
US Supreme Court Examines the Limits of General Jurisdiction

Over the last 10 years, the U.S. Supreme Court has issued landmark opinions that have clarified the nature and scope of personal jurisdiction over a corporate defendant. These opinions have focused largely on questions of general or specific jurisdiction. The court has not yet addressed the constitutional limits of a corporate defendant's consent to personal jurisdiction under its modern jurisprudence. On Nov. 8, in *Mallory v. Norfolk Southern Railway*, 266 A.3d 542 (Pa. 2021), cert. granted, 142 S. Ct. 2646 (April 25, 2022), the court heard argument on whether a state can require a foreign corporation to consent to general jurisdiction when it registers to do business in the state. The court's decision will undoubtedly have a significant impact on products liability and mass tort litigation, and could potentially reshape modern principles of personal jurisdiction.

Current Principles of Personal Jurisdiction

'International Shoe' and its Progeny. In its seminal decision *International Shoe v. Washington*, 326 U.S. 310 (1945), the U.S. Supreme Court clarified that the due process clause of the Fourteenth Amendment protects a defendant's liberty interest in not being subject to the binding judgment of a forum in which the defendant has insufficient "contacts, ties, or relations." Since *International Shoe*, the focus on a corporate defendant's relationship with the forum state led to the recognition of two kinds of personal jurisdiction: specific and general. See *Ford Motor v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017, 1024 (2021). Specific jurisdiction requires an adequate connection between the forum state and the underlying case or controversy. General jurisdiction extends to any and all claims brought against a corporation, even with no forum connection.

In 2011, the Court began narrowing the constitutional limits of general jurisdiction to reflect the modern economy. It held that general jurisdiction exists only where a corporation has affiliations with the state that are so "continuous and systematic" as to render the corporation essentially "at home" there. See *Goodyear Dunlop Tires Operations v. Brown*, 564 U.S. 915 (2011). Except in exceptional circumstances, a corporation is subject



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to general jurisdiction only in its state of incorporation and location of its principal place of business. See *Daimler AG v. Bauman*, 571 U.S. 117 (2014). These seminal cases thus rejected the notion that a state may exercise general jurisdiction over an out-of-state corporation merely because it does business there. See, e.g., *Daimler*, 571 U.S. at 139 n.20 (“a corporation that operates in many places can scarcely be deemed at home in all of them.”).

Consent to Jurisdiction. Consenting to jurisdiction—voluntarily waiving one’s due process rights—is an independent basis for jurisdiction. See *Brady v. United States*, 397 U.S. 742, 748 (1970) (observing that waivers of constitutional rights must be voluntary, knowing, and intelligent). Consent jurisdiction is, by definition, jurisdiction “that parties have agreed to, either by accord, by contract, or by general appearance.” See “Black’s Law Dictionary” (11th ed. 2019).

Unlike general or specific jurisdiction, consent jurisdiction does not require a connection between the claim and the forum. See *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985). All states require some form of foreign business registration. Plaintiffs have increasingly argued such registration is consent to jurisdiction. But is registration consent? See *Viko v. World Vision*, No. 2:08-cv-221, 2009 WL 2230919, at *10 n.17 (D. Vt. July 24, 2009) (noting due process permits consenting to jurisdiction, but whether due process allows the inference of jurisdictional consent from compliance with a registration statute is a separate question). In *Pennsylvania Fire Insurance v. Gold Issue Mining*, 243 U.S. 93, 95-96 (1917), the U.S. Supreme Court held that a corporation’s consent to general jurisdiction by compliance with a business registration statute is consistent with due process, but it is unclear if this holding survived *International Shoe* and its progeny. Most state supreme courts that have recently considered the consent-by-registration theory of personal jurisdiction have rejected it. See, e.g., *Aybar v. Aybar*, 37 N.Y.3d 274 (2021), *Chavez v. Bridgestone Americas Tire Operations*, 503 P.3d 332 (N.M. 2021), and *Mallory*, 266 A.3d at 547. However, the theory was upheld by the Georgia Supreme Court in *Cooper Tire & Rubber v. McCall*, 863 S.E.2d 81 (Ga. 2021).

‘Mallory v. Norfolk Southern’: State Court Proceedings

Plaintiff Robert Mallory, a Virginia resident, sued his former employer, Norfolk, in Pennsylvania state court for asbestos exposures that occurred in Ohio and Virginia. At the time, Norfolk was a Virginia corporation with its principal place of business in Virginia.

Norfolk moved to dismiss for lack of personal jurisdiction. Since all of Mallory’s alleged exposures occurred outside of Pennsylvania, Norfolk argued Pennsylvania courts did not have specific jurisdiction over Mallory’s claim. Norfolk also argued the state court lacked general jurisdiction because the company was not “at home” in Pennsylvania. In response, Mallory argued that Norfolk consented to general jurisdiction when it registered to do business in Pennsylvania.

Like every state, Pennsylvania requires a foreign corporation to register with the state before doing business there. A foreign corporation “may not do business in” Pennsylvania “until it registers.” See 15 Pa. Cons. Stat. §411(a). However, unlike other states, Pennsylvania treats this mandatory registration as “a sufficient basis ... to exercise general personal jurisdiction,” regardless of whether the foreign corporation has incorporated, established its principal place of business, or is otherwise “at home” in Pennsylvania. See 42 Pa. Cons. Stat. §5301(a)(2)(i). Thus, “any cause of action may be asserted against” a registered foreign corporation.

The trial court found this statutory scheme unconstitutional and dismissed the action for lack of personal jurisdiction. On direct appeal, the Pennsylvania Supreme Court unanimously affirmed.

In rejecting the consent-by-registration theory, the state high court acknowledged that, since *Daimler*, courts across the country have grappled with the question, and reached disparate results. Nonetheless, the court held that Norfolk’s registration was an insufficient basis to exercise jurisdiction for primarily two reasons.

First, the court analyzed whether the assertion of general jurisdiction over Norfolk would comport with due process under *Goodyear* and *Daimler*. In rejecting Mallory’s argument that Norfolk’s registration alone was sufficient to assert general jurisdiction, the court stated such a position “eviscerates the Supreme Court’s general jurisdiction framework set forth in *Goodyear* and *Daimler* and violates federal due process by failing to comport with *International Shoe*’s traditional conception of fair play and substantial justice.” Asserting general jurisdiction over Norfolk based on its registration alone would flout “*Daimler*’s directive that a court cannot subject a foreign corporation to general all-purpose jurisdiction based exclusively on the fact that it conducts business in the forum state.”

Second, the court examined whether Norfolk validly consented to general jurisdiction. The court held that Norfolk did not do so voluntarily. It observed Pennsylvania law gave corporations only two options: either consent to general jurisdiction or not conduct business in Pennsylvania at all. The court opined that faced with this “Hobson’s choice,” a foreign corporation’s consent to general jurisdiction can hardly be characterized as voluntary and is instead coerced. In its view, registration to do business in Pennsylvania is not voluntary consent but rather “compelled submission to general jurisdiction by legislative command.”

Indeed, if Pennsylvania could enforce such a scheme, every state could do so, “rendering every national corporation subject to the general jurisdiction of every state”—a result that “flies in the face of *Goodyear* and *Daimler*.”

Conclusion

In their briefing and during oral argument before the U.S. Supreme Court, the parties maintained their diametrically opposed positions. Mallory asserted states have unfettered power to extract consent to general jurisdiction from nonresident corporations through registration statutes. Norfolk contended that states have no power to do so because allowing consent-by-registration would effectively reinstate the rejected theory that “doing business” in a state is sufficient for a state to exercise general jurisdiction. The case generated immense interest—20 amicus briefs were filed, including from the United States.

The court’s decision will have far-reaching implications, especially for products liability and mass tort cases. National manufacturers have come to rely upon the bright line “at home” test limiting the exercise of general jurisdiction to their place of incorporation or principal place of business. However, despite the directives of *Goodyear* and *Daimler*, the split among state high courts and federal courts on whether consent-by-registration supports general jurisdiction has identified gaps in the court’s modern jurisprudence.

Based on questions at oral argument, it appears the court is leaning toward affirming though it remains unclear how and on what grounds it may do so. If the court maintains its resistance to “litigation tourism” and affirms, business is likely to continue as usual. Most states do not have statutes that explicitly treat business registration as mandatory consent to general jurisdiction, and the ability to forum-shop will be further limited. If, on the other hand, the court sides with Mallory and reverses, we may see states adopt similar consent-by-registration statutes, thereby substantially increasing the number of venues where a plaintiff can sue a corporate defendant.