

CLIENT ALERT



# Supreme Court Issues Decision Potentially Exposing Corporations to Jurisdiction under State Registration Laws

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## Key Takeways

- The Supreme Court has held that a state can require a company to consent to personal jurisdiction as a condition of registering to do business within the state.
- This decision represents an important limitation on the Court's jurisdiction case law, which previously limited general jurisdiction to places where a company was "essentially at home."
- One justice signaled that the debate might not be over, though, suggesting that such a law might violate the dormant Commerce Clause, even if it does not violate the Due Process Clause of the Fourteenth Amendment.

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The U.S. Supreme Court issued a decision this week that could have a profound impact on personal jurisdiction. In *Mallory v. Norfolk Southern*, the Court held that a state can require companies to consent to personal jurisdiction as a condition of registering to do business in the state—without running afoul of the Due Process Clause of the Fourteenth Amendment. The Court reasoned that the issue was controlled by its 1917 decision in *Pennsylvania Fire v. Gold Issue Mining & Milling Co.*, which upheld a Missouri law requiring insurance companies registered in the state to "appoint a state official to serve as the company's agent for service of process" and found that the law conferred personal jurisdiction over registered companies.

In *Mallory*, the Court determined that Pennsylvania courts could exercise personal jurisdiction over Virginia-based Norfolk Southern to hear a Virginia resident's lawsuit involving events that allegedly occurred in Virginia and Ohio because the railroad consented to jurisdiction in Pennsylvania when it registered to do business there. This decision has the potential to expand significantly the number of places where corporations may face lawsuits, even if the parties and allegations have no other connection with the jurisdiction.

This decision represents a sea change in the law of personal jurisdiction. Over the past century, the Court's jurisdiction cases have emphasized the Due Process Clause's demands that a court entertaining a lawsuit must have personal jurisdiction over the defendant. In *International Shoe Co. v. Washington* (1945), the Court explained that the key question in the personal jurisdiction analysis is whether the defendant has enough "contacts" with the

forum that it is “reasonable” and “fair” for the defendant to be sued there. Depending on the nature of these contacts, personal jurisdiction can be either “specific” or “general.”

Specific jurisdiction—jurisdiction that is specific to a particular case—requires that the defendant “purposefully avail” itself of the benefits of the forum state and that the claims “arise from or relate to” the defendant’s contacts in the state. General jurisdiction, by contrast, depends on the defendant’s contacts with the state and is not case-specific. In recent decisions like *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) and *Daimler AG v. Bauman* (2014), the Court has explained that general jurisdiction is typically limited to jurisdictions where the defendant has business contacts that are so “continuous and systematic” that the company is “essentially at home” in the forum state.

Applying the “essentially at home” formulation, the Pennsylvania trial court found that it could not hear a Virginia resident’s claims against his former employer, Norfolk Southern, because the railroad was not “at home” in Pennsylvania and there was no basis for specific personal jurisdiction. (Mallory alleged that he was exposed to carcinogens while on the job in Virginia and Ohio.) Mallory pointed to Pennsylvania’s “jurisdiction by consent” scheme as a basis to exercise general personal jurisdiction over Norfolk Southern. Under state law, out-of-state corporations that want to do business in Pennsylvania must register, and such registration “constitute[s] a sufficient basis” for general jurisdiction by Pennsylvania’s courts. 15 Pa. Cons. Stat. § 411(a); 42 Pa. Cons. Stat. § 5301(a)(2)(i).

Norfolk Southern argued that Pennsylvania’s requirement that out-of-state defendants submit to its jurisdiction violated the limits set by the Due Process Clause of the Fourteenth Amendment. The state courts below agreed, finding that *Pennsylvania Fire* was abrogated by *International Shoe*’s “minimum contacts” test.

The U.S. Supreme Court reversed, reasoning that *Pennsylvania Fire* and *International Shoe* “sit comfortably side by side” because *International Shoe* had not registered to do business in the state or otherwise consented to accept service of process. Therefore, the Court explained, while “*Pennsylvania Fire* held 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,” *International Shoe* simply “stake[d] out an *additional* road to jurisdiction over out-of-state corporations” that have not “consented to in-state suits.”

Leaving these two jurisdictional routes open, *Mallory* may expose corporate defendants to greater liability by allowing suits to proceed against them in every state where they do business, even if that business has no connection to the claims at issue in the case. There was some dispute in the briefing and opinions over whether and to what extent other states have adopted similarly broad jurisdiction-by-consent statutes like Pennsylvania, but states may now enact laws to expand the reach of their courts’ jurisdiction. Thus, companies should be aware that they may now be sued in any additional jurisdiction where they have registered to do business – if that registration amounts to a consent to jurisdiction under state law.

The Court left open the possibility that Pennsylvania’s registration law may be unconstitutional under the dormant Commerce Clause doctrine. In a concurrence, Justice Alito explained that in his view, there was a “good prospect” that exercise of jurisdiction “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 because the state scheme potentially “discriminates against out-of-state companies” and “poses a ‘significant burden’ on interstate commerce.” Norfolk Southern will be free to raise these arguments on remand. A decision in its favor could limit *Mallory*’s expansion of general jurisdiction.

4 Min Read

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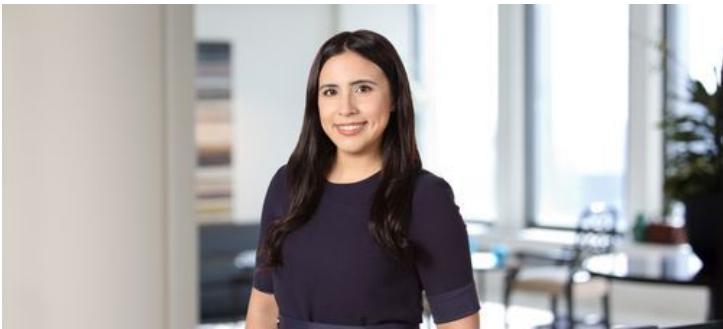
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