NEWSLETTERS

Supreme Court Expands General Jurisdiction in Mallory v. Norfolk Southern Railway Co., Marking Departure from "At Home" Jurisdiction Rule for Out-of-State Defendants

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Authors: Deana S. Stein

The test for personal jurisdiction, which asks 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 fifteen years. Following decisions in Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty., 582 U.S. 255 (2017), Daimler AG v. Bauman, 571 U.S. 117 (2014), and Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011), the test for personal jurisdiction essentially resolves to allow 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 cause of action asserted in the lawsuit (specific jurisdiction). As such, 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.

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. Mallory argued that Norfolk conducts extensive operations in Pennsylvania, including managing over 2,000 miles of track, operating eleven rail yards, and running three locomotive repair shops in the state. And, critically, 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.

Supreme Court Finds Norfolk Consented to Jurisdiction

The Pennsylvania Supreme Court ruled in favor of Norfolk Southern, holding that Pennsylvania's requirement that out-of-state businesses consent to being sued in Pennsylvania when they register to do business in Pennsylvania courts violated the Due Process Clause. The U.S. Supreme Court, in a majority opinion written by Justice Gorsuch, which Justices Thomas, Sotomayor, Jackson, and Alito joined (in part),[1] reversed and remanded the state court's ruling, holding that the Pennsylvania law comported with the Due Process Clause.

The plurality opinion relied heavily on *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93 (1917), where the Court previously found that Missouri courts could exercise personal jurisdiction over a Pennsylvania insurance company in a suit brought by an Arizona mining company pertaining to a fire insurance claim concerning a Colorado gold smelter. 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. Although Norfolk argued that the pivotal case on personal jurisdiction, *Int'l Shoe Co. v. Wash., Off. Of Unemployment Comp. & Placement*, 326 U.S. 310 (1945), as well as *Daimler*, *Goodyear*, and others, overruled *Pennsylvania Fire*, the Court held that such cases never replaced the long-standing rule that jurisdiction may be exercised by physical presence or consent to suit in the forum state. And, as the Court explained, none of the defendants in these other cases ever consented to suit in the forum state as part of a registration to do business in such state. The Court also held that there were no concerns of "fair play" or "substantial justice," given that 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. Thus, 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.

Concurrences Focus on Due Process and Dormant Commerce Clause

In her concurrence, Justice Jackson warned that personal jurisdiction is waivable, 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 the law. However, Justice Alito joined the majority decision, as no Dormant Commerce Clause argument was presently before the Court.

Dissent Argues the Pennsylvania Law Violates Due Process and Decades of Precedent

In her dissent, joined by Chief Justice Roberts, Justices Kagan, and Justice Kavanaugh, Justice Barrett described the Due Process Clause as a "guard" against judicial authority when a defendant has insufficient ties to the forum. By permitting general jurisdiction over a corporation that was not "at home" in the forum state by virtue of a state law allowing it to do so, Justice Barrett argued 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 seventy-five years of personal jurisdiction jurisprudence, beginning with *International Shoe*. Justice Barrett also explained that courts have routinely held that registration of an agent for service of process is insufficient to subject a foreign corporation to local jurisdiction in a suit unrelated to the corporation's activities in the forum state, and that *Pennsylvania Fire* is no longer good law in light of the framework established by *International Shoe* and its progeny nearly three decades later.

The Effect on Jurisdictional Analysis and Future Considerations for Corporations

After the Court's decision in *Mallory*, the analysis for personal jurisdiction has now shifted with respect to corporations, although it remains unchanged as to individual defendants. Courts can be expected to 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 traditional *Daimler* and *International Shoe* analyses will apply, with corporations only being subject to jurisdiction if the lawsuit arises out of the corporation's activities in the forum state or in the states 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 in all likelihood will be deemed to have impliedly consented to personal jurisdiction, without even considering the corporation's contacts with the forum state. Of course, there is always the possibility that such a law could be deemed to violate the Dormant Commerce Clause, and the Court must still evaluate the statute under *International Shoe's* "fair play and substantial justice" analysis. For example, courts may examine a corporation's infrastructure, number of employees, and overall business strategy across the forum state. Thus, the once predictable general jurisdiction analysis is now in flux.

One fairly predictable 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. Presently, only Pennsylvania and Georgia have enacted such laws, but that number could grow depending on state interest in adjudicating disputes against foreign companies. Because of this possibility, companies with business across multiple U.S. states should monitor legislative action in the 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 regardless of *International Shoe* requirements for minimum contacts.

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 similar statute to Pennsylvania's. Nonetheless, Justice Alito's 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, prudent scrutiny is advised as to how the court ultimately resolves this issue.

For additional information, please contact:

Deana S. Stein at 216.363.6170 or dstein@beneschlaw.com

Lidia C. Mowad at 216.363.4443 or lmowad@beneschlaw.com.

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[1] Parts I and III-B of the opinion were joined by Justices Thomas, Alito, Sotomayor, and Jackson. Parts II, III-A, and IV were joined only by Justices Thomas, Sotomayor, and Jackson. Justice Jackson filed a concurring opinion, and Justice Alito filed an opinion concurring in part and concurring in the judgment. Justice Barrett filed a dissenting opinion, which was joined by Justices Roberts, Kagan, and Kavanaugh.