

PUBLICATION

United States Supreme Court Confirms Business Registration as Means for Consent to Personal Jurisdiction

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On Tuesday, the United States Supreme Court held, in a fractured opinion in *Mallory v. Norfolk Southern Railway*, that if a state requires a foreign entity to consent to personal jurisdiction through its business registration requirements, then such consent operates as consent to general jurisdiction. Thus, the consent statutes do not violate traditional notions of fair play and substantial justice afforded by the Due Process Clause of the 14th Amendment. Practically speaking, if a business registers to do business in a state providing mandatory consent to personal jurisdiction, those businesses run the risk of waiving any complaints to general jurisdiction in those states and could be sued for any claim, whether or not occurring in that state.

In *Mallory*, the plaintiff (a Virginia resident) sued his employer (also based in Virginia) in Pennsylvania state court under the Federal Employers' Liability Act for violations alleged to occur in Virginia and Ohio. The underlying facts of the case were not tied to Pennsylvania. The only tie to Pennsylvania was the defendant's registration to do business there, along with its operations in the state.

The Court confirmed its holding in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue & Milling Co.*, a 1916 opinion. As the Court explained, *Pennsylvania Fire* remains a controlling precedent for consent-based jurisdiction and despite any inconsistent statements from lower courts calling the case into question, it remains good law. *International Shoe Co. v. Washington*, and its progeny, governs when a defendant has not consented to jurisdiction. Both cases work in conjunction, not in conflict, for jurisdictional analysis.

To understand the implications of this case to ongoing operations, businesses need to familiarize themselves with the consent-mandating nature of a state's long-arm statute in those states they do business. In certain states, businesses may only operate in the state by registering to do business in that state, and accordingly, the long arm statute mandates consent to jurisdiction. Those states include, for example, Pennsylvania and New York. A handful of states, including Arkansas, Idaho, Maine, Mississippi, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington, have enacted statutes specifically stating registration and designation of an agent for service of process is not consent to personal jurisdiction. Other states such as Texas do not go as far as excluding consent, but rather are silent, even though in Texas, for example, consent-based jurisdiction has been analyzed by various state and federal courts finding the state's statutes do not mandate consent to jurisdiction as part of the business registration requirements.

Another issue raised in the opinion by Justice Alito in his concurrence is likely to be addressed in this case on remand and should be monitored for whether it returns to the Supreme Court. Justice Alito only joined in portions of the opinion, thus somewhat limiting the opinion as discussed herein. Justice Alito focuses the Court's holding and finds, simply, if it is constitutional for a state to require consent to jurisdiction as a basis to register to do business in that state, then consent statutes do not violate traditional notions of fair play and substantial justice afforded by the Due Process Clause of the 14th Amendment. Justice Alito raises concerns with the constitutionality of consent statutes under the dormant Commerce Clause doctrine, which was not considered by the Court in its opinion. The defendant presented the court below with an alternative argument against the constitutionality of the consent statute, which was not reached, but it is likely to be addressed on

remand. Businesses should continue to monitor this case as it returns to Pennsylvania for further consideration.

To learn more about how this ruling will impact your business, please contact [Bobbie Stratton](#) or any member of Baker Donelson's [Business Litigation Group](#).