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Far From Home: Supreme Court Expands General Jurisdiction for Out-of-State Defendants in Mallory v. Norfolk Southern Railway Co.

SEPTEMBER 7, 2023

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When served with a summons and complaint for an out-of-state lawsuit, one of the first things a defendant is likely to ask is—can this court compel me to appear? Given that most transportation and logistics-related disputes involve parties of multiple states, the question of whether a litigant will have to chase a defendant to its home state court is an important one, and often a way to get a lawsuit dismissed early. The law on personal jurisdiction, which determines whether a defendant can be compelled to litigate in a particular state, has been extensively developed over the past several decades, and notably refined in the last 15 years to give defendants a sense of predictability in answering this question. Following decisions in Bristol-Myers Squibb Co. v. Superior Court of California, 137 S. Ct. 1773 (2017), Daimler AG v. Bauman, 134 S. Ct. 746 (2014), and Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011), the rules of personal jurisdiction essentially allowed a corporation only to be sued in the state where it was considered "at home"—which the Supreme Court has generally defined as its state of incorporation or principal place of business (general jurisdiction)—or in the state where the corporation engaged in the conduct giving rise to the claims asserted in the lawsuit (specific jurisdiction). As a result, plaintiffs have faced increasing difficulties in suing corporations doing business across the U.S. outside of their home base, and such corporations have enjoyed some level of predictability when sued out of state. However, the Supreme Court's recent decision in Mallory v. Norfolk Southern Railway Co., No. 21-1168, slip op. at 2 (U.S. June 27, 2023), has now changed that predictable landscape, making companies susceptible to jurisdiction in foreign states wherein the state requires the company agree to jurisdiction as a condition of doing business there.

Overview of the Facts of the Case

Mallory was a freight-car mechanic in Ohio and Virginia. After leaving his job as a mechanic, Mallory moved to Pennsylvania before returning to Virginia. Along the way, Mallory was diagnosed with cancer, which he attributed to his time at Norfolk Southern. Mallory filed suit against Norfolk Southern under the Federal Employer's Liability Act in Pennsylvania state court. Since Mallory resided in Virginia, was exposed to carcinogens in Ohio and Virginia, and Norfolk Southern is headquartered and incorporated in Virginia, Norfolk Southern argued that the Pennsylvania state court lacked personal jurisdiction over it. However, Norfolk conducts extensive operations in Pennsylvania, including managing over 2,000 miles of track, operating 11 rail yards, and running three locomotive repair shops in the state. But under the previous predictable landscape, none of that might have mattered were it not for the fact that Pennsylvania requires all out-of-state

companies that register to do business in the state (including Norfolk Southern) to agree to appear in its courts on "any cause of action" against them.

Divided Court Finds Norfolk Consented to Jurisdiction By Registering to Do Business in Pennsylvania

In a divided opinion, the Supreme Court ultimately held that Pennsylvania's requirement that out-of-state businesses consent to being sued in Pennsylvania when they register to do business in Pennsylvania was enough to convey personal jurisdiction in this case and did not offend due process. In reaching its decision, the Court's plurality opinion relied heavily on a case that was over 100 years old, *Pennsylvania Fire Insurance Company of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), which involved a finding of personal jurisdiction over a Pennsylvania insurance company by a Missouri court in a case concerning a Colorado gold smelter, because Missouri had a law similar to the Pennsylvania one here. There, Missouri law required out-of-state insurance companies seeking to do business in-state to file paperwork agreeing to appoint a state agent for service of process and to accept such service in Missouri, which was the basis for jurisdiction. The Court found this case analogous to the Pennsylvania law at issue, and pointed out that there were no due process concerns with this outcome because Norfolk Southern had been registered to do business in Pennsylvania for many years, had an office to receive service of process in Pennsylvania, and reaped the benefits of the state of Pennsylvania through its extensive business activities. By consenting to service of process in Pennsylvania as a condition of doing business in Pennsylvania, Norfolk Southern was required to defend the lawsuit in Pennsylvania, regardless of its place of incorporation or headquarters.

However, the Court was still divided on the rationale for this outcome. In a concurring opinion, Justice Jackson warned that personal jurisdiction is always something that can be waived, and under the circumstances, Norfolk waived the right to contest personal jurisdiction by choosing to register as a foreign corporation, which expressly required that it consent to accept service of process in Pennsylvania. Justice Alito, on the other hand, focused on the Dormant Commerce Clause, which prohibits state laws that discriminate against or unduly burden interstate commerce, absent a legitimate local public interest. Justice Alito posited whether the Pennsylvania law would be susceptible to a challenge that it violated the Dormant Commerce Clause, finding a lack of any local interest advanced by this law.

In her dissenting opinion, joined by three other Justices, Justice Barrett criticized reliance on *Pennsylvania Fire*, opining that this case had long-been overruled by other cases, and offering a warning that any state could construct a long-arm statute to elicit consent from a corporation solely for registering to do business in that state, which would upend 75 years of personal jurisdiction jurisprudence.

The Long Way Home or Brave New World? The Effect on Jurisdictional Analysis and Future Considerations for Corporations

Following the decision in *Mallory*, the analysis for personal jurisdiction has now shifted with respect to corporations, although it remains unchanged as to individual defendants. Courts will now first assess whether the forum state has a statute granting state courts the authority to exercise personal jurisdiction over registered foreign corporations. If it does not, then the longstanding analyses will apply and nothing changes, with a corporation only being subject to jurisdiction if the lawsuit arises

out of the corporation's activities in the forum state or in the state(s) of its incorporation or principal place of business. However, if there is a statute like that in Pennsylvania, it would appear that the foreign corporation will likely be deemed to have impliedly consented to personal jurisdiction, without even considering the corporation's actual relationship with the forum state. But perhaps, as Justice Alito hinted at, such state laws could still be challenged under the Dormant Commerce Clause, and *Mallory* could prove to be a short-lived detour back to the status quo of "at home" jurisdiction. But as of now, the once predictable general jurisdiction analysis is now in flux.

One potential consequence of the *Mallory* decision is that more states may enact similar laws, essentially expanding jurisdiction to most, if not all, foreign corporations by requiring them to consent to jurisdiction as a condition of registering to do business there. As of print, only Pennsylvania and Georgia have enacted such laws, but that number could grow, depending on whether more states have an interest in their courts hearing disputes against foreign companies. Because of this possibility, companies doing business across multiple U.S. states-specifically motor carriers, freight forwarders, and freight brokerage and logistics companies-should monitor legislative action in all states in which they are registered to do business. But, if any company is already registered to do business in either Pennsylvania or Georgia, then it should be aware that it may be subject to personal jurisdiction in those states' courts following *Mallory*.

For plaintiffs, *Mallory* may invite the return to broad general jurisdiction and widely available domestic forum shopping. While the Court may limit its holding to the facts of *Mallory*, mandated fictional-consent statutes still create an opportunity for nationwide jurisdiction, so long as a company is registered to do business in a state with a statute similar to that of Pennsylvania. Nonetheless, Justice Alito's Dormant Commerce Clause concerns may result in the effective death of statutes like that of *Mallory*. As the case was remanded with an opportunity for Norfolk Southern to raise this issue, the question is still open as to how the lower court ultimately resolves this issue on the path to its final destination.[1]

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[1] So far, one District Court has used *Mallory* to expand general jurisdiction against a foreign corporation registering to do business in the forum state. *See In Re: Abbott Laboratories et al., Preterm Infant Nutrition Products v. Mead Johnson & Company, LLC*, No. 22 C 02011, 2023 WL 4976182 (N.D. Ill. August 3, 2023)