



# U.S. Supreme Court Upholds Pennsylvania Corporate Registration Statute in New Personal Jurisdiction Decision

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The Supreme Court of the United States seems to revisit the topic of personal jurisdiction every few years. In its most recent cases, the Court has focused on addressing in what circumstances an out-of-state corporation's contacts with a forum state suffice to permit the exercise of personal jurisdiction by a court in the forum state.

*Mallory v. Norfolk Southern Railway Co.*, No. 21-1168 (slip op.) (June 27, 2023), which the Supreme Court decided earlier this week, takes on a slightly different aspect of personal jurisdiction law. Most of the Supreme Court's recent cases have discussed either "general" (sometimes called "all-purpose") jurisdiction or "specific" (sometimes called "case-specific" or "arising under") jurisdiction. *Mallory* addresses the less commonly discussed topic of "consent" jurisdiction. Unlike general and specific jurisdiction – both of which require a court to consider the out-of-state corporation's contacts with the forum – consent jurisdiction focuses on whether the corporation has already consented to be sued in the forum, typically by virtue of compliance with a state's business-registration statute.

## The Facts

*Mallory* involved a personal injury claim related to asbestos exposure that Mr. Mallory allegedly experienced while working for Norfolk Southern Railway Company "first in Ohio, then in Virginia." After he left Norfolk Southern, Mr. Mallory moved to Pennsylvania for a time before returning to Virginia. Mr. Mallory hired a Pennsylvania attorney after his cancer diagnosis and sued Norfolk Southern in Pennsylvania state court under a federal statute that allows railway workers to access workers' compensation due to their employer's negligence.

Norfolk Southern is incorporated in Virginia and was headquartered there. At the time he sued, Mr. Mallory was also a resident of Virginia. So Norfolk Southern argued that there were *no* Pennsylvania contacts supporting the exercise of personal jurisdiction under the Due Process Clause. Mr. Mallory, on the other hand, relied on a Pennsylvania law that expressly requires a corporation registering for business in Pennsylvania to "answer any suits against it in exchange for status as a registered foreign corporation and the benefits that entails." The Pennsylvania Supreme Court agreed with Norfolk Southern. In doing so, it construed recent due process decisions as implicitly overruling the U.S. Supreme Court's century-old decision in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining*

& Milling Co., 243 U.S. 93 (1917), which held that states' business-registration requirements could obligate corporations to consent to personal jurisdiction.

The U.S. Supreme Court granted certiorari to resolve a split between the Pennsylvania decision and one from the Georgia Supreme Court, *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021), concerning the continuing vitality of *Pennsylvania Fire*. A fractured majority – a 5-to-4 split with multiple concurrences within that – reversed the Pennsylvania Supreme Court. The majority opinion, authored by Justice Gorsuch, held that this issue had been resolved by *Pennsylvania Fire*. Under Pennsylvania's foreign corporation registration law, in exchange for the privilege to operate within the Commonwealth, a corporation must agree to "permit state courts 'to exercise general personal jurisdiction' over" it to the same degree as domestic corporations. Therefore, because Norfolk Southern consented to Pennsylvania's registration requirement, it was subject to general jurisdiction in the Commonwealth and could be sued there regardless of contacts.

### Key Takeaways from the Court's Holding

1. **Jurisdiction-by-consent remains good law.** Many scholars and practitioners believed that consent jurisdiction had all-but been replaced by the contacts-based analysis discussed by the Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny. Indeed, Justice Barrett's dissent argued exactly that, claiming the majority's rule "flies in the face" of 75 years of precedent. Now that we know *Pennsylvania Fire* is still good law, companies operating in states with jurisdiction-by-consent registration statutes should expect that their consent will continue to subject them to personal jurisdiction pursuant to the terms of that statute.
2. ***International Shoe* fits when a corporation does not consent.** As a corollary to *Pennsylvania Fire*, the Court recognized that *International Shoe's* "minimum contacts" test for personal jurisdiction – the one everyone learns in law school – "stake[s] out" the way to obtain "jurisdiction over out-of-state corporations" that "have not consented to in-state suits" like Norfolk Southern had. This contacts-based test, which includes the tests for general and specific jurisdiction, is a separate lane for establishing personal jurisdiction if a corporation is sued in a state that does not have a Pennsylvania-like statute.

### Looking Ahead

*Mallory* serves as a reminder that there may be more forums in which cases against out-of-state corporations can be filed beyond the ones in which corporations are headquartered or incorporated, or from which the underlying case arose.

To date, relatively few states have statutes similar to the Pennsylvania one at issue in *Mallory*. Some states, however, may consider amending their long-arm statutes to expand the reach of their courts' jurisdiction over out-of-state corporations. For example, in 2021, the New York legislature did just that; it passed a bill to amend the state's Business Corporation Law to provide that a foreign corporation registered to do business in New York consents to jurisdiction by New York's courts. Governor Hochul vetoed that bill on the last day of 2021. In states that may follow the New York legislature's lead, *Mallory* could provide plaintiffs' lawyers another forum in which they can file cases against an out-of-state defendant, regardless of the contacts related to the underlying suit.

Other states may have more nuanced approaches, like California, which allows for service on a foreign corporation doing business there, but does not subject that same corporation to the general jurisdiction of California's courts. See *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 884 (Cal. 2016) (recognizing that California cases have construed its business-registration statute narrowly, such that "a corporation's appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its California transactions"), *overruled on other grounds*, 582 U.S. 255 (2017). In *Mallory's* wake, analyzing how a specific state's statutes and case law impact consent jurisdiction will be an individualized undertaking.

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#### Additional Information

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