IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. ____ EAL 2023

No. 1746 EDA 2022
MICHAEL TRANTER, as the Administrator of the Estate of J.V., a minor, and Administrator Ad Prosequendum of the Estate, ET AL.,
v.
Z & D TOUR, INC., ET AL.

No. 2343 EDA 2022
TAYLOR TEETS,
v.
UNITED PARCEL SERVICE, INC. c/o Corporation Service Company, ET AL.

No. 2421 EDA 2022
LUCERO VAZQUEZ, ET AL.,
v.
Z & D TOURS, INC., ET AL.

Nos. 2426 EDA 2022 and 2427 EDA 2022
XUE-ZHEN CHEN, ET AL.,
v.
FEDEX GROUND PACKAGE SYSTEM, INC., ET AL.

BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, THE UNIVERSITY OF PITTSBURGH MEDICAL CENTER, AND THE PENNSYLVANIA MOTOR TRUCK ASSOCIATION IN SUPPORT OF PETITIONERS' PETITIONS FOR ALLOWANCE OF APPEAL

Petitions for Allowance of Appeal from an Opinion and Order of the Superior Court of Pennsylvania entered on October 11, 2023 at No. 1746 EDA 2022, No. 2343 EDA 2022, No. 2421 EDA 2022, No. 2426 EDA 2022, and No. 2427 EDA 2022, vacating the Orders granting Motions to Transfer Venue Based on *Forum Non Conveniens* Under Pa.R.C.P. 1006(d)(1) entered June 2, 2022, August 3, 2022, and August 4, 2022, in the Philadelphia County Court of Common Pleas at Docket Nos. 211001768, 2011201805, 211201583, and 211200570

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, bipartisan organization representing businesses, healthcare, and other perspectives. PCCJR is dedicated to improving the Commonwealth's civil justice system by elevating awareness of problems, advocating for legal reform in the legislature, and promoting fairness in the courts. PCCJR often participates as an *amicus* in appeals of statewide importance.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber regularly files *amicus* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 63% of the U.S. property-casualty insurance market and write

more than $19 billion in premiums in the Commonwealth. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus* briefs in significant cases before federal and state courts.

The University of Pittsburgh Medical Center ("UPMC") is a world-renowned healthcare provider and insurer, inventing new models of patient-centered, cost-effective, accountable care. UPMC provides more than $1 billion in annual benefits to its communities. UPMC is the largest nongovernmental employer in the Commonwealth with approximately 87,000 employees, 40 hospitals, 700 doctors' offices and outpatient sites, and a 3.5-million-member Insurance Services Division.

The Pennsylvania Motor Truck Association ("PMTA"), which is a non-profit entity formed in 1928 with over 1,200 members, represents the interests of almost 69,000 trucking companies employing over 340,00 individuals in the Commonwealth of Pennsylvania, ranging from large multinational corporations to small businesses and single owner-operators. The mission of PMTA is to promote the professional and economic growth of the trucking industry and the businesses that support it. Roadway safety, which PMTA promotes through education, advocacy, collaboration, and recognition programs, is among its highest priorities.

This appeal involves, *inter alia*, the standard of proof required to establish that a case warrants transfer for *forum non conveniens* because a plaintiff's chosen forum is oppressive or vexatious. *Forum non conveniens* has long been an essential part of Pennsylvania jurisprudence. *Fairchild Engine & Airplane Corp. v. Bellanca Corp.*, 137 A.3d 248 (Pa. 1958). Indeed, the doctrine is memorialized in the Pennsylvania Rules of Civil Procedure. Pa.R.Civ.P. 1006(d)(1).

Forum non conveniens serves a vital purpose. The doctrine acts as a "necessary counterbalance to insure fairness and practicality," *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989), *rev'd on other grounds by Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997), empowering trial courts to transfer a case to a more appropriate forum if litigating in the plaintiff's chosen forum would be oppressive or vexatious.

This Court has made clear since at least *Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997), that the doctrine is flexible: "*Cheeseman* and Rule 1006(d) do not require any particular form of proof. All that is required is that the moving party presents a sufficient factual basis for the petition [, and t]he trial court retains the discretion to determine whether the particular form of proof is sufficient." *Bratic v. Rubendall*, 99 A.3d 1, 9-10 (Pa. 2014) (cleaned up).

Through a recent series of inconsistent decisions, however, the Superior Court has sown uncertainty in this once-settled doctrine, subjecting some litigants to new,

more rigid requirements for *forum non conveniens*, but others to the traditional, flexible standard that has existed for over a quarter century. Worse, the Superior Court did not even attempt to reconcile its conflicting rulings with this Court's binding precedent.

Litigants and courts deserve clarity regarding the doctrine of *forum non conveniens*, which has taken on greater significance in the wake of *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) (holding lawsuit by nonresident against out-of-state corporation premised on Commonwealth's consent-by-registration statute did not violate Fourteenth Amendment's Due Process Clause), and *Hangey v. Husqvarna Professional Products*, 247 A.3d 1136 (Pa. Super. Ct. 2021) (holding venue could lie over defendant who does only 0.005% of its annual business in forum), *appeal granted*, 278 A.3d 301 (Pa. 2022). Because PCCJR, Chamber, APCIA, UPMC, and PMTA ("*Amici*") and their respective members wish to avoid being subjected to litigation in oppressive or vexatious forums, *Amici* have a compelling interest in this appeal.

Pursuant to Pa.R.A.P. 531(b)(2), *Amici* each file this brief in their own right and, where applicable, on behalf of their respective members. *Amici* state that no person, other than their respective members and their respective counsel, paid for or authored this brief, in whole or in part.

INTRODUCTION

This Court should grant allocatur to clarify the essential protections embodied in Rule 1006(d)(1), which enable courts to transfer cases to alternate forums "[f]or the convenience of parties and witnesses." Pa.R.C.P. 1006(d)(1). Historically, to establish *forum non conveniens,* the movant had to show the plaintiff's chosen forum is either oppressive or vexatious, "without any particular form of proof." *Bratic*, 99 A.3d at 9 (cleaned up). Indeed, this Court consistently has emphasized the necessity of fact-specific assessment for *forum non conveniens*, focusing on the totality of the circumstances and granting considerable discretion to trial courts. *Id.* at 8; *Cheeseman*, 701 A.2d at 162.

But at least two Superior Court panels recently have imposed new, more rigid requirements holding defendants to a specific level of proof. *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).[1] Specifically, *Ehmer* and *Tranter* require movants to establish the potential witnesses claiming burden or hardship are "key witnesses" possessing testimony "relevant and necessary" to the defense. *Ehmer*, 296 A.3d at 1208-09; *Tranter*, 2023 WL 6613731, at *3. Both decisions are fundamentally flawed in several respects.

[1] The defendant in *Ehmer*, Maxim Crane Works, L.P. ("Maxim"), filed a Petition for Allowance of Appeal on September 12, 2023, docketed at 291 EAL 2023.

First, while purporting to apply the abuse-of-discretion standard, the Superior Court in each case effectively reviewed the decisions below *de novo*, substituted its judgment for that of the trial court, and searched the record to make new factual findings about the affiants and potential witnesses despite overwhelming evidence of oppression. The heightened requirements of *Ehmer* and *Tranter* also contradict this Court's precedent, which makes clear that the *forum-non-conveniens* analysis is a fact-specific inquiry based on the totality of the circumstances—with no specific manner-of-proof requirement. *Bratic*, 99 A.3d at 8; *Cheeseman*, 701 A.2d at 158.

Additionally, *Ehmer* and *Tranter* are at odds with other recent Superior Court opinions, further compounding the *Erie*-esque problem facing litigants across the Commonwealth (where the outcome of *forum non conveniens* challenges depends upon composition of the presiding panel). In fact, the recent trend of nuclear verdicts ($10 million+) and thermonuclear verdicts ($100 million+) from Philadelphia juries strongly incentivizes plaintiffs to advocate for unduly restrictive interpretations of *forum non conveniens*, despite this Court's rulings in *Cheeseman* and *Bratic*. *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 COMMERCE INST. FOR

LEGAL REFORM (Sept. 2022) (noting "[m]ore than half" of Commonwealth's nuclear verdicts are returned in Philadelphia County).

Even putting aside that this heightened standard spurns precedent, meeting the "key witness" requirement of *Ehmer* and *Tranter* is practically impossible. Indeed, if this case cannot satisfy *forum non conveniens* with 11 affidavits and 32 statements from potential witnesses who work or reside 240 or more miles from Philadelphia County, it is difficult to imagine facts that could, making plaintiff's chosen forum unassailable. At the same time, *forum non conveniens* has become increasingly more important for litigants given the convergence of recent jurisdiction and due-process decisions that have rendered the doctrine the last line of defense against forum shopping for many defendants.

The irony of the *Ehmer-Tranter* standard is it will harm the busiest trial court in Pennsylvania by causing more cases to remain in the Philadelphia County Court of Common Pleas at a time when it is already overburdened with an influx of cases resulting from this Court's repeal of the medical malpractice venue rule. In short, the bench and bar need guidance from this Court regarding this critical procedural doctrine, and this issue is of paramount importance for litigants and courts alike.

Indeed, this appeal is the ideal vehicle for this Court to restore fairness in the law and correct the flawed impression of some Pennsylvania courts that a plaintiff's choice of forum should be afforded extreme deference—which is the root cause of

the forum-shopping problem plaguing Pennsylvania. *See Mallory*, 600 U.S. at 153-54 (Alito, J., concurring in part and concurring in the judgment) (acknowledging forum shopping by Philadelphia plaintiffs to "venue [] reputed to be especially favorable to tort plaintiffs").

REASONS FOR GRANTING ALLOWANCE OF APPEAL

Allocatur is appropriate "only when there are special and important reasons therefor." Pa.R.A.P. 1114(a). Such reasons include where "the holding of the intermediate appellate court conflicts with a holding of the Pennsylvania Supreme Court or the United States Supreme Court on the same legal question," "the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion," and "the question presented is one of such substantial public importance as to require prompt and definitive resolution" by this Court. Pa.R.A.P. 1114(b). This case implicates each of these reasons. *Amici* incorporate by reference each of the three questions presented in Petitioners' Petitions for Allowance of Appeal and urge this Court to grant allocatur on the questions presented for review.

I. Allocatur Is Warranted Because the Panel's New, Heightened Standard for *Forum Non Conveniens* Conflicts with Prior Decisions from This Court and the Superior Court and Presents an Issue of Statewide Importance

A. *Tranter* Deviates from Existing Caselaw and Intrudes upon Trial Court Discretion by Imposing a Specific Form of Proof to Establish *Forum Non Conveniens*

Rule 1006(d)(1) and the *forum non conveniens* doctrine provide defendants "a necessary counterbalance to a plaintiff's choice of forum to insure [sic] fairness and practicality." *Bratic*, 99 A.3d at 6 (cleaned up). It is well established that "a plaintiff's forum choice should be rarely . . . disturbed, is entitled to great weight, and must be given deference by the trial court." *Powers v. Verizon Pa., LLC*, 230

A.3d 492, 496-97 (Pa. Super. Ct. 2020) (cleaned up). Equally well established, however, is that a plaintiff's choice of forum is "not absolute or unassailable." *Powers*, 230 A.3d at 496-97.

Trial courts addressing Rule 1006(d)(1) petitions to transfer thus "are vested with considerable discretion … to balance the arguments of the parties, consider the level of prior court involvement, and consider whether the forum was designed to harass the defendant." *Bratic,* 99 A.3d at 7 (cleaned up). A trial court's transfer decision under *forum non conveniens* should not be disturbed absent an abuse of discretion. *Cheeseman*, 701 A.2d at 159. "If there exists a proper basis for the trial court's decision to transfer venue, the decision must stand." *Bratic*, 99 A.3d at 7.

In *Bratic*, this Court clarified the standard for *forum non conveniens* as expressed in *Cheeseman* and cautioned against overemphasizing public and private interest at the expense of the ultimate issue—whether the chosen forum is oppressive or vexatious. *Id.* at 6-8. In reaffirming *Cheeseman*, *Bratic* made clear that *Cheeseman* and Rule 1006(d) do not require any particular form of proof. *Id.* at 9. Rather, trial courts must consider the totality of the circumstances supporting the petition, as rarely will one factor alone suffice to warrant transfer. *Id.* at 8-10. A defendant must show more than mere inconvenience but need not show "near-draconian consequences" resulting from the plaintiff's chosen forum. *Bratic*, 99 A.3d at 10; *Cheeseman,* 701 A.2d at 162. For instance, a defendant may demonstrate

trial elsewhere "would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute." *Cheeseman,* 701 A.2d at 162. So long as a petition is supported by detailed information of record, whether the particular form of proof suffices to support transfer is left to the trial court's sound discretion. *Bratic*, 99 A.3d at 10.

Despite the foregoing, the panel below held that the trial court erred in granting the petitions to transfer venue based on *forum non conveniens* because it "did not find that Appellees had demonstrated that this 'relevant evidence' was critical to their defenses" and "none of the Appellees asserted in their motions to transfer that the witnesses who signed the affidavits were 'key witnesses' for the defense." *Tranter*, 2023 WL 6613731, at *3.

This case represents the second time since June that an intermediate appellate court decision imposed a specific-manner-of-proof standard for potential witness testimony. *Ehmer*, 296 A.3d at 1207-08; *Tranter*, 2023 WL 6613731, at *4. Under these cases, when the transfer request is based on allegations of witness hardship, the defendant must not only identify the allegedly encumbered witness but also make a general statement of what testimony that witness will provide sufficient to establish they are "key" to the defense. *Tranter*, 2023 WL 6613731, at *3.

The Superior Court in *Ehmer* looked first to *Ritchey v. Rutter's, Inc.*, 286 A.3d 248 (Pa. Super. Ct. 2022), for its proposition that "the party seeking a change of

venue bears a heavy burden in justifying the request, and it has been consistently held that this burden includes the demonstration on the record of the claimed hardships." *Ehmer*, 296 A.3d at 1207-08 (quoting *Ritchey*, 286 A.3d at 254). *Ehmer* took this one step further, finding an abuse of discretion where the trial court determined hardship to affiants and potential witnesses warranted a transfer without first determining the testimony is "relevant and necessary" to the defense. *Ehmer*, 296 A.3d at 1207-08. Writing for the panel and citing a decision that, in turn, cited a case predating *Cheeseman*, Judge Dubow proclaimed: "[w]hen the transfer request is based on an allegation of witness hardship, the defendant must (1) identify the allegedly encumbered witness, and (2) make a general statement of what testimony that witness will provide." *Ehmer*, 296 A.3d at 1207-08 (citing *Bochetto v. Diemling, Schreiber & Park*, 151 A.3d 1072, 1083 (Pa. Super. Ct. 2016) (citing *Petty v. Suburban Gen. Hosp.*, 525 A.3d 1230, 1234 (Pa. Super. Ct. 1987)). The Superior Court instructed: "Only after the defendant has placed detailed information on the record establishing that the witness possesses information relevant to its defense should the trial court proceed to consider the alleged hardship posed to the witness." *Id.* at 1208.

Writing again for the panel in the instant case, and once more invoking the same pre-*Cheeseman* case, Judge Dubow augmented the standard still further, requiring that the general statement also "establish that the potential witness is 'key'

to the defense." *Tranter*, 2023 WL 6613731, at *3 (citing *Perry*, 525 A.3d at 1234). The Superior Court proceeded to apply a *de novo* standard of review and probe the facts relied upon by the trial court. *Id.* The result was the Superior Court discounting 11 affidavits and 32 statements from potential witnesses who worked and resided 240 or more miles from Philadelphia County, on the basis that the movants failed to establish these witnesses were "key" witnesses whose testimony is "relevant and necessary" to the case. *Id.* But *Bratic* makes clear no particular form of proof is required to establish that a forum is oppressive under *forum non conveniens*. 99 A.3d at 9. Rather, "[a]ll that is required is that the moving party present sufficient factual basis for the petition." *Id.* Thus, *Tranter* conflicts with this Court's binding precedent.

Tranter and *Ehmer* also diverge from prior Superior Court decisions affirming transfer absent any hardship affidavits or witness statements. For instance, in *Duty v. Toyota Advanced Logistics*, 1453 EDA 2020, 2021 WL 4026871 (Pa. Super. Ct. Sept. 3, 2021), the Court affirmed a venue transfer without witness affidavits or statements, holding "a reasonable evidentiary basis supported the conclusion that the selection of a distant Philadelphia venue to litigate this purely York County matter was manifestly oppressive," where all 17 potential fact witnesses resided no less than 80 miles away in York County. *Id.* at *5.

Similarly in *Powers v. Verizon Pennsylvania, LLC,* 230 A.3d 492 (Pa. Super. Ct. 2020), the Superior Court affirmed the trial court's *forum non conveniens* transfer from Philadelphia to Bucks County despite a lack of supporting affidavits. *Id.* at 495-96. The Court held that the totality of the circumstances, including the difference in travel time from the accident scene to the respective venues, as well as reduced travel time for medical professionals who treated plaintiff in Bucks County, sufficiently justified the trial court's exercise of discretion. *Id.* at 500.

Since *Tranter*, the Superior Court has issued two additional decisions on this subject, both of which fail to acknowledge the purported change in law or to clarify when one standard applies over the other. *See Smith v. CMS W., Inc.*, 1002 EDA 2022, 2023 WL 7119812 (Pa. Super. Ct. Oct. 30, 2023); *Austin v. Amazon.com, Inc.*, 756 EDA 2023, 2023 WL 7273842 (Pa. Super. Ct. Nov. 3, 2023).

In *Smith*, the Superior Court affirmed a transfer from Philadelphia County to Butler County, holding that the burden on defense witnesses justified transferring the suit. 2023 WL 7119812. The movants produced just four inconvenience affidavits in a case plaintiffs argued was "certain to have dozens of witnesses." *Id.* at *2. Writing for the Court, Judge Stabile explained:

> If inconvenience fades in the mirror and oppressiveness nears in that 100-mile stretch between Philadelphia and Harrisburg, oppressiveness is certainly reached before someone embarks on a 300-mile journey leaving from Bu[tl]er, traveling past Bedford, Breezewood, and through the turnpike's tunnels, before reaching Harrisburg, with another 100 miles still to go before arriving in Philadelphia.

2023 WL 7119812, at *2. The *Smith* Court distinguished *Tranter* in a footnote, simply declaring that, unlike *Tranter*, the defense established that two burdened witnesses were "'central' or 'critical' witnesses whose testimony would be relevant and necessary" to the case. *Id.* at *6, n.6.

A second post-*Tranter* opinion, this one authored by Judge Olson, reversed a transfer from Philadelphia County to neighboring Montgomery County, holding that Amazon failed to demonstrate the requisite oppressiveness to overcome plaintiffs' choice of venue. *Austin*, 2023 WL 7273842, at *5. Notably, *Austin* failed to even acknowledge the "relevant and necessary" standard articulated in *Tranter* and *Ehmer*.

Given the flurry of recent *forum non conveniens* decisions, each applying their own interpretation of the standard,[2] litigants and trial courts currently are deprived of uniform guidance as to how a case may be transferred out of an oppressive venue under *forum non conveniens*. Ostensibly, the standard applied to any given case will depend primarily on the composition of the Superior Court panel, creating an *Erie*-esque problem for the bench and bar. Because recent Superior Court decisions display a notable lack of consistency, litigants are left to grapple with an

[2] The recent string of inconsistent decisions on this issue is widely recognized. *See, e.g.*, Aleeza Furman, *Superior Court Breaks String of Plaintiff-Side Forum Rulings, Upholding Case's Move From Phila.*, THE LEGAL INTELLIGENCER (Nov. 1, 2023).

unpredictable, ever-changing standard. Until this Court weighs in, more uncertainty will ensue to the detriment of all Pennsylvanians. The state of this doctrine is of such substantial public importance as to require prompt review from this Court.

B. Precedent Aside, the New *Ehmer-Tranter* Standard for *Forum Non Conveniens* Is Practically Impossible to Meet and Renders the Doctrine Devoid of Any Practical Impact or Meaning

In addition to marking a vast departure from existing Pennsylvania law, the Superior Court's new "key witness" and "relevant and necessary" standard is virtually impossible to meet. *Forum non conveniens* is raised on a petition to transfer at the preliminary stages of litigation—before discovery and before the parties have fully developed their claims and defenses for trial. It is unreasonable, unworkable, and inefficient to mandate at this early stage that defendants establish certain witnesses (including third-party witnesses) as key witnesses and identify with precision the relevance and necessity of each witness's testimony for purposes of *forum non conveniens*.

Maxim echoes this sentiment in its pending Petition for Allowance of Appeal. Maxim correctly argues that the form-of-proof requirement adopted by the *Ehmer* Court effectively puts defendants between a rock and a hard place—reveal their defense in detail to opposing parties and subject it to trial court scrutiny prematurely or be forced to litigate in an oppressive or vexatious forum. Maxim's petition to transfer showed that the site of the accident, the fact witnesses expected to be called

at trial, all records related to the plaintiff's medical treatment, and plaintiff himself are all located in or near Columbia County, more than 100 miles and several hours from Philadelphia. (*Ehmer* Pet. at 15). The panel nevertheless vacated the transfer order because, *inter alia*, the trial court found that trial in Philadelphia would pose a hardship to Maxim's three witness-affiants without first making a finding that they possessed testimony relevant to Maxim's defense. (*Id.* at 17-18).

The circumstances in *Tranter* are even more compelling: the accident giving rise to the claims occurred over 250 miles from Philadelphia County; none of the Plaintiffs reside in or received medical care in Philadelphia County; none of the Defendants reside or maintain a principal place of business in Philadelphia County; and of the dozens of potential witnesses, including emergency, medical, police, and investigating officers, none work or reside in Philadelphia County and many reside no closer than 240 miles from there. The only arguable connection with Philadelphia County is the fact that some of the Defendants conduct business there, which is irrelevant to the *forum non conveniens* analysis. The quantum of proof in support of transfer is compelling here, and if ever there is a case that should satisfy *forum non conveniens*, it is this one.

Nevertheless, the *Ehmer* and *Tranter* panels effectively eliminate *forum non conveniens* as a defendant's last line of defense (no pun intended) against forum shopping. *But see Bratic*, 99 A.3d at 6 (noting the doctrine acts as a "necessary

counterbalance" against a plaintiff's "desire to pursue verdicts in counties perceived to be more plaintiff-friendly," among other things). This is especially troublesome given the convergence of recent venue and jurisdiction decisions that have eroded the doctrine's practical impact under Pennsylvania law, which previously would have protected defendants from oppressive forum shopping by plaintiffs.

In *Mallory*, the U.S. Supreme Court rejected a due-process challenge to Pennsylvania's consent-by-registration statute, which requires out-of-state corporations to consent to general jurisdiction in the Commonwealth as a condition of doing business here; the Court held the statute broadly confers personal jurisdiction in Pennsylvania for out-of-state corporations for conduct that occurred outside the Commonwealth against an out-of-state plaintiff, creating an additional, consent-based theory of personal jurisdiction. *Mallory*, 600 U.S. at 125; *see id.* at 150 (Alito, J., concurring in part and concurring in the judgment). Although other potential challenges to that statute remain pending, as it presently stands, corporate defendants who are not "at home" in Pennsylvania now face the real prospect of suit in the Commonwealth for claims arising in ***any*** jurisdiction by a plaintiff ***with no ties to Pennsylvania***.

Meanwhile, in *Hangey*, the Superior Court held that 0.005% of a corporation's national sales in Philadelphia were sufficiently continuous for the "quantity prong" of a venue analysis under Pennsylvania Rule of Civil Procedure 2179(a)(2). 247

A.3d at 1141. Thus, a corporation may be sued in a venue even if they have a *de minimis* amount of business in the county. *Id.*; *see Hausmann v. Bernd*, 271 A.3d 486 (Pa. Super. 2022) (distinguishing *Hangey* and affirming transfer by trial court where corporation had 0.27% of total revenue in Philadelphia County).

And at the same time, this Court repealed the longstanding medical malpractice venue rule (former Rule 1006(a.1)), which provided that plaintiffs could only file lawsuits against healthcare providers in the county where medical treatment occurred. *In re*: Order Amending Rules 1006, 2130, 2156, and 2179 of the Pennsylvania Rules of Civil Procedure, No. 736 (Aug. 25, 2022). With this change, medical malpractice suits may now be filed in any county in which care occurred, where a defendant could be served, or where any transaction or occurrence giving rise to the suit took place. Curt Schroder, *Transparency, Open Process Needed for Review of 2022 Amendments to Med Mal Venue Rule*, THE LEGAL INTELLIGENCER (Sept. 14, 2023). The repeal has led to a sharp increase in medical malpractice actions filed in Philadelphia County, with at least 468 such cases filed there since January 1, 2023, according to statistics provided by the Philadelphia County Court of Common Pleas—***a 170% increase from the prior year*** with still two months remaining in 2023.

This perfect storm of recent changes in the law stacks the deck against Pennsylvania defendants and makes *forum non conveniens* more important than

ever. But where *forum non conveniens* once operated as a safety net to protect defendants from oppressive or vexatious forum shopping, the new heightened standard imposed by the panel below makes it even more likely that Pennsylvania disputes will be adjudicated wherever they are filed, regardless of the burden on the parties and witnesses. The *Ehmer-Tranter* standard will undoubtedly exacerbate the Commonwealth's burgeoning forum-shopping problem, stranding defendants with no other connection to Philadelphia County in a court with notoriously plaintiff-friendly juries. *See Mallory*, 600 U.S. at 153-54 (Alito, J., concurring in part and concurring in the judgment); *see also Duty,* 2021 WL 4026871, at *5 ("The doctrine addresses the issue of plaintiffs bringing suit in an inconvenient forum in the hope that they will secure easier or larger recoveries or so add to the costs of the defense that the defendant will take a default judgment or compromise for a larger sum." (cleaned up)).

CONCLUSION

For the foregoing reasons and those additional reasons set forth in Petitioners' Petitions, *Amici* respectfully request that this Court grant the Petitions and permit review on all questions presented for review.

Respectfully submitted,

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