Babst | Calland
Attorneys at Law

ALERT
LITIGATION

Where Can a Corporation Be Sued For, Well, Anything? (An Evolving Test)

The 14th Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Am. XIV § 1. For corporations, the question of what constitutes due process—and specifically, where the corporation can be sued for conduct unrelated to corporation's conduct in the forum (*i.e.*, "general personal jurisdiction")—has continued to evolve. Indeed, over the last century, the Supreme Court's jurisprudence has contracted the available fora in which a corporation can be subjected to general personal jurisdiction, culminating in 2014 with the concept that there are only two locations in which a corporation is "at home" for general jurisdiction purposes: where it is incorporated or where it maintains its principal place of business. This test has been a practical one, and has provided both (some degree of) certainty to corporate defendants and a disincentive to otherwise-inclined forum shoppers.

At the close of this past term, however, the Supreme Court in *Mallory v. Norfolk Southern Railway Co.*[1] rejected a due process challenge to a Pennsylvania law that *requires* out-of-state corporations to submit to general jurisdiction in the Commonwealth as a *condition* of registering to do business within Pennsylvania.

The concept of "personal jurisdiction" is an important one in the law. It refers to the ability of a court to take an action that is binding on parties in front of it.[2] A court that has "general jurisdiction" over a defendant can entertain any cause of action against that defendant, irrespective of whether the defendant's complained-of conduct has a nexus to the forum.[3] A court that only has "specific jurisdiction" over a defendant, by contrast, can entertain only those causes of action that arise out of or relate to that defendant's complained-of conduct in the forum state.[4] This distinction has been part of the legal canon since the Supreme Court's landmark 1945 decision in *International Shoe Co. v. Washington*.[5]

When Robert Mallory sued Norfolk Southern in Philadelphia County, Pennsylvania for alleged workplace injuries, he did not allege either general or specific jurisdiction. Norfolk Southern was not incorporated in Pennsylvania, nor did it maintain its principal place of business there. And Mallory, a Virginia resident, alleged workplace exposures as having occurred only in Ohio and Virginia. But Mallory alleged instead that Philadelphia County, known for its large jury verdicts, was proper for a separate reason.

Mallory asserted that Philadelphia County had personal jurisdiction over Norfolk Southern because the company had registered to do business in Pennsylvania. Under Pennsylvania law, a corporation doing business in Pennsylvania must register to do business in the state. 15 Pa. C.S. § 411(a). But Pennsylvania's unique corporate registration scheme then takes it one step further: under 42 Pa. C.S. § 5301(b), any corporation that registers to do business in Pennsylvania necessarily consents that "any cause of action may be asserted against him" in the Commonwealth's courts, irrespective of whether the complained-of conduct has any nexus to the forum. In essence, Mallory argued that § 5301(b) provided an additional ground for exercising personal jurisdiction beyond those identified in *International Shoe*—that is, jurisdiction by consent.

Norfolk Southern disputed the enforceability of § 5301(b). It argued that *International Shoe* established the *only* two circumstances under which general jurisdiction can be imposed on a corporation within the limits of constitutional due process. When the issue reached the Pennsylvania Supreme Court, that court agreed and limited the application of § 5301(b) to be consistent with *International Shoe*. The Pennsylvania Supreme Court then affirmed the dismissal of Mallory's suit for lack of personal jurisdiction.

[1] *Mallory v. Norfolk S. R. Co.*, 600 U.S. --- (2023).
[2] *See Mallory v. Norfolk S. R. Co.*, 600 U.S. --- (2023) (Barret, J., dissenting) (slip. op. at 2).
[3] *Id.* at --- (slip op. at 13).
[4] *Id.*
[5] *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

JULY 18, 2023

CONTACT

CHRISTINA MANFREDI MCKINLEY
CMckinley@babstcalland.com
412.394.5432

JOSEPH V. SCHAEFFER
JSchaeffer@babstcalland.com
412.394.5499

Pittsburgh, PA
Two Gateway Center
603 Stanwix Street
Sixth Floor
Pittsburgh, PA 15222
412.394.5400

BABSTCALLAND.COM

After granting certiorari, the United States Supreme Court reversed. Writing for a four-justice plurality, Justice Gorsuch concluded that the case was controlled by *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining and Milling Co.*[6] In *Pennsylvania Fire*, decided nearly 30 years before *International Shoe*, the Supreme Court unanimously rejected a due process challenge to a Missouri law that, similar to § 5301(b), required an out-of-state corporation desiring to transact business in Missouri to consent to personal jurisdiction on any suit.[7] Justice Gorsuch's opinion saw no distinction between the Pennsylvania and Missouri statutes and no conflict with *International Shoe*. In Justice Gorsuch's interpretation, *International Shoe* only established the due process limits of personal jurisdiction when an out-of-state corporation had *not registered* to do business in the forum state. Nothing in *International Shoe* or the Supreme Court's subsequent cases, according to Justice Gorsuch, precluded an out-of-state corporation from *consenting* to general personal jurisdiction—as *Norfolk Southern* did when it registered to do business in Pennsylvania.

Justice Barrett, joined by Chief Justice Roberts and Justices Kagan and Kavanaugh, dissented. In the dissenters' view, *International Shoe* had overruled *Pennsylvania Fire* and established the outer due process limits of general jurisdiction over out-of-state corporations.[8] And because Norfolk Southern was neither incorporated in Pennsylvania, nor maintaining its principal place of business there, the dissent would have ruled that Pennsylvania lacked general jurisdiction to hear Mallory's case.

Mallory is undoubtedly a significant development in the Supreme Court's personal jurisdiction jurisprudence (and a significant shift, depending on perspective). But its practical impact remains to be seen. First, only Pennsylvania has enacted a statute requiring out-of-state corporations to consent to general jurisdiction as a condition for registering to do business in the Commonwealth, and it is far from assured that the other states will follow suit. Second, the Supreme Court entered judgment solely on Norfolk Southern's due process challenge to § 5301(b). Norfolk Southern also had brought a dormant commerce clause challenge, which the Supreme Court emphasized had not been addressed below and should be considered on remand.[9] And third, Justice Alito, though concurring in judgment, wrote separately to express his view that § 5301(b) would be struck down under that as-yet-undecided dormant commerce clause challenge. In short, there is a fair possibility that § 5301(b) will survive one constitutional challenge only to fall later under another.

Nevertheless, there remains a significant risk that other states will enact similar corporate registration schemes, thereby putting a corporate defendant to an impossible choice: either decline to do business in a foreign (and sometimes far-away) state, or register at the risk of being haled into that state's courts for conduct *wholly unrelated* to any activity the corporation might conduct there. It is too soon to tell the ramifications of *Mallory*, so, for now, the measured approach is best. Corporations doing business outside their states of incorporation and principal places of business should not panic but continue to monitor *Mallory*'s progress on remand and the evolution of such corporate registrations in other jurisdictions.

If you have any questions about the *Mallory* decision, or its implications for your business, please contact Christina Manfredi McKinley at 412.394.5432 or cmckinley@babstcalland.com or Joseph V. Schaeffer at 412.394.5499 or jschaeffer@babstcalland.com.

---

[6] *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining and Milling Co.*, 243 U.S. 93 (1917).
[7] *See, generally, id.*
[8] *Mallory*, 600 at --- (Barrett, J., dissenting) (slip op. at 15).
[9] *Id.* at 4 n.2.