US SUPREME COURT HOLDS BUSINESS REGISTRATION SUBJECTS OUT-OF-STATE COMPANIES TO GENERAL PERSONAL JURISDICTION

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On 27 June 2023, in a plurality opinion authored by Justice Gorsuch, the United States Supreme Court issued its ruling in *Mallory v. Norfolk Southern Railway Co.*,[1] holding that a company's decision to register to do business in Pennsylvania amounts to consent to general personal jurisdiction in the Commonwealth. This decision has broad implications for companies that register (or have registered) in Pennsylvania and could serve as an unwelcome invitation to other states to create similar statutory schemes in line with Pennsylvania's.

CASE BACKGROUND

In Pennsylvania, foreign corporations may not do business unless they register with the Commonwealth.[2] At issue here, Pennsylvania's long-arm statute also provides that registration as a foreign corporation, in turn, submits the corporation to general personal jurisdiction.[3] Thus, for decades, Pennsylvania served as fertile ground for plaintiffs' lawyers who preferred to litigate in the forum, even though the matter might have had no connection with the Commonwealth.

That changed in December 2021, when the Pennsylvania Supreme Court issued its decision in *Mallory*.[4] In *Mallory*, the plaintiff sued his former employer Norfolk Southern for a violation of the Federal Employers' Liability Act, alleging that an occupational exposure caused his colon cancer.[5] The plaintiff, a Virginia resident, worked for Norfolk Southern in Virginia and Ohio, not Pennsylvania.[6]

The Pennsylvania Supreme Court ultimately held that Pennsylvania's statutory scheme was unconstitutional “to the extent that it confers upon Pennsylvania courts general jurisdiction over foreign corporations that are not 'at home' in Pennsylvania pursuant to *Goodyear*[7] and *Daimler*.”[8,9] The Pennsylvania Supreme Court also “decline[d] to follow *Pennoyer-era* High Court decisions that resolve questions of general jurisdiction because they do not hold significant precedential weight in federal jurisprudence on the issue.”[10,11] Turning then to the constitutional validity of the consent-by-registration scheme, the court concluded, “a foreign corporation's registration to do business in the Commonwealth does not constitute voluntary consent to general jurisdiction but, rather, compelled submission to general jurisdiction by legislative command.”[12]

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THE US SUPREME COURT'S HOLDING

The US Supreme Court reversed the state court decision, stating simply "[i]t is enough to acknowledge that the state law and facts before us fall squarely within *Pennsylvania Fire's* rule."[13]

That case, the Court explained, concerned a suit in Missouri state court, brought by an Arizona corporation against its Pennsylvania-based insurer, for benefits under its insurance policy executed in and insuring property in Colorado.[14] On appeal from the Missouri Supreme Court, the US Supreme Court held there was "no doubt" the insurer could be sued in Missouri by an out-of-state plaintiff on an out-of-state contract, because it agreed to accept service of process in Missouri as a condition of doing business there.[15]

Emphasizing its relevance, the Court rebuked the Pennsylvania Supreme Court's dismissal of Pennoyer-era precedent, noting that it was the Supreme Court's "prerogative [to] overrul[e] its own decisions."[16] The Court declined Norfolk Southern's invitation to do so, thereby rejecting the Pennsylvania Supreme Court's interpretation of *International Shoe*[17] and subsequent personal jurisdiction case law.

The Court explained that "all *International Shoe* did was stake out an additional road to jurisdiction over out-of-state corporations."[18] Specifically, that decision held that a corporate defendant could be sued for "claims based on in-state activities even though the defendant had not registered to do business in Washington and had not agreed to be present and accept service of process there."[19] That did not conflict with *Pennsylvania Fire's* holding "that an out-of-state corporation that has consented to in-state suits in order to do business in the forum is susceptible to suit there."[20]

Nor did the Court interpret the landmark personal jurisdiction cases that followed—including *Goodyear and Daimler*—as in tension with *Pennsylvania Fire*. The Court explained that those cases "spoke[] of the decision" as asking whether jurisdiction applied over a defendant that did not consent to suit in that forum, recognizing that "express or implied consent" remained a valid pathway to personal jurisdiction.[21]

The Court was unpersuaded by Norfolk Southern's remaining arguments. Rejecting an argument that "fairness" considerations weighed against a finding of personal jurisdiction, the Court highlighted Norfolk Southern's willing compliance with the Pennsylvania statutory scheme in exchange for a business presence in Pennsylvania.[22] Likewise, the Court brushed aside federalism concerns, noting that its personal-jurisdiction jurisprudence "never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum State."[23]

Last, the Court disagreed with Norfolk Southern's contention that its compliance with Pennsylvania's statutory consent-by-registration scheme was not consent but the exercise of "mere formalities."[24] The Court observed that Norfolk Southern "[did] not dispute that it appreciated the jurisdictional consequences attending these actions and proceeded anyway, presumably because it thought the benefits outweighed the costs."[25] The Court further noted that "under [its] precedents a variety of 'actions of the defendant' that may seem like technicalities nonetheless can 'amount to a legal submission to the jurisdiction of a court.'"[26] Accordingly, to overrule *Pennsylvania Fire*, the Court reasoned, would require overruling all of those precedents; a solution the Court would not allow.

Justice Alito authored an opinion partially concurring with the plurality and concurring in the judgment. The concurrence provides a potentially viable avenue for litigants and lower courts to challenge the constitutionality of the consent-to-jurisdiction statutory scheme by focusing on the dormant Commerce Clause as a more appropriate avenue to contest state efforts to regulate conduct with little connection to local state interests. His concurrence

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noted the established tenet of federal constitutional law that a state law may violate the dormant Commerce Clause "when the law discriminates against interstate commerce or when it imposes 'undue burdens' on interstate commerce."[27] The Pennsylvania Supreme Court did not address the dormant Commerce Clause and Justice Alito noted Norfolk Southern could presumably renew this challenge on remand.

CONCLUSION

While the Court's opinion may have definitively answered the Due Process question, both the plurality and Justice Alito's concurrence leave open Norfolk Southern's alternative argument that Pennsylvania's consent-by-registration statutory scheme violates the dormant Commerce Clause.[28] It therefore remains to be seen whether the Court's opinion here is merely a speed bump in what is ultimately a rejection of Pennsylvania's consent-by-registration statutory scheme.

In the meantime, and pending that hypothetical future decision, corporations seeking to do business in the Commonwealth (and those already registered to do so) should be prepared to be haled into Pennsylvania courts, by out-of-state defendants, for conduct occurring wholly outside of Pennsylvania. Indeed, the plurality's opinion could be an open invitation to do so. Corporations across the country that may not be registered to do business in Pennsylvania should also pay heed; as the plurality acknowledges, other states may have thus far declined to adopt similar consent-by-registration statutes.[29] That position, however, could change following the Court's decision in *Mallory*, particularly if there is push by the plaintiffs' bar for more states to follow Pennsylvania's lead.

FOOTNOTES

[1] *Mallory v. Norfolk S. Ry. Co.*, --- S.Ct. ---, No. 21-1168, 2023 WL 4187749 (U.S. June 27, 2023).

[2] *See* 15 PA. C.S. § 411(a).

[3] 42 PA. CONS. STAT. § 5301(a)(2).

[4] *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542 (Pa. 2021) ("Mallory"), *vacated and remanded*, No. 21-1168, 2023 WL 4187749 (U.S. June 27, 2023) ("Mallory 2").

[5] *Id*. at 551.

[6] *Id*.

[7] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

[8] *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

[9] *Mallory*, at 567-68.

[10] *Id*. at 567.

[11] For further discussion, see our previous alerts on this subject: Pennsylvania Supreme Court to Consider Whether Business Registration Subjects an Out-of-State Company to General Personal Jurisdiction (Jan. 14, 2021); Pennsylvania Supreme Court Rejects Business Registration as Means for Consent to Personal Jurisdiction (Jan. 26, 2022).

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[12] *Mallory*, at 569.

[13] *Mallory* 2, at *7; *see also id*. ("*Pennsylvania Fire* controls this case.").

[14] *Id*. at *5.

[15] *Id*. at *6.

[16] *Id*. at *7 (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc*., 490 U.S. 477, 484 (1989)).

[17] *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)

[18] *Mallory* 2, at *8.

[19] *Id*.

[20] *Id*.

[21] *Id*. (quoting *Goodyear Dunlop Tires Operations*, 564 U.S. at 927-28).

[22] *Id*. at *10.

[23] *Id*. at *11.

[24] *Id*.

[25] *Id*.

[26] *Id*. at *12 (quoting *Insurance Corp. of Ireland*, 456 U.S. at 704-05, 102 S.Ct. 2099).

[27] *Id*. at *11-12 (citing *South Dakota v. Wayfair, Inc*., 585 U.S. ___, __ (2018) (slip op., at 7)).

[28] *Id*. at *3 n.3, *14-20.

[29] *See id*. at *9 n.7.

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