

## Insights

# DOES THE SUPREME COURT'S EXTENSIVE PERSONAL JURISDICTION JURISPRUDENCE RISK GOING OFF THE RAILS?

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## SUMMARY

The Supreme Court held on Tuesday that a corporation can be subject to personal jurisdiction in a state in which it has registered to do business—solely on that basis, and regardless of the extent of its operations in that state.

In *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. \_\_\_\_ (2023), the Court affirmed a 1917 precedent that the lower court held had been implicitly overruled by *Daimler* and other key cases on personal jurisdiction. The Court seemingly distinguished those cases, holding that state statutory schemes that require out-of-state corporations to agree to be considered as in-state corporations via registration functions as consent to be subject to suit in those states separate from a contacts-based personal jurisdiction analysis. While the ruling is limited to Pennsylvania's unique statute, this decision could have profound effects if other state statutes are similarly interpreted and/or other states adopt similar statutes that explicitly tie corporate registration to personal jurisdiction.

## THE RULING

In *Mallory*, the Court determined that Norfolk Southern's registration to do business in Pennsylvania made it amenable to suit in state court. The suit was brought in Pennsylvania by a Virginia resident suing Norfolk Southern, a Virginia corporation. The claims concerned alleged exposure to toxic chemicals on job sites in Virginia and Ohio with no connection whatsoever to the state of Pennsylvania.

The Court's decision, at its core, held that its ruling in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U. S. 93 (1917), was still good law and directly applied to the jurisdictional dispute in *Mallory*. *Pennsylvania Fire* held that lawsuits premised on statutes conferring general

personal jurisdiction based on a corporation's registration to do business in the state did not deny the corporation-defendant due process of law. The Court's ruling vacated the Pennsylvania Supreme Court's decision, which had been made in favor of Norfolk Southern on the basis that intervening cases on personal jurisdiction, such as *International Shoe* and *Daimler*, had "implicitly overruled" *Pennsylvania Fire*.

Pennsylvania statutes require that an out-of-state corporation register with the Department of State before it can do business in Pennsylvania (15 Pa. Cons. Stat. § 411(a)), and permit state courts to exercise personal jurisdiction over registered foreign corporations (42 Pa. Cons. Stat. § 5301(a)(2)). The Court found that these statutes allowed Pennsylvania to exercise personal jurisdiction over Norfolk Southern, a registered foreign corporation—regardless of the extent of Norfolk Southern's activities in the state.

Justice Gorsuch delivered the Opinion of the Court. Justice Jackson concurred, and Justice Alito concurred in part. Justice Barrett dissented, joined by Justices Roberts, Kagan, and Kavanaugh. Justice Jackson's concurrence asserted that Norfolk Southern had waived any objections to personal jurisdiction in Pennsylvania when it registered to do business in the state. Justice Alito's concurrence proposed that the dormant Commerce Clause may limit the degree to which states like Pennsylvania can assert jurisdiction over suits that have no real connection to the forum, as in the instant case. Justice Barrett's dissent argued that the majority's ruling allows states to bypass due process requirements via statute and manufacture "consent" to suit. The dissent also argued that the language of the Pennsylvania statute itself does not equate registration with consent. The fractured nature of the opinion provides less than clear guidance about how the court might handle another case on jurisdiction by registration.

## **WHAT ABOUT *INTERNATIONAL SHOE*, *DAIMLER* AND *BRISTOL-MEYERS SQUIBB*?**

A plurality of the Court announced that *Mallory* and *Pennsylvania Fire* deal with instances in which state statutes establish that a foreign corporation has consented to the jurisdiction of the subject state by registering to do business there. Where a foreign corporation has not consented to jurisdiction under such a statutory framework, corporation-friendly decisions such as *International Shoe*, *Goodyear Dunlop Tire*, *Daimler* and *Bristol-Meyers Squibb* still apply.

The Court's decision, therefore, does not technically change existing law on personal jurisdiction. Rather, it adds corporate registration to the methods by which entities consent to general personal jurisdiction.

## **THE STATE LAW LANDSCAPE**

*Mallory* deals specifically with the Pennsylvania statutes on foreign corporations and personal jurisdiction. Pennsylvania's scheme, critically, consists of two elements: the statute requiring foreign

corporations to register to do business in the state, and the statute explicitly naming registered foreign corporations as entities subject to personal jurisdiction in the state.

Pennsylvania's statutes on this topic are somewhat unique. Most states require out-of-state corporations to register to do business in the state, but do not explicitly tie this registration to personal jurisdiction the way Pennsylvania does. Some of these states, including New York, California, and Missouri, have explicitly ruled that corporate registration or the appointment of an agent alone does not equate to consent to general personal jurisdiction. *See, e.g., Aybar v. Aybar*, 37 N.Y.3d 274, 177 N.E.3d 1257 (2021), *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41 (Mo. 2017), *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874 (Cal. 2016), *rev'd on other grounds*, 137 S. Ct. 1773 (2017).

The Court in *Mallory* left open whether statutory frameworks that require corporate registration but do not explicitly tie in personal jurisdiction would fall under the *Pennsylvania Fire* rule, stating that it "need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." A reasonable conclusion, then, is that *International Shoe*, *Daimler*, and related cases apply to the personal jurisdiction analysis in this category. The Court's opinion noted that Pennsylvania law provides that a registered foreign corporation "*shall enjoy the same rights and privileges as a domestic entity and shall be subject to the same liabilities, restrictions, duties and penalties...to the same extent as if it had been formed under this title.*" 15 Pa. Cons. Stat. § 402(d) (emphasis added). Yet to be seen in future litigation is whether state corporate registration statutes that include similar "privileges and liabilities" language (such as Missouri, Mo. Rev. Stat. 351.582(2)) will adopt application of the *Pennsylvania Fire* rule.

Only a few other states join Pennsylvania in directly equating corporate registration with consent to general personal jurisdiction in the state. For example, Georgia has applied the *Pennsylvania Fire* rule to its registration statutes. *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021). In light of *Mallory*, however, other State legislatures may entertain enacting statutes resembling Pennsylvania's to permit their state courts to assert jurisdiction over out-of-state corporations.

## WHAT CAN I DO?

It is yet to be seen what tools may be available to business entities to protect themselves from general jurisdiction in unfamiliar states. Going forward, companies will need to consider even more carefully the risks and benefits of registering to do business in a given state.

If you anticipate significant litigation risk in dangerous jurisdictions where your company has little meaningful connection, you should evaluate the impact of this revived method of "consent" to personal jurisdiction, and consider how to protect yourself from *Pennsylvania Fire*.

*Please contact Christopher J Schmidt, Bettina Strauss, Suzanne Hart or any of the Firm's nationwide team of class action and mass tort partners to understand how this ruling may impact*

*your litigation risk.*

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## MEET THE TEAM



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