Mallory v. Norfolk: One Decision to Potentially Overturn Them All

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The *Mallory v. Norfolk* case—currently pending before the US Supreme Court—could potentially overturn recent rulings on issues related to personal jurisdiction and impact many businesses across the country.

On September 18, 2017, plaintiff and Virginia resident Mr. Robert Mallory filed a complaint in Philadelphia County Court against defendant Norfolk Southern Railway under the Federal Employer's Liability Act (FELA). In his complaint, Mr. Mallory claimed that he was exposed to harmful carcinogens, specifically asbestos, while working in Ohio and Virginia from 1988 to 2005 as an employee of Norfolk. He further claimed that he developed colon cancer as a result of Norfolk failing to provide an asbestos free workplace.

Importantly, Mr. Mallory never alleged that he suffered any exposure in Pennsylvania, where he filed suit. Given this, Norfolk sought dismissal on the grounds that Pennsylvania lacked both specific and general personal jurisdiction. Under its jurisdictional argument, Norfolk argued that the case did not "arise" in Pennsylvania, sufficient to grant the court specific jurisdiction, and that defendant Norfolk is not otherwise considered "at home" in the Commonwealth, and that the court therefore lacked general jurisdiction.[1]

Norfolk is a Virginia railway corporation with its principal place of business in Norfolk, Virginia. However, in Pennsylvania, a foreign corporation "may not do business in this Commonwealth until it registers" with the Department of State of the Commonwealth.[2] Mr. Mallory argues that the Pennsylvania courts have exercised general personal jurisdiction over foreign corporations like Norfolk that have registered with the Commonwealth of Pennsylvania to conduct business in Pennsylvania, despite that the corporation is not otherwise "at home" in the Commonwealth.[3] Mr. Mallory centers his appellate argument solely upon the mandatory registration requirement that provides Pennsylvania courts with exclusive authority to grant general personal jurisdiction over companies like Norfolk, without more.

The trial court disagreed with Mr. Mallory and held that the current Pennsylvania law that gives courts general personal jurisdiction over all foreign corporations who register to do business in Pennsylvania, even if they lack continuous and systematic contacts within that Commonwealth rendering them at home, fails to comply with the 14th Amendment due process clause.[4] The plaintiff appealed, but the Supreme Court of Pennsylvania agreed with the trial court and found that Norfolk's compliance with the mandatory registration requirement does not qualify as a voluntary consent to general personal jurisdiction.[5]

The Pennsylvania Supreme Court in *Mallory* relied on two past Supreme Court decisions in making its ruling: *Goodyear Dunlop Tires Operations S.A. v. Brown*, 564 U.S. 915, 923 (2011) and *Daimler AG v. Bauman*, 571 U.S. 117 (2014). In *Goodyear*, the US Supreme Court held that the exercise of general personal jurisdiction over a defendant on the basis of a stream of commerce theory did not comport with the due process clause of the 14th Amendment.[6] In other words, in a products liability action, a court may not exercise general jurisdiction over a defendant manufacturer or supplier when the product at issue merely traveled in or through the forum state, without more. In *Goodyear*, North Carolina plaintiffs filed a wrongful death action in North Carolina following a bus accident that occurred in France which killed the plaintiffs' sons.[7] The court ruled that, merely because some of the defective tires associated with the bus at issue had reached North Carolina, North Carolina courts could not exercise general personal jurisdiction over Goodyear, an Ohio corporation with several international affiliates relevant to the action.[8] Specifically, the rule on general jurisdiction set forth in *Goodyear* is: "[a] court may assert general jurisdiction over

foreign… corporation… when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State."[9] The *Goodyear* Court found that a corporation is generally considered "at home" in the place of its incorporation and/or the place of its principal place of business.[10]

A few years later, the Court applied the *Goodyear* rule in *Daimler* when it considered whether due process permitted California courts to exercise general jurisdiction over Daimler Chrysler, a German corporation, in a lawsuit filed in California by residents of Argentina based on alleged human rights violations committed abroad by a Daimler subsidiary.[11] In reference to the Supreme Court's ruling in *Daimler*, the *Mallory* court provided the general jurisdiction analysis into whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render it essentially at home in the forum State."[12] The Court's decision in *Daimler* reiterates that it is not proper to subject defendants to general jurisdiction outside of its state of incorporation and/or its principal place of business.[13]

In February 2022, Mr. Mallory petitioned the US Supreme Court for a writ of certiorari, which was granted by the Court. The question before the Court is: Does a state registration statute for out-of-state corporations that purports to confer general personal jurisdiction over the registrant violate the due process clause of the Fourteenth Amendment?

In *Mallory*, Mr. Mallory argues that the Pennsylvania law requiring foreign corporations to comply with this mandatory registration equipment in order to do business in the Commonwealth, does not violate due process. Mr. Mallory further argues that any foreign corporations deciding to operate in Pennsylvania have two very clear choices: (1) register their businesses, thus submitting to general jurisdiction of the Commonwealth, or, (2) do not conduct business in Pennsylvania.[14] Mr. Mallory's argument focuses upon the specific issue of "voluntary consent." Mr. Mallory argues that "voluntary consent" was not specifically addressed in past Supreme Court rulings like *Goodyear* and *Daimler*; therefore, these cases are not applicable to the issue of whether Norfolk voluntarily consented to general jurisdiction in Pennsylvania.

Norfolk, on the other hand, argues it did not voluntarily consent to general jurisdiction in Pennsylvania by complying with the registration law.[15] Norfolk reasons that if business are required to comply with the mandatory registration requirement in order to do business in Pennsylvania, the mandatory requirement cannot trigger a voluntary waiver of their due process rights.16 When the case was pending before the Pennsylvania Supreme Court, Norfolk urged the Court to consider the original premise in *Goodyear* and *Daimler*, which provide guidance for the minimum due process requirements to establish general jurisdiction.[17] Applying *Goodyear* and *Daimler* to this case, if the Pennsylvania registration statute is determined to be constitutional, then many corporations would potentially be subject to general jurisdiction in all fifty states.[18] This result would be inconsistent with the "at home" analysis in *Goodyear* and *Daimler*.[19]

Oral arguments in *Mallory* took place in November of 2022, and the Court will rule on the issue later this year. If the business registration statute is upheld as constitutional, the consequences to business nationwide may be severe if the Court rules that: a) a statute requiring out-of-state corporations to register to do business in a state does not violate the due process clause; and b) compliance with a mandatory registration statute automatically subjects businesses to general jurisdiction in that state. If Pennsylvania's registration statute remains in place and deemed constitutional, other states will surely follow Pennsylvania's lead and pass similar statutes. Such a ruling could subject certain businesses to general jurisdiction in any state, as Norfolk contends, just by registering to do business in that state. Further, forum shopping would logically follow, to the detriment of corporations that are would have little or no ability to challenge jurisdiction.[20] *Mallory* is an important case to monitor, given that the Court's decision could have a substantial impact on decades of jurisprudence on the issue or personal jurisdiction.

[1] *Mallory v. Norfolk S. Ry. Co*., 266 A.3d 542, 551 (Pa. 2021), *cert. granted*, 212 L. Ed. 2d 605, 142 S. Ct. 2646 (2022).
[2] 15 Pa. C.S. § 411(a). *Mallory*, 266 A. 3d at 546.
[3] 42 Pa. C.S. § 5301(a)(2)(i). *Mallory*, 266 A.3d at 551 (*citing Webb-Benjamin, LLC v. Int'l Rug Grp., LLC*, 194 A.3d 1133 (Pa. Super. 2018).
[4] *Id*. at 574.
[5] *Id*.
[6] *See Goodyear Dunlop Tires Operations S.A. v. Brown*, 564 U.S. 915, 923 (2011)
[7] *Id*. at 918-921.
[8] *Id*.
[9] *Id* at 919.
[10] *Id*. at 924
[11] *Daimler AG v. Bauman*, 571 U.S. 117 (2014)
[12] *Daimler*, 571 U.S. at 139 (citing *Goodyear*, 564 U.S. at 919).
[13] *Id*. at 118-119.
[14] *Mallory*, 266 A. 3d at 556.
[15] *Mallory* at 565.
[16] *Id*.
[17] *Id*.
[18] *See e.g.*, *Goodyear*, 564 U.S. at 924; *Daimler*, 571 U.S. at 118-119.
[19] *Mallory* at 565.
[20] *Daimler*, 571 U.S. at 138-139

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