

Supreme Court Ruling Opens Door to Suits in States Where Companies are Registered

Alert

06.30.2023

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In its June 27, 2023, *Mallory v. Norfolk Southern Railway Co.* decision, the U.S. Supreme Court held that a corporate defendant can be sued in Pennsylvania — regardless of whether the cause of action accrues in Pennsylvania or is otherwise related to the state — so long as the corporate defendant is registered to do business in Pennsylvania. In so holding, the Court concluded that there is nothing in the Due Process Clause of the Fourteenth Amendment that prohibits a state from requiring an out-of-state corporation, as part of the registration process to do business there, to consent to general personal jurisdiction.

The foundation for the Court's decision is not novel; however, the Court's ruling may have wide-reaching consequences for companies that do business in multiple states. Dating back to its *International Shoe Co. v. Washington* opinion in 1945, the Supreme Court has held that the Due Process Clause does not allow state courts to assert general jurisdiction over foreign corporate defendants who have not consented to jurisdiction merely because they do business in the state. In more recent cases, the Supreme Court has confirmed that a state court can exercise general personal jurisdiction (which allows the court to adjudicate any and all claims against a defendant, regardless of the suit's connection to the forum state) only when the defendant is at home in the forum state. Absent exceptional circumstances, a corporation is "at home" only in its place of incorporation and principal place of business.

The *Mallory v. Norfolk Southern* majority opinion relied on *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, a case that predates *International Shoe*, as holding that a state can require an out-of-state corporation to register to do business in the state, and such registration may be conditioned on the foreign corporation's consent to general personal jurisdiction in the state. The *Mallory v. Norfolk Southern* opinion is limited in some respects. The majority opinion was clear that its decision was based on the specific Pennsylvania statutory scheme at issue, which explicitly indicates that a registered foreign

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corporation agrees that state courts can exercise general personal jurisdiction over the corporation. The Court did not speculate on whether any other state's corporate registration statutes or any other set of facts would establish consent to suit. And, the Court mustered a 5-4 majority for only part of its decision, as one of the five members of the majority, Justice Samuel Alito, concurred with only parts of the Court's opinion. In his concurrence, Justice Alito suggested that Pennsylvania's registration-based jurisdiction law imposes a "significant burden" on interstate commerce by requiring a foreign corporation to defend itself with reference to all suits, including those with no connection to the forum state. Because Pennsylvania's registration statutes require foreign corporations to consent to general personal jurisdiction in the state, Justice Alito opined that "Pennsylvania's scheme injects intolerable unpredictability into doing business across state borders," and may offend the Commerce Clause, if not the Due Process Clause.

The Supreme Court's ruling creates uncertainty for businesses with multi-state operations and creates a pathway for corporations to be sued in many, or perhaps even all, of the states in which they register regardless of where a particular suit arose. However, given the Supreme Court's insistence that its opinion dealt with only the statutory scheme and set of facts at hand, and Justice Alito's suggestion that Pennsylvania's consent by registration scheme may be unconstitutional for reasons not before the Court at that time, it is also possible that the fallout of the *Mallory v. Norfolk Southern* will be more limited. While some States, such as Georgia, have treated foreign corporate registration as adequate support for general jurisdiction, others specifically address this issue by statute and limit suits against foreign corporations to those with a connection to the forum state.

Businesses with multi-state operations should monitor developments going forward. Given the Supreme Court's determination that consent by registration statutes do not violate the Due Process Clause, it is possible that state legislatures may move to adopt laws similar to the Pennsylvania statutes at issue in the *Mallory v. Norfolk Southern* case. In his concurrence, Justice Alito noted that the plaintiff's choice of venue in *Mallory* appeared to be an exercise of forum shopping, with the suit being filed in a location that was reputed to be especially favorable to tort plaintiffs. It is certainly possible that other purportedly-friendly jurisdictions see an uptick in suits which bear no connection to the forum state except the foreign defendant's registration there, and those states will be called upon to determine whether such suits are proper under their own registration and long-arm statutes.

Stinson attorneys will be closely following these developments. For more information on this Supreme Court ruling, please contact [Dennis Lane](#), [Andrew Leindecker](#), [Luke VanFleteren](#) or the Stinson LLP contact with whom you regularly work.

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