

Client Alert **Product Liability Law**

***Mallory v. Norfolk Southern Railway Co.* – The United States Supreme Court Upholds Consent-Based Theory of General Jurisdiction**

The United States Supreme Court's recent decision in *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2023 (2023) is one of the most significant decisions addressing the issue of general jurisdiction since *Daimler AG v. Bauman*, 571 U.S. 117 (2014). In *Mallory*, the United States Supreme Court held that Pennsylvania's long-arm statute, which gives Pennsylvania courts jurisdiction over out-of-state companies that register to do business in Pennsylvania, does not violate the Due Process Clause. In a 5-4 majority, the Court held that Due Process concerns are not implicated by the statute because an out-of-state company is deemed to consent to jurisdiction when it registers to do business in Pennsylvania.

The facts underlying the Supreme Court's decision are as follows. Plaintiff Robert Mallory worked for Norfolk Southern as a freight car mechanic for nearly twenty years in Ohio and Virginia. After he left the company, Mr. Mallory moved to Pennsylvania before returning to Virginia. Mr. Mallory was diagnosed with cancer, which he attributed to his work at Norfolk Southern. Although Norfolk Southern was incorporated and headquartered in Virginia, Mr. Mallory sued Norfolk Southern in Pennsylvania state court. Mr. Mallory argued that although there was no specific personal jurisdiction over Norfolk Southern in Pennsylvania, jurisdiction was proper because Norfolk Southern had registered to do business in Pennsylvania, which automatically conferred jurisdiction with respect to any dispute, regardless of its connection to the State. 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b) (2019). In its decision below, *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542 (Pa. 2021), the Pennsylvania Supreme Court dismissed the case for lack of jurisdiction, holding that Pennsylvania's long-arm statute violates the Due Process Clause because it is coerced consent to general jurisdiction that strips foreign corporations of the due process safeguards guaranteed in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) and *Daimler*.

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In striking the due process challenge to the Pennsylvania long-arm statute, the Supreme Court relied on a 100+ year-old case, *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). In *Pennsylvania Fire*, plaintiff challenged a Missouri statute that required any out-of-state insurance company that wanted to do business in Missouri to register to do business in the state and to agree to accept service of process there. The Supreme Court concluded that the Missouri statute did not violate the Due Process Clause because Plaintiff consented to service in Missouri by registering to do business there. The *Mallory* majority concluded that like the Missouri statute, the Pennsylvania statute required consent to jurisdiction as a condition for doing business in the state, and that nothing about this violates due process.

Norfolk Southern argued that *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) overruled *Pennsylvania Fire* because *International Shoe* requires enough activity in the state “to make it reasonable and just” to maintain suit there against a foreign company. In the plurality portion of his opinion, Justice Gorsuch explained that unlike here, where Norfolk Southern consented to jurisdiction by registering to do business in Pennsylvania, there was no consent to jurisdiction in *International Shoe*. Justice Gorsuch also noted that there are no fairness concerns in conferring jurisdiction over Norfolk Southern in Pennsylvania because at the time of Mr. Mallory’s suit, Norfolk Southern employed nearly 5,000 people, maintained nearly 2,400 miles of track, and had a 70-acre locomotive shop (the largest in North America) in Pennsylvania.

In his concurring decision, Justice Alito agreed that the Pennsylvania statute did not violate the Due Process Clause because Norfolk Southern consented to jurisdiction in Pennsylvania by registering to do business there. Justice Alito went on to say, however, that he was “not convinced” that “the Constitution permits a State to impose such a submission-to-jurisdiction requirement.” Specifically, Justice Alito observed that “there is a good prospect that Pennsylvania’s assertion of jurisdiction here — over an out-of-state company in a suit brought by an out-of-state plaintiff on claims wholly unrelated to Pennsylvania — violates the Commerce Clause.” A state law may offend the Commerce Clause when its law: (i) “discriminates against” interstate commerce, or (ii) imposes “undue burdens” on interstate commerce. Pennsylvania’s law, Justice Alito posited, can be viewed as discriminatory by forcing out-of-state companies to increase their exposure to suits on all claims in order to access Pennsylvania’s markets, while Pennsylvania companies generally face no similar burden for accessing markets in other States. Moreover, the law imposes a significant burden on interstate commerce by requiring an out-of-state company to defend itself in Pennsylvania against lawsuits with no connection to the forum, placing operational burdens and creating unpredictability in doing business. Furthermore, no countervailing legitimate local interest is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff based on claims that have no relation to Pennsylvania. Although Norfolk Southern made this argument below, the Pennsylvania Supreme Court did not address it. Justice Alito invited Norfolk Southern to renew its challenge based on the dormant commerce clause on remand.

In the dissenting opinion, Justice Barrett characterized Pennsylvania's long-arm statute as manufactured consent to personal jurisdiction that circumvents the constitutional limits placed on personal jurisdiction over companies by *International Shoe* and *Daimler*. The Pennsylvania statute, Justice Barrett argued, is at odds with the Due Process Clause because companies must register to do business in order to do any business in Pennsylvania, and simply doing business is insufficient to confer jurisdiction over an out-of-state company. "Absent an exceptional circumstance," a corporation is subject to general jurisdiction only in a State where it is incorporated or has its principal place of business. Justice Barrett observed that there is nothing reasonable about a State imposing consent in cases where it has no connection, citing by analogy cases where the Supreme Court rejected efforts of States to require defendants to relinquish the right to removal as a condition of doing business.

Impact

While *Mallory* could be read to signal the beginning of an erosion of *International Shoe* and its progeny, its immediate impact is likely limited to questions of jurisdiction in Pennsylvania, which the Dissent recognized is the only State with a statute treating registration as sufficient for general jurisdiction.¹ It is likely that this decision will trigger an increase of filings in Pennsylvania by out-of-state plaintiffs, placing a disproportionate burden on out-of-state companies doing business in Pennsylvania, and also increasing the strain on the Pennsylvania Courts. The decision may also result in other states enacting long-arm statutes similar to Pennsylvania's, requiring consent to suit as a condition to doing business in that state. The story, however, has not yet been fully told because we can expect that Norfolk Southern will renew its motion to dismiss for lack of jurisdiction based on the Commerce Clause, which may ultimately result in another *Mallory* decision by the United States Supreme Court.

¹ The Dissent also acknowledged that another state, Georgia, through its Supreme Court (and not a long-arm statute), has maintained that registration justifies general jurisdiction.

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