

Supreme Court Addresses Where Corporations Can Be Sued

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On November 8, the Supreme Court of the United States heard argument in a case with ramifications for where corporations can be sued. In *Mallory v. Norfolk Southern Railway Co.*, Mr. Mallory sued his former employer, Norfolk Southern Railway Co. ("Norfolk"), alleging Norfolk's tortious actions led to Mr. Mallory developing cancer. Norfolk is incorporated and has its principle place of business in Virginia. Further, the alleged actions at issue all occurred in Ohio and Virginia. Yet Mr. Mallory sued Norfolk in Pennsylvania. The Pennsylvania trial court dismissed the case for lack of personal jurisdiction. The Supreme Court of Pennsylvania upheld the dismissal, and Mr. Mallory appealed.

Center to the case is how much protection the Fourteenth Amendment's Due Process provides - does due process ban a state from requiring a company to consent to personal jurisdiction in the state as a prerequisite to conducting business within the state? All states require corporations foreign to the state to register before conducting business within the state. However, Pennsylvania's statute for personal jurisdiction interprets such mandatory registration as consent to jurisdiction in Pennsylvania courts ("consent-by-registration"). And while generally the protection of personal jurisdiction can be waived, the waiver must be voluntary.

Specifically, the Court will need to examine the limits of general jurisdiction. The legal landscape of general jurisdiction was significantly altered in the 2014 case *Daimler A.G. v. Bauman* ("*Daimler*"). *Daimler* set forth that general jurisdiction exists over a company when the company has continuous and systemic contacts with a state that render the company at home in the state. The *Daimler* framework, relying on the Fourteenth Amendment's language, contrasted with previous precedent that found consent-by-registration schemes constitutional. Norfolk argues that *Daimler* and subsequent cases overruled that prior precedent. Mr. Mallory argues that *Daimler* clarified the limits of personal jurisdiction over nonconsenting parties but did not rule that consent-by-registration statutes were unconstitutional.

If the Supreme Court finds consent-by-registration statutes comport with due process, other states may find such schemes attractive. Thus corporations with interstate business will face increased vulnerability of being called to defend suits in distant and inconvenient jurisdictions. For contract related cases, such a

reality increases the importance for corporations to protect themselves through forum-selection clauses and choice-of-law provisions. Additionally, companies should be aware if states they are registered in or plan to register in have consent-by-registration statutes and then plan accordingly for potential liability.

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