

This Time It's Personal (Jurisdiction): U.S. Supreme Court Upholds Constitutionality of Pennsylvania's Consent to Jurisdiction by Registering to do Business Statute

As the term ends for the Supreme Court, there have been several opinions issued recently that have garnered public attention. However, one decision may have flown under the radar that could have significant implications on businesses and where they can be sued: *Mallory v. Norfolk Southern Railway Co.*

In *Mallory*, a former employee with Norfolk Southern in Ohio and Virginia for twenty years, was diagnosed with cancer. Mr. Mallory attributed his cancer diagnosis to his employment with Norfolk Southern and filed suit in Pennsylvania state court under a federal workers compensation scheme applicable to railroad workers.

The case had nothing to do with Pennsylvania. Mallory didn't live there, the injuries didn't happen there, and Norfolk Southern was headquartered and incorporated in Virginia. But Norfolk Southern owned rail lines, rail yards and repair shops in Pennsylvania and was required to register to do business in Pennsylvania as a foreign corporation. Under traditional notions of fair play, any effort by a Pennsylvania court to exercise personal jurisdiction over it would offend the Due Process Clause of the Fourteenth Amendment. The Pennsylvania Supreme Court agreed.

The United States Supreme Court disagreed, and held last week 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 its presence in that state. In relying on a case from 1917, the Court concluded that Norfolk Southern consented to personal jurisdiction in Pennsylvania by registering to do business there. Pennsylvania requires out-of-state companies register to do business there, and that by registering the companies agree to appear in its courts on "any cause of action" against them. This registration, the Court held, meant that Norfolk Southern consented to personal jurisdiction in Pennsylvania, despite being an out-of-state business entity that is incorporated and headquartered in Virginia.

What does this mean for businesses? Of immediate significance to business entities, this decision means that if registered to do business in Pennsylvania, or other consent-by-registration states, the business can be sued there even if it is a non-Pennsylvania company and the conduct or harm alleged did not occur in Pennsylvania. Businesses should factor consent-by-registration statutes into their calculus of whether to enter into new markets and, if so, whether to include choice of law and venue provisions in agreements they use in any markets. Additionally, businesses should be on the look-out for other states that might enact similar statutes. Indeed, Georgia and Minnesota already have similar registration statutes that have been interpreted as consenting to personal jurisdiction. Some uncertainty still remains as to the full impact of the *Mallory* decision, but businesses should be aware of the possibility of being haled into a particular state court as a result of registering to do business there.

To learn more about what the Supreme Court's decision in *Mallory* means and the impact it may have on your business, please contact Alexis Way, an attorney in Archer's Business Litigation Group, at 856-354-2313 or away@archerlaw.com.

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