



## LEGAL UPDATES

# Supreme Court Holds Corporation Waived Due Process Rights and Consented to General Personal Jurisdiction by Registering to do Business in Pennsylvania; Distinguishes *International Shoe*.

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On June 27, 2023, the United States Supreme Court held in *Mallory v. Norfolk Southern R. Co.*, No. 21-1168, 2023 WL 4187749, that Norfolk Southern submitted to the state of Pennsylvania's general jurisdiction (that is, being subject to any suit in Pennsylvania's courts) by registering to do business in the state as an out-of-state, or "foreign" corporation. The Court distinguished *Mallory* from long-standing precedent under *International Shoe v. Washington*, 326 U.S. 310 (1945) that established a contacts-based due process test for determining personal jurisdiction. Under *Mallory*, states can condition the right to do business in that state on submission to that state's general jurisdiction for any action involving the company without violating the Due Process Clause of the Fourteenth Amendment.

## The Court Likens *Mallory* to *Pennsylvania Fire's* 1917 Precedent

According to the Court, it already addressed this issue in 1917 in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93. In that case, an Arizona corporation sued an insurance company incorporated in Pennsylvania in Missouri for an incident that occurred in Colorado. Missouri law required that in order to do business in the state, a corporation must appoint a state official to serve as an agent and accept service for any suit against the corporation brought in Missouri. The Supreme Court held that a corporation who agrees to accept service of process on any suit in a state submits to that state's general jurisdiction.

In *Mallory*, a former employee sued Norfolk Southern in Pennsylvania, even though both parties were out-of-state, and the alleged injuries did not occur in Pennsylvania. Pennsylvania law requires an out-of-state corporation to register with the state and maintain a local office in order to enjoy the same rights and privileges as a domestic business. The statute also permits state courts to exercise general personal jurisdiction over registered foreign corporations. Norfolk Southern had been registered for 20 years and maintained a local office. However, Norfolk Southern argued that this statute violated their due process rights under the Fourteenth Amendment, because the circumstances did not fall under the two types of personal jurisdiction (specific and general) established by *International Shoe* in 1945.

## Related People

### Charles (Charlie) K. Maier

Partner

Fargo (by appointment)

612.632.3242 (MN), 701.298.6177 (ND)

[charles.maier@lathropgpm.com](mailto:charles.maier@lathropgpm.com)

### Emily Ditzler

Associate

Minneapolis

612.632.3286

[emily.ditzler@lathropgpm.com](mailto:emily.ditzler@lathropgpm.com)

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The Court disagreed, stating that the precedent set in *Pennsylvania Fire* controlled. The Court held that, by registering in Pennsylvania, Norfolk Southern consented to being amenable to suit in a Pennsylvania state court for any claim. The Court reasoned that, because personal jurisdiction is a personal right that can be waived or forfeited, Pennsylvania's statute did not violate Norfolk Southern's right to due process.

## The Court Distinguishes *International Shoe*

To be clear, *International Shoe* is still good law. While *International Shoe*'s specific jurisdiction ruling (that allows for suit against a corporation in a forum for claims that arise out of or relate to the defendant's contacts with the forum) was not addressed, the Court avoided the due process analysis for general jurisdiction (whether the corporation was at "home" in the forum state) required by *International Shoe* and its progeny based upon the specifics in the Pennsylvania statute at issue.

The main distinction, the Court remarked, was that *International Shoe* applies to out-of-state corporations that did not consent to in-state suits. The Court emphasized that, if anything, *International Shoe* added a flexible approach to jurisdiction under the rationale of fair play and substantial justice, but it did not overrule precedent in *Pennsylvania Fire*. In *Mallory*, the Court affirmed the idea in *Pennsylvania Fire* that express or implied consent to appear in court in a state as a requirement to do business there can establish general personal jurisdiction.

## What Happens Next?

It is possible that this case makes its way back through the court system on remand. Justice Alito noted in his concurring opinion that statutes like Pennsylvania's are not vulnerable to due process challenges but may be vulnerable to a Commerce Clause challenge. He reasoned that a statute like this could be seen as unduly restricting interstate commerce in violation of the Constitution, as states may not have a legitimate local interest in allowing out-of-state plaintiffs to sue out-of-state corporations.

For now, corporations that do business or plan to do business in a state in which they are not incorporated or headquartered should become familiar with the registration requirements and any conditions of registration, especially ones that implicated suit and service of process (the Court does not distinguish between corporations and other business entities, so we assume that the ruling in *Mallory* applies equally to all business entities). The dissent in *Mallory* noted that "Pennsylvania is the only state with a statute treating registration as sufficient for general jurisdiction," but with this green light, other states could start enacting similar statutory provisions.

The Court's ruling in *Mallory* significantly impacts personal jurisdiction for businesses. If you have any questions about the implications of this decision, feel free to contact the authors of this alert or your relationship attorney.

*Thank you to Emily Ditzler, a 2023 Summer Associate at Lathrop GPM, who contributed to the writing of this alert.*