

Getting Sued in All the Wrong Places: Supreme Court Opens Door to Suits in Unrelated States

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Let's say that your company is incorporated in Michigan, headquartered in Michigan, and does business there and in a dozen other states. One of your customers in Texas claims the products it purchased from you and that you shipped to its Texas facility are defective. Ordinarily, that customer could only sue your company in Michigan (*i.e.*, where your company is incorporated and headquartered) or in Texas (*i.e.*, where the transaction took place). But those rules may be about to change.

On June 27, 2023, in *Mallory v. Norfolk Southern R. Co.*, 600 U.S. ____ (2023), the U.S. Supreme Court held that a company can be sued in a state with no connection to either the plaintiff or the dispute, if it has consented to jurisdiction by registering to do business in that state. The case involved a lawsuit against a company in Pennsylvania state court, brought by the company's former employee for alleged injuries that occurred entirely in Virginia and Ohio.

The company, Norfolk Southern Railway Co., is incorporated and has its headquarters in Virginia. Its former employee sued under the Federal Employers' Liability Act. The employee sued in Pennsylvania state court even though the employee had: (1) only worked in Virginia and Ohio; (2) suffered all his alleged injuries in Virginia and Ohio; (3) lived in Virginia when the suit was filed; and (4) lived in Virginia at the time of the decision. Norfolk Southern does business in Pennsylvania, but this dispute had no connection to the state. The employee lived in Pennsylvania for a short time after his employment, but perhaps more significantly, sued in Pennsylvania because it "is reputed to be especially favorable to tort plaintiffs."^[1]

Norfolk Southern argued that it was not subject to Pennsylvania jurisdiction, relying on the established principles that: (1) a corporation is subject to *general jurisdiction* (*i.e.*, subject to any suit, regardless of where the underlying acts took place) only in its state of incorporation and where it has its principal place of business; and (2) a corporation can only be sued elsewhere if there is *specific jurisdiction* (*i.e.*, a specific, substantial connection between the dispute and the forum state). However, the employee asserted that Pennsylvania has a statute that requires out-of-state corporations to register with the state to do business and to consent to jurisdiction over "any cause of action" against them.^[2] In response, Norfolk Southern argued that the statute violated the Due Process Clause in the U.S. Constitution's Fourteenth Amendment by forcing it to defend a claim in Pennsylvania that had no connection to Pennsylvania or its courts.

The Pennsylvania Supreme Court agreed with Norfolk Southern and held that the exercise of jurisdiction was unconstitutional. The U.S. Supreme Court reversed in a 5-4 opinion authored by Justice Neal Gorsuch. The Court held that it did not need to consider whether there were specific ties to Pennsylvania or, whether it was fair for Norfolk Southern to be sued in Pennsylvania. The Court reasoned that by registering with the state to do business, Norfolk Southern consented to general jurisdiction in Pennsylvania. Although the Court left the possibility of future constitutional challenges open, the bottom line is that Norfolk Southern can currently be sued in Pennsylvania for simply registering to do business in the state.

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So far, at least Pennsylvania and Georgia have laws that require out-of-state companies registering to do business there to expressly consent to the jurisdiction of those state courts over any dispute. But other states could pass similar statutes. If these *consent to jurisdiction statutes* are passed, it remains unclear whether they will survive future constitutional challenges.

In the meantime, corporations facing suit in such states are not helpless. If the requirements of federal jurisdiction are met, corporate defendants will still be able to remove the dispute from state court to federal court.[3] And once in federal court, they can ask to transfer the suit to a more convenient venue — for example, one where the defendant, the witnesses, and the evidence are located.[4] But for now, companies doing business in Pennsylvania and Georgia should be aware that they likely could be sued there for claims that have no connection to those states. And companies doing business in other states should keep a careful eye on whether those states enact statutes similar to the states mentioned above.

Please contact your Miller Canfield attorney or any of the authors of this alert to discuss these developments further.

[1] *Mallory*, 600 U.S. ___ at 36. (Alito, J., concurring)

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

[3] 28 U.S.C. § 1446.

[4] See 28 U.S.C. §§ 1404, 1412; see also *Prevent USA Corporation v. Volkswagen AG*, 17 F.4th 653, 638 (6th Cir. 2021).