

# A Year With *Mallory*: Revisiting The Concept of Consenting to General Personal Jurisdiction

## Article

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On June 27, 2023, the Supreme Court of the United States decided *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023). The divided Court upheld a Pennsylvania corporate registration statute which stated that by registering to do business in the state, a corporate entity consented to general personal jurisdiction in its courts. Due process requires that a court have personal jurisdiction over a defendant in order to hear a claim against them. There are two types of personal jurisdiction: general and specific. General personal jurisdiction means the defendant can be sued in that state for any and all claims. Specific personal jurisdiction, on the other hand, means a state can only hear claims against the defendant that specifically arise out of its activities in the state. Based upon the Court's decision in *Mallory*, a foreign corporation that registers to do business in Pennsylvania can be sued in a Pennsylvania state court on any claim whatsoever, even claims wholly unrelated to the corporate defendant's activities in the state or activities that occurred in another state.

The Court in *Mallory* reiterated that the extensive due process analysis for determining general personal jurisdiction outlined in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) is only relevant for *non-consenting* foreign corporations. In other words, a foreign corporate defendant may consent to subject itself to general personal jurisdiction as a condition for doing business in a state and due process will not be offended. Notably, the Pennsylvania statutory scheme at issue in *Mallory* is "explicit that 'qualification as a foreign corporation' shall permit state courts to 'exercise general personal jurisdiction' over a registered foreign corporation . . . ." *Mallory*, 600 U.S. at 134. In fact, Norfolk Southern admitted during oral argument that it was aware of this provision when it filed its registration paperwork. Based on these facts, the only real open question after *Mallory* was whether the decision signaled a shift in the Court's view of general personal jurisdiction or whether it was limited to Pennsylvania's unique registration statute.

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Plaintiffs have attempted to expand *Mallory* but these efforts have been rebuffed. For instance, in *Bancredito Holding Corp. v. Driven Admin. Servs. LLC*, No. 5:23-CV-00575-M (E.D.N.C. January 8, 2024), the plaintiff argued the foreign corporate defendant consented to personal jurisdiction in North Carolina because it registered to do business in the state and named a designated agent for service of process in the state. The court found that North Carolina's corporate registration statute did not have the explicit language consenting to general personal jurisdiction present in the Pennsylvania registration statute. The lack of a "reciprocal condition" distinguished the facts from *Mallory*, and the court held that simply registering to do business and naming an agent for service was not enough to find consent. In so holding, the court cited to four post-*Mallory* decisions that have similarly declined to extend the concept of consent.

The transportation industry would be uniquely impacted by an expansion of *Mallory*. Motor carriers are required by federal law to designate an agent for service of process in each state in which it operates. 49 U.S.C. § 13304. If designating an agent for service of process was viewed by courts as consent to general personal jurisdiction in a state, it would mean motor carriers could be sued in *any* state in which they operate on lawsuits unrelated to the state. In other words, a personal injury lawsuit stemming from a motor vehicle accident in Iowa could theoretically be filed in Illinois (a more liberal and generous court for plaintiffs), so long as the motor carrier had a designated agent for process in Illinois. Thus far, the courts are resisting such a seismic shift, and we do not expect this position to change. Given what is at stake, this case law is worth monitoring. Should we see a shift toward general jurisdiction and consent in these situations, we will provide an update.

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