

Post-Mallory, Calif. Personal Jurisdiction Unlikely To Expand

By **Virginia Milstead and Raza Rasheed** (September 11, 2023, 4:45 PM EDT)

On June 27, in *Mallory v. Norfolk Southern Railway Co.*, the U.S. Supreme Court held that a Pennsylvania statute requiring out-of-state companies to submit to general personal jurisdiction of the state's courts as a condition of doing business there does not violate the U.S. Constitution's due process clause.[1]

Pennsylvania is one of the only states that treats an out-of-state company's registration to do business in the state as consent to be sued by anyone, from anywhere in the country, in that state's local courts — even for conduct unrelated to the company's business in Pennsylvania.

Mallory could prompt other states — like California — to experiment with similar laws, although such efforts have not materialized yet. But in our view, those experiments would likely change little.

Even if California passed a Pennsylvania-like jurisdiction consent statute, existing defenses like *forum non conveniens* would prevent non-California plaintiffs from suing non-California defendants in California based on non-California disputes.

The Supreme Court's Holding in Mallory

Norfolk Southern is a Virginia corporation headquartered in Georgia. In 2017, Robert Mallory sued Norfolk Southern in Pennsylvania state court, alleging that he was exposed to carcinogens while working for Norfolk Southern in Ohio and Virginia.

Mallory argued that Norfolk Southern is subject to personal jurisdiction in Pennsylvania's courts — even though it is incorporated and headquartered out of state, and Mallory's injuries had no connection with Pennsylvania — based on a Pennsylvania statute that requires out-of-state companies that register to do business in Pennsylvania to agree to appear in its courts on "any cause of action" against them.[2]

The Pennsylvania Supreme Court rejected Mallory's arguments, holding that Pennsylvania's jurisdiction consent regime for out-of-state corporations violates due process.[3] The court reasoned that the Pennsylvania statute conflicts with the U.S. Supreme Court's decisions in *Daimler AG v. Bauman* in 2014[4] and *Goodyear Dunlop Tires Operations v. Brown* in 2011.[5]

According to those decisions, corporations are usually subject to general personal jurisdiction — i.e., jurisdiction covering claims that do not arise from the defendant's contacts with the forum — only in the states where they are incorporated or headquartered.

In reaching this conclusion, the Pennsylvania Supreme Court rejected a 2021 decision by the Georgia Supreme Court in *Cooper Tire & Rubber Co. v. McCall*, holding that registering to do business in Georgia constitutes consent to general jurisdiction in Georgia's courts.[6] The U.S. Supreme Court granted certiorari to resolve the split between the Pennsylvania and Georgia Supreme Courts, and reversed.



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The high court's 5-4 majority held that *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, a 1917 decision upholding a Missouri statute similar to Pennsylvania's jurisdiction consent statute, is still controlling.[7] The majority found that this decision has not been displaced by modern cases applying *International Shoe Co. v. Washington*, the Supreme Court's seminal 1945 personal jurisdiction decision.[8]

Despite Mallory's holding that the Pennsylvania jurisdiction consent statute does not violate due process, it remains unclear whether the law will stand up to further constitutional scrutiny.

In a lengthy concurrence, Justice Samuel Alito — who cast the deciding vote in Mallory — argued that the Pennsylvania statute might violate the U.S. Constitution's so-called dormant commerce clause by allowing Pennsylvania's courts to regulate too much out-of-state conduct.

If the four dissenting justices in Mallory ultimately agree with Justice Alito's critique, the Pennsylvania statute's days might well be numbered.

Implications for California

Although California does not have a Pennsylvania-style jurisdiction consent statute, Mallory could prompt a push in California and other states to enact similar statutes. Because California is such a large and significant market, a Pennsylvania-style law in California could lead to many large companies being subject to general jurisdiction in California's courts.

That outcome would be a big change in California personal jurisdiction law — California courts have previously held that registering to do business in the state does not subject an out-of-state corporation to general jurisdiction.[9]

But a number of nonjurisdictional doctrines would prevent out-of-state plaintiffs from suing non-California corporations in California state court based on events that happened outside of California.

To start with, under California's *forum non conveniens* doctrine, courts should generally decline to hear lawsuits that have little connection to California, and that would overburden the local courts, thereby denying the state's residents access to timely justice.[10] *Forum non conveniens* should apply to most suits involving entirely out-of-state parties and events — even if the defendant is technically subject to general jurisdiction in California.

In such suits, most or all of the relevant evidence and witnesses will be located elsewhere, making it inconvenient to litigate the case in California using local courts and counsel. Moreover, plaintiffs will typically have other viable places to bring their lawsuits — such as the place where the events leading to the litigation occurred, or the defendant's home state — meaning that there is little justification for burdening the California courts with this kind of wholly foreign lawsuit.

Moreover, Mallory does not displace private parties' ability to select a forum for their disputes by contract. Accordingly, even if California were to enact a Pennsylvania-style jurisdiction consent statute, companies likely would still be able to enforce forum selection and arbitration clauses designed to avoid inconvenient forums.


Indeed, courts should be even more willing to enforce such clauses when doing so will avoid using the court's scarce decisional resources on entirely out-of-state disputes.

Conclusion

While a Pennsylvania-style statute might alter California's current personal jurisdiction landscape, it likely would not lead to increased civil litigation in California. Local courts would still have plenty of tools available to keep entirely out-of-state disputes from clogging California's already-overburdened dockets.

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[1] See [Mallory v. Norfolk S. Ry. Co.](#) , No. 21-1168, 2023 WL 4187749 (U.S. June 27, 2023).


[2] 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b) (2019).

[3] See [Mallory v. Norfolk S. Ry. Co.](#), 266 A.3d 542 (2021).

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

[5] [Goodyear Dunlop Tires Operations v. Brown](#) , 564 U.S. 915 (2011).

[6] See 266 A.3d at 560 n.13 (citing [Cooper Tire & Rubber Co. v. McCall](#) , 863 S.E.2d 81 (Ga. 2021)).

[7] [Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.](#) , 243 U.S. 93 (1917)

[8] [International Shoe Co. v. Washington](#) , 326 U.S. 310 (1945).

[9] See [Bristol-Myers Squibb Co. v. Super. Ct.](#) , 1 Cal. 5th 783 (2016).

[10] See [Stangvik v. Shiley Inc.](#) , 54 Cal. 3d 744 (1991).