

U.S. Supreme Court Decides That Companies May Be Deemed to Have Consented to General Personal Jurisdiction in States Where They Are Registered To Do Business

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In a case issued on June 27, 2023, a divided Supreme Court decided another important personal jurisdiction case – *Mallory v. Norfolk Southern Railway Co.*, 2023 WL 4187749. The principal issue was whether a foreign corporation that registers to do business in a state will be deemed to have consented to the personal jurisdiction of that state’s courts (and correspondingly the federal courts in the state for diversity cases). The answer was a qualified “yes,” which suggests that an out-of-state company that is registered to do business in Ohio might be deemed to have agreed to be subject to general personal jurisdiction in Ohio courts irrespective of whether the underlying cause of action has any connection with the state.



In a surprisingly conversational-style opinion by Justice Gorsuch, the decision was based on the precedent of the 1917 case of *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93. The Court squarely held that the *Pennsylvania Fire* case (decided by Justice Oliver Wendell Holmes) was still good law. It is important to note that only 3 justices joined Gorsuch’s opinion (i.e., a plurality of 4) but Justice Alito concurred in part, agreeing that the holding that the *Pennsylvania Fire* case remained good law and agreeing with the Court’s judgment vacating and remanding the Pennsylvania Supreme Court’s judgment denying personal jurisdiction – making the 5 justices needed for the judgment. (More to say below on Alito’s separate opinion that discusses the “dormant Commerce Clause” and its potential effect on a state’s constitutional authority to require foreign corporations to register to do business.)

The operative facts in the *Mallory* case are simple. The plaintiff, Mallory, claimed he developed cancer from his work for Norfolk Southern in Ohio and Virginia, but importantly not for any work for NS in Pennsylvania. Notwithstanding that Mallory’s claims had nothing to do with Pennsylvania and that NS is incorporated and had its principal place of business in Virginia, the Supreme Court held that the facts that NS applied for a Pennsylvania business license and had appointed a statutory agent in Pennsylvania were sufficient for it to “consent” for Pennsylvania’s state courts to exercise personal jurisdiction. It is not clear whether the facts that NS also employed 5,000 and ran trains over 2,400 miles of track in the state were significant factors that might distinguish the *Mallory* case from cases involving smaller companies having much less of a “presence.” Moreover, the relevant Pennsylvania statute cited in Gorsuch’s opinion specifically provided that by registering to do business in Pennsylvania a foreign corporation expressly agrees to appear in the state’s courts on “any cause of action” against it. If the *Pennsylvania Fire* case drives the analysis, it may be that, but is not clear whether, simply appointing a statutory agent as part of the process to qualify to do business will itself be sufficient to constitute consent to personal jurisdiction.

The take away from the *Mallory* case is that, where a non-Ohio corporation or LLC is registered to do business in Ohio, there is a decent argument that Ohio courts can exercise general personal jurisdiction for causes of action arising outside of Ohio even though Ohio's registration law is not as explicit regarding consent as is Pennsylvania's. Moreover, this is likely to be tested soon because Ohio companies will likely prefer to sue out-of-state companies that are registered in Ohio and have appointed Ohio statutory agents in Ohio's state or federal courts using their Ohio lawyers rather than traveling to an inconvenient distant state to bring a claim that arose there.

An interesting array of justices dissented with an opinion written by Justice Barrett (joined by Justices Roberts, Kagan and Kavanaugh). Beginning with a citation of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), Barrett noted that the due process clause does not allow state courts to assert general personal jurisdiction over foreign defendants merely because they do business in the state. The dissent then goes on to discuss the recent Supreme Court cases drawing the distinction between general and specific personal jurisdiction that basically say that a corporation is only amenable to personal jurisdiction in a state court (and in a federal court exercising diversity jurisdiction) for a suit filed either where the corporation is incorporated or maintains its principal place of business - the corporation's "home" ("general personal jurisdiction"), or where the plaintiff's cause of action arose ("specific personal jurisdiction"). Barrett cited the series of recent cases setting forth that dichotomy, including (but not limited to) *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (barred California courts from hearing claims against Daimler for Argentina's "dirty war"); *Bristol-Myers Squibb Co v. Superior Court of Cal.*, 583 U.S. 255 (2017) (excluded non-California class plaintiffs from state court drug products liability class action); and *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S.Ct. 1017 (2021) (allowed specific jurisdiction for products claims against Ford because the company reasonably expected its cars would be delivered to and sold in Montana and Minnesota, the forum states, even though the plaintiffs' cars were bought used). The majority, however, concluded that all of those jurisdictional obstacles were overcome by NS's consent to jurisdiction by having registered to do business in Pennsylvania and appointing a Pennsylvania statutory agent.

Now turning to Alito's concurrence addressing the U.S. Constitution's dormant Commerce Clause, that issue was not addressed by the Pennsylvania Supreme Court and presumably will be addressed there on remand. The dormant Commerce Clause limits the power of states to regulate interstate commerce within their states, because such regulation is reserved under the Commerce Clause for the federal government. The point of Alito's opinion is that he is concerned that Pennsylvania's mandate that NS consent to the jurisdiction of its courts for causes of action unrelated to Pennsylvania may violate the dormant Commerce Clause. In other words, while, per the *Mallory* decision, NS had consented (and Pennsylvania had required it to consent) to personal jurisdiction in the state by registering to do business, Alito's opinion suggests that Pennsylvania might not have had the constitutional power to do so. The issue was left open by the Pennsylvania Supreme Court and wasn't an issue on which the U.S. Supreme Court had granted certiorari. It will be interesting whether the Supreme Court will again grant cert on the dormant Commerce Clause issue once the Pennsylvania court decides that issue. If Alito's view prevails, NS could still end-up being able to avoid having to litigate in Pennsylvania on Mallory's claims.