



Can You Be Sued In Any State? The Supreme Court’s Decision in *Mallory v. Norfolk Southern* Suggests So

Article
07.05.2023

A recent (and surprising) ruling of the United States Supreme Court may allow businesses to be sued in states in which they have little connection. The United States Supreme Court, split 5-4 (Gorsuch, Thomas, Alito, Sotomayor and Jackson for the majority), upheld a Pennsylvania law^[1] that requires a corporation to consent to the jurisdiction of Pennsylvania courts over them as a condition of registering to do business there.

Under prior jurisdictional analysis, a corporation could be sued where a person is injured or where the corporation is incorporated or has its headquarters. The Pennsylvania statute added a “consent to be sued” requirement in its business registration statute. The majority of the Court held that the Pennsylvania statute comports with fundamental notions of due process and is not unconstitutional. The Court explained, “[i]n truth, it is a very old question—and one this Court resolved in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917).” Slip Op. at 4. In *Pennsylvania Fire*, the Court unanimously held that laws like Pennsylvania’s satisfy the Due Process Clause.

Writing for the Court, Justice Gorsuch emphasized that individual defendants have always been subject to general jurisdiction in any state where they can be located and served, no matter how temporary their presence there. The Court compared “tag” jurisdiction over individuals to service on corporations under Pennsylvania’s law. Relying on the reasoning in *Pennsylvania Fire*, the Court extrapolated, “[w]hat sense would it make to treat a fictitious corporate person differently?” Slip Op. at 9. The Court

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rationalized that its more recent decisions involving general personal jurisdiction, such as *International Shoe* and its progeny, merely provide additional avenues to jurisdiction over out-of-state corporations. See Slip Op. at 14.

Ultimately, the Court concluded that where a state law requires a company to register and consent to general jurisdiction in order to do business in that state, and that company complies with the law by registering and maintaining an agent in the state, the assertion of general jurisdiction over the company by that state's courts comports with traditional notions of fair play and substantial justice because of that corporation's *consent. Id.*

A closer examination of the facts of *Mallory* drive home the importance of this decision. Norfolk Southern is incorporated in Virginia and had (at the time) its principal place of business in Virginia. Norfolk Southern manages track across the eastern United States, including thousands of miles of track in Pennsylvania. The plaintiff, Robert Mallory, was employed by Norfolk Southern but did not work on its railroads in Pennsylvania. He spent the majority of his time working for Norfolk Southern in Virginia and Ohio. Mr. Mallory moved to Pennsylvania after his employment ended with Norfolk Southern. While living in Pennsylvania, he sought legal representation for the cancer he alleges he developed as a result of the work he performed for Norfolk Southern. Mr. Mallory then moved back to Virginia. Subsequently, he filed a Federal Employers' Liability Act claim against Norfolk Southern in a Pennsylvania state court that had little to no connection to the lawsuit.[2] Yet, according to the *Mallory* Court, the case may proceed there because of Pennsylvania's statute that required Norfolk Southern's consent as a cost of doing business.

If you are a company doing business in a number of states, should you be concerned? Maybe. If you are registered to do business in Pennsylvania, you are subject to general jurisdiction in its courts. That means that no matter where your headquarters are located, you might find the company sued in Pennsylvania whether the dispute at issue has *any* connection to that state or no connection at all. As Justice Gorsuch recognizes, "corporations [will] not relish the prospect of being sued for any claim anywhere they conduct business." Slip Op. at 6. But that is the cost of doing business in Pennsylvania according to the *Mallory* majority.

Even so, the case is not over yet as the Court remanded the case back to the lower court where a potentially further constitutional challenge to the corporate registration statute may occur. The Majority notes, and Justice Alito points out in his concurrence, that Norfolk Southern made an alternative argument that Pennsylvania's statutory scheme violates the Court's dormant Commerce Clause. See *Tennessee Wine and Spirits Retailers Assn. v. Thomas*, 588 U.S. ____ - ____ (2019)(slip op. at 6-7) (explaining the dormant Commerce Clause prevents "state laws that unduly restrict interstate commerce."). The Majority did not consider this question and left the question open-ended on remand. Slip Op. at 4, n. 3.

So stay tuned. The issue of whether a state may require consent to jurisdiction via a corporate registration statute may see further challenges in the years to come.

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[1] 15 Pa. Cons. Stat. § 411(a) (2014).

[2] A claim under the Federal Employers' Liability Act, 45 U.S.C. §§51-60, allows railroad employees to recover damages for their employers' negligence.