

Mallory Gives Plaintiffs A Better Shot At Justice

By **Rayna Kessler and Ethan Seidenberg** (July 27, 2023)

The U.S. Supreme Court's June 27 decision in *Mallory v. Norfolk Southern Railroad Co.* was easy to overlook amid a flurry of consequential end-of-term rulings, as acknowledged recently in another Law360 guest article.[1]

Yet, for victims of corporate wrongdoing, *Mallory* is one of the most important decisions from the court's 2022-2023 term.

At issue was Pennsylvania's long-arm statute, which explicitly granted Pennsylvania courts general jurisdiction over corporations registered to do business in the state.[2]

Writing for the plurality, Justice Neil Gorsuch concluded that the Pennsylvania law did not violate due process, reversing the Pennsylvania Supreme Court's earlier ruling to the contrary.[3]

Deviating from typical partisan lines, Justices Clarence Thomas, Sonia Sotomayor and Ketanji Brown Jackson joined the opinion. Justice Samuel Alito concurred in part and concurred with the judgment, while Justice Amy Coney Barrett wrote a dissent joined by Chief Justice John Roberts and Justices Elena Kagan and Brett Kavanaugh.

Writing for the court, Justice Gorsuch relied heavily on the court's 1917 decision in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Company*, which affirmed the constitutionality of consent-by-registration statutes.[4]

Although the Pennsylvania Supreme Court recognized that *Pennsylvania Fire* had not been formally overturned, it declined to apply the case, claiming it was inconsistent with recent Supreme Court precedent.[5]

The U.S. Supreme Court's affirmation that *Pennsylvania Fire* remains good law is an important victory for individuals seeking access to courts, who may now use business registration statutes in some states to establish a court's general personal jurisdiction over a corporation.

Indeed, Justice Gorsuch began his opinion by discussing the recent Norfolk Southern train derailment in East Palestine, Ohio. The court's ruling for *Mallory* suggests that were an Ohio resident to sue Norfolk Southern in Pennsylvania, the court could establish general personal jurisdiction via Pennsylvania's long-arm statute — a result previously barred by the Pennsylvania Supreme Court.

Supporters of Norfolk Southern complain that these long-arm statutes enable "litigation tourism" — i.e., burdening defendants by suing in a court that has no business hearing the case.[6] As Justice Gorsuch notes, though, Norfolk Southern's own conduct belies the notion that *Mallory* was burdening Norfolk Southern.

As a result of doing business in the state, Norfolk Southern maintains thousands of miles of



Rayna Kessler



Ethan Seidenberg

rail throughout Pennsylvania, and employs thousands of Pennsylvanians.[7] More importantly, Norfolk Southern chose to conduct business in Pennsylvania.

And Pennsylvania's consent-by-registration statute put the company on notice of the consequences for doing so. The Supreme Court's decision in *Mallory* simply holds the company to its prior commitments.

As Justice Barrett's dissent acknowledges, Pennsylvania is the "only state with a statute treating registration as sufficient for general jurisdiction." [8] Nonetheless, the effects of this decision have the potential to reach far beyond the Keystone State.

Existing case law already supports arguments for general jurisdiction via registration in Georgia,[9] Iowa[10] and Minnesota[11] — even without the explicit language included in Pennsylvania's statute.[12] Indeed, the Supreme Court granted certiorari in *Mallory* in part because the Pennsylvania Supreme Court's ruling conflicted with a 2021 ruling on the same issue by the Georgia Supreme Court in *Cooper Tire & Rubber Co. v. McCall*. [13]

The high court's decision in *Mallory* affirms the validity of these existing state and federal precedents — reviving an avenue for plaintiffs to claim courts have general jurisdiction over large corporations. The court's ruling in *Mallory* may also encourage other states to follow Pennsylvania's lead.

In New York, for instance, a bill that would create a consent-by-registration scheme has already been passed by the Assembly by a wide margin.[14] Although Gov. Kathy Hochul vetoed a similar bill in 2021, the *Mallory* decision may increase pressure on Hochul to sign it into law. With the blessing of the Supreme Court, other states may follow suit.

Particularly in cases involving large corporations, the court's ruling will permit access to more courts than perhaps previously considered. Under Rule 4(k)(1)(a) of the Federal Rules of Civil Procedure, federal courts may exercise personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." [15]

Mallory affirms that federal courts sitting in Pennsylvania may look to Pennsylvania's consent-by-registration system to establish this jurisdiction. Hypothetically, then, *Mallory* would enable a plaintiff from New Jersey, injured in California by a pharmaceutical company based in Florida, to sue in Pennsylvania federal court — assuming the company was registered to do business there and all other jurisdictional requirements were met.

All told, *Mallory* is a rare win for plaintiffs from a court often friendly to alleged jurisdictional complaints raised by corporations.

In *Bristol Meyer Squibb v. California Superior Court*, for instance, the Supreme Court held in 2017 that California courts did not have specific jurisdiction to hear the claims of out-of-state residents — even though their injuries were identical to in-state claimants, making California an ideal forum for hearing all the claims. [16]

Relatedly, in *Daimler AG v. Bauman*, the high court prevented a class action filed by California residents from proceeding in California against Daimler Chrysler, a German corporation, in 2014. [17] Were California to follow Pennsylvania's lead and pass a consent-by-registration statute, *Mallory* could enable suits like these to proceed.

Far from litigation tourism, then, *Mallory* simply enables plaintiffs to sue in a wider range of

fora — increasing the likelihood that the suit will proceed in the best possible court.

As more states embrace Pennsylvania's consent-by-registration system, the burden on individual plaintiffs to search out viable fora will lighten, enabling them to seek justice more easily against major corporations.

Rayna E. Kessler is a partner and Ethan Seidenberg is a summer associate at Robins Kaplan LLP.

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[1] *Mallory v. Norfolk S. Ry.Co.*, 599 U.S. ____ (2023) (Gorsuch, J., plurality).

[2] 42 Pa. C.S. §5322 (2023).

[3] *Mallory*, 599 U. S. (slip op. at 1).

[4] *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917).

[5] *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 567–68 (2021).

[6] James Beck, *Litigation Tourism Lives — Mallory Reversed*, *Drug & Device Law* (June 28, 2023), <https://www.druganddevicelawblog.com/2023/06/litigation-tourism-lives-mallory-reversed.html>.

[7] *Mallory*, 599 U.S. (slip op. at 19).

[8] *Id.* (Barrett, J., dissenting) (slip op. at 10).

[9] *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422 (2021).

[10] *Spanier v. American Pop Corn Co.*, No. C15-4071-MWB, 2016 WL 1465400 (N.D. Iowa Apr. 14, 2016).

[11] *Knowlton v. Allied Van Lines Inc.*, 900 F.2d 1196 (1990).

[12] For a thorough discussion of state-level case law concerning consent by registration, see Matthew D. Kaminer, *The Cost of Doing Business? Corporate Registration as Valid Consent to General Personal Jurisdiction*, 78 *Wash. & Lee L. Rev. Online* 55 (2021).

[13] *Cooper Tire*, 312 Ga. 422.

[14] N.Y. Assemb. B. A7351 (2023).

[15] Fed. R. Civ. P. 4(k)(1)(a).

[16] *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 582 U. S. 255 (2017).

[17] Daimler AG v. Bauman, 571 U.S. 117 (2014).