

Litigation Law Alert | Registering To Do Business In A State May Subject Your Company To Personal Jurisdiction In That State



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Registering To Do Business In A State May Subject Your Company To Personal Jurisdiction In That State

Rose Suriano
Member, Litigation

Robyn K. Lym
Associate, Litigation

BRACH | EICHLER^{LLC}
Counsellors at Law

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In *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168 (June 27, 2023), the U.S. Supreme Court held that registering to do business in a state can result in a company being subject to general personal jurisdiction in the state and being sued in the state's courts on all claims.

Facts

The plaintiff, Robert Mallory worked for the defendant, Norfolk Southern Railway Co. (Norfolk Southern) for almost 20 years, in Ohio and Virginia. After leaving the company, Mallory moved to Pennsylvania. Following a cancer diagnosis that he accredited to his work for Norfolk Southern, Mallory sued Norfolk Southern in Pennsylvania state court.

Norfolk Southern is headquartered and incorporated in Virginia and argued that a Pennsylvania court does not have personal jurisdiction over the company because it had no ties to Pennsylvania, and as a result, it cannot be sued as a defendant in that state. Norfolk Southern also argued that a Pennsylvania court's exercise of personal jurisdiction over it, a Virginia company, would violate the U.S. Constitution. Although, Pennsylvania has a statute which provides that foreign (out-of-state) companies must register with the Department of State to do business in Pennsylvania and its courts may exercise general jurisdiction over registered foreign companies on any claim, Pennsylvania's Supreme Court held that Pennsylvania's statute was unconstitutional. The U.S. Supreme Court agreed to review the case.

The US Supreme Court Held Norfolk Southern Consented To General Jurisdiction In Pennsylvania By Registering To Do Business In The State

The U.S. Supreme Court in *Mallory* held that a state can require any foreign (out-of-state) company that registers to do business there to consent to be sued in that state's courts on any claim. Specifically, the Court held that corporate registration to do business can be conditioned on a company's consent to general jurisdiction in that state's courts without violating the U.S. Constitution's Due Process Clause.

The court recognized that historically, many states have adopted various types of consent-by-registration statutes which permit corporations to be sued in those states.

Wider implications

This decision is having wider repercussions, as many states are considering adopting similar consent-by-registration statutes. What should also be considered is that a state court could also interpret a state's registration statute as requiring consent to jurisdiction as part of registration, even if the statute itself does not specifically include that provision.

A company considering registering to do business in another state outside of the state of its incorporation or principle place of business should review that state's registration statute and judicial decisions interpreting it. In addition, companies should consider reviewing their agreements to include forum selection and choice of law clauses to control which state's law will govern issues related to the contract and where it can and cannot be sued.

If you have any questions about this alert, please contact:

Rose A. Suriano, Esq., Member, [Litigation Practice](#), at rsuriano@bracheichler.com or 973-403-3129

Robyn K. Lym, Esq., Associate, [Litigation Practice](#), at rlym@bracheichler.com or 973-403-3124

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