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PERSPECTIVE

## Corporate defendants could face the music in more forums

By Arash Homampour

Imagine if plaintiffs could sue and hold corporate defendants accountable in the courts of other states simply because it was convenient and that defendant consented to jurisdiction when registering to do business in that state. The U.S. Supreme Court could soon make it possible for plaintiffs to bring products liability, personal injury, and other claims in states far from the places where the defendant companies are headquartered or where they do most of their business.

On April 25, the court agreed to hear arguments in *Mallory v. Norfolk Southern Railway Co.*, 21-1168. Robert Mallory sued Norfolk Southern in Pennsylvania superior court for his alleged exposure to carcinogens while working for the company from 1998 to 2005, mainly in Ohio and Virginia, and his resulting colon cancer. Mallory is a Virginia resident; Norfolk Southern is based in Virginia. Neither party has much of a connection to Pennsylvania.

Nevertheless, Mallory asserted that Pennsylvania courts could hear his case. His claim relied on a long-arm provision of Pennsylvania's foreign-business statute (42 Pa. Cons. Stat. §5301(a)(2)(i)), which essentially requires companies to consent to the jurisdiction of its courts if they want to do any business in the state. The defendant, naturally, protested that the state's courts lacked personal jurisdiction.

The lower court found that Pennsylvania's statutory scheme "forced" companies to choose between consenting to general jurisdiction and conducting business in the state. The Pennsylvania Supreme Court agreed, concluding that Pennsylvania's consent-by-registration scheme "does not constitute voluntary consent to general jurisdiction but, rather, compelled submission to general jurisdiction by legislative command." The law, according to the state's

court, did not comport with due process and did not confer general jurisdiction over foreign corporations.

The Supreme Court must now decide "[w]hether the Due Process Clause of the Fourteenth Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state." Jurisdiction over out-of-state corporations has traditionally been guided by the 1945 case of *International Shoe Co. v. Washington* (326 U.S. 310), which shifted the analysis away from a corporate defendant's presence within the forum state and instead considered its contacts, ties, or relations within the state. Bringing such a lawsuit, the court ruled, must "not offend 'traditional notions of fair play and substantial justice.'"

Depending on the nature and extent of a corporation's contacts, a forum state could have "specific (case-linked) jurisdiction" or "general (all-purpose) jurisdiction" over a corporate defendant. When general jurisdiction applies, there is no need for the claims at issue or the defendant's conduct to be connected in any way with the forum state. It is on this type of jurisdiction that Mallory's claim relies.

In *Daimler AG v. Bauman* (571 U.S. 117 (2014)) and *Goodyear Dunlop Tires Operations, S.A. v. Brown* (564 U.S. 915 (2011)), the Supreme Court clarified that general jurisdiction requires more than simply doing business in a state. "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." (*Daimler AG*, 571 U.S. at 127 (quoting *Goodyear*, 564 U.S. at 919).)

Mallory argues that Norfolk Southern voluntarily consented to general jurisdiction in Pennsylvania when it registered to do business

in the state, consistent with due process principles. He relies on precedent from *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.* (243 U.S. 93 (1917)), which, he claims, "held that a corporation's consent to jurisdiction through a registration statute is constitutionally valid." "[A] corporation's consent to jurisdiction through a registration statute remains a 'traditional' and valid basis of jurisdiction." Norfolk Southern says the consent-by-registration scheme violates "the unconstitutional conditions doctrine" by "impermissibly condition[ing] the privilege of doing business in Pennsylvania upon a foreign corporation's surrender of its constitutional right to due process."

Every state has a registration requirement for out-of-state companies who want to conduct business within their borders. Pennsylvania's statute may be broader than most others, but it is not a complete outlier. The California Court of Appeals ruled on July 7 (*Daimler Trucks North America LLC v. Superior Court* (No. B316199, 2022 Cal. App. LEXIS 594)) that an Oregon-based truck manufacturer could be sued in California for a truck sold to a Nebraska company, shipped to Georgia, sold to a California company and crashed by a California resident in Oklahoma. There was jurisdiction, the court said, because the defendant did "substantial business in California": It advertised, had 32 dealerships, and sold thousands of trucks in California.

The time is ripe for courts to take a new look at jurisdictional issues involving national corporations. The business landscape that was in place when *International Shoe* and its progeny were decided is a thing of the past. In today's marketplace, consumers are bombarded with advertisements from companies in all parts of the country, not to mention across the globe, and they routinely shop and buy from foreign and out-of-state entities.

Internet-based product sales, as well as online contracts for employment and independent services, are a regular feature of today's economy. To allow such transactions without providing plaintiffs an effective mechanism for judicial relief for resulting injuries is unjust and short-sighted. If companies expect to be able to expand into other territories and realize revenue from such expansion, they should also be prepared to defend lawsuits in those same territories.

Should *Mallory* prevail, it is foreseeable that more cases will be filed in states that have mandatory jurisdiction clauses, and many more states may enact legislation requiring jurisdiction as a condition for out-of-state corporations to transact business within the borders of those states. In other words, the tide may finally be turning in favor of access to justice and leveling the playing field for plaintiffs, as well as providing real substance to corporate accountability.

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