Potential Implications to Companies Nationwide Following US Supreme Court's Ruling that Expands General Jurisdiction in Pennsylvania

By Jennifer A. Whelan

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On June 27, 2023 the United States Supreme Court issued its opinion in *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168 (2023) vacating the Pennsylvania Supreme Court's decision, which held that it was a violation of the Due Process Clause to require an out-of-state company to be sued in the Commonwealth of Pennsylvania because it registered to conduct business in the Commonwealth.

In Mallory, The Supreme Court of Pennsylvania held (consistent with the Pennsylvania trial court) that that Norfolk's compliance with the mandatory registration requirement does not qualify as a voluntary consent to general personal jurisdiction.[1]

The issue before the United States Supreme Court was whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction in order to do business there.[2] The Court's finding allows States to adopt statutes that require out-of-state corporations to consent to in-state suits in exchange for the rights to enjoy and receive the full range of benefits of that State.[3]

In its holding, the United States Supreme Court relies on *Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), in which an insurance company executed a contract in Colorado to insure a smelter owned by an Arizona corporation.[4] Suit was then brought in Missouri when the facility was destroyed.[5] The Supreme Court held that Pa. Fire could be sued in Missouri, even though Missouri had no connection to the cause of action.[5] Missouri law required out-of-state companies that wanted to transact business within the state, to file paperwork agreeing to appoint a state office as company's agent for service of process that must then accept service on that office as validation for jurisdiction in any suit.[6]

Similar to the insurance company in *Pa. Fire*, the Court observed that Norfolk Southern in *Mallory* has complied with Pennsylvania law since 1998.[7] Additionally, Norfolk names a “Commercial Registered Office Provider” in Philadelphia County, thus, deeming itself “located” in Pennsylvania.[8] Norfolk has also regularly updated its information with the Secretary. Though Mr. Mallory no longer lives in Pennsylvania and his cause of action did not occur there, the Court finds, applying *Pa. Fire*, no violation of Norfolk's due process rights by allowing the lawsuit to remain in Pennsylvania.

While not directly at issue in this case, but relevant to the holding, the Court discusses the notion of “consent” to jurisdiction either expressly, in order to conduct business (as in PA Fire), or impliedly (*International Shoe*), due to the nature of the activity within the jurisdiction.[9] However, the majority Opinion does note that there is no violation of *International Shoe's* “fair play and substantial justice.”[10] The Court reasons, because Norfolk Southern employs approximately 5,000 people in Pennsylvania, maintains 2,400 miles of track across the state, and proclaims on its website to be a part of, “the Pennsylvania Community,” that Pennsylvania exercising jurisdiction over Norfolk Southern in this case was fair.[11]

The Dissenting Opinion in *Mallory* argues that a ruling in favor of this Pennsylvania registration law would destroy long-standing precedent. This precedent has prevented States from having an expansive ability to subject anyone to adjudication in the state, regardless of the parties “contacts” within that State.[12] The Dissent further argues that the

registration law in Pennsylvania prevents defendants from resisting judicial authority when the State lacks sufficient contacts, a direct violation of the Due Process Clause.[13]

The Dissenting Justices disagree with the majority opinion that States should have ability to proclaim companies like Norfolk Southern “at home,” simply based on registration requirements. They reason that a State should only have “sweeping authority” over a defendant when its connection to a State is tight—so tight, in fact that the defendant is “at home”.[14] Traditionally, for corporations, general jurisdiction is typically found in both the place of incorporation and/or the principal place of business, absent exceptional circumstances.[15] In *Mallory*, the Pennsylvania law allows the Commonwealth's courts to exercise general jurisdiction over entities who are not “at home” in the State.[16]

The potential effects of the Supreme Court's decision in *Mallory* on corporations are severe. The Court's decision will expand the application of general jurisdiction in Pennsylvania and potentially in other jurisdictions. Though Pennsylvania is currently the only state in the country to explicitly require foreign corporations to consent to jurisdiction in order to register to do business, other states could amend statutory language to reflect that of Pennsylvania. Conversely, a reading of a Concurring Opinion calls into question the potential constitutionality of Pennsylvania's “registration law,” an issue not specifically raised in *Mallory*, but one that may be addressed in future matters.[17] The decision by the Court in *Mallory* follows a general trend in which the Court has left certain issues for states to resolve rather than the Federal Government. If other states model after Pennsylvania, and require foreign corporations to consent to jurisdiction in order to do business, the consequences could be extreme for corporations that operate in multiple states. Such corporations could be subject to jurisdiction in any state in the country, just for merely registering to do business in that state. As such, forum shopping will surely follow, to the detriment of corporate defendants that will be unable to challenge jurisdiction. As the Dissenting Opinion argues, the ruling in *Mallory* potentially destroys decades of long-standing precedent made by the Court.

[1] *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 551 (Pa. 2021); See also, https://www.jdsupra.com/legalnews/mallory-v-norfolk-one-decision-to-4950708/ for MG+M The Law Firm's article regarding the Pennsylvania Supreme Court's decision.
[2] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 7 (2023).
[3] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 9 (2023).
[4] *Id.* at 11 and 13.
[5] *Id.*
[6] *Cold Issue Min. & Milling Co. v. Pennsylvania Fire Ins. Co. of Phila.*, 267 Mo. 524 (1916), Noting that the law in this case was a Missouri law which required any out-of-state insurance company "desiring to transact any business" in the State to file paper agreeing to accept service of process and consent to jurisdiction. See *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 11 (2023).
[7] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 14 (2023).
[8] *Id.*
[9] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 14-15 (2023) , quoting *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).
[10] *Id.* at 23.
[11] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 23 (2023).
[12] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 47 (2023).
[13] *Id.* at 48.
[14] *Ford Motor v. Montana Eighth Judicial Dist. Court*, 592 U.S. slip op., at 5 (2021).
[15] Daimler, 571 U.S. at 137.
[16] *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 49 (2023).
[17] Noting that in his concurrence, Justice Alito hints that the registration requirement in Mallory could be attacked under the Dormant Commerce Clause. However, Norfolk Southern did not challenge the validity of the registration equipment under the Commerce Clause in this case. See, *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, slip op. at 41 (2023).

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