

Smith Publishes Personal Jurisdiction Article with Defense Research Institute

Jackson Partner Peyton Smith recently had an article published in DRI's *For The Defense* (June 2019). Click the image below to read it.

Interstate Commerce
Versus State Interest

By T. Peyton Smith

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Personal Jurisdiction, Registration as Consent, and the Commerce Clause

Seeking dismissal based on lack of personal jurisdiction has become a critical component of any defense, particularly when litigating in unfavorable jurisdictions. While defendants have experienced extraordinary

success in recent years, some state courts and legislatures have found an end-run around the recent personal jurisdiction case law: business registration statutes that require consent to general jurisdiction. Challenges to these statutes have had varying degrees of success, but defendants may be litigating this issue while leaving their best argument on the shelf. This article assesses the personal jurisdiction landscape, the treatment of registration as consent, and the potential for using the Commerce Clause to attack registration-as-consent statutes.

The Turning Tides of Personal Jurisdiction Jurisprudence

In recent years the United States Supreme Court has set out to clarify the constitutional parameters of personal jurisdic-

tion—the basis upon which a particular court can exercise power over a particular party. In the process, much of what many of us learned in Civil Procedure was turned on its head.

For many attorneys and judges, the long-standing lens through which we analyzed personal jurisdiction was “minimum contacts.” Cases such as *International Shoe*, *Worldwide Volkswagen*, *Asahi Metal*, and *Burger King* taught that if a party’s contacts with a forum were sufficient enough to conclude that the party had “availed itself” of the benefits of the forum’s laws—even if the contact simply came through the flow of the “stream of commerce”—then that party was subject to suit in that forum. In practice, this standard was easily met when litigation involved a large corporation with