SUPREME COURT DERAILS CONTACTS-BASED APPROACH TO JURISDICTION

July 10, 2023

The Supreme Court this week upended long-held understandings of when a state court can assert personal jurisdiction over an out-of-state business.

Lawyers have long advised corporate clients on the differences between specific and general jurisdiction. Specific jurisdiction allows a state court to hear specific claims against a defendant that arise out of or relate to the defendant's contacts with the forum state. Each state has its own "long arm" statute, which delineate the acts giving rise to specific jurisdiction in that state. General jurisdiction, in contrast, allows a state court to hear *any* claim against a defendant.

Until this week, general jurisdiction was thought to exist only in a defendant's "home states"—that is, the state of its incorporation and the state in which it principally conducts business. But in Monday's decision in *Mallory v. Norfolk Southern Railway Co*., the Supreme Court held that general jurisdiction *also* exists where a state law requires that foreign companies registering to do business in the state consent to the state courts' exercise of jurisdiction over them.

The case was brought by a former Norfolk Southern employee who worked as a freight-car mechanic in Ohio and Virginia. He sued his former employer after developing cancer that he attributed to his work for the company. Although Norfolk Southern is incorporated and headquartered in Virginia, Mallory brought suit in Pennsylvania state court. Mallory did not live in Pennsylvania and his cause of action did not accrue there.

When Norfolk Southern resisted the suit based on lack of personal jurisdiction, Mallory pointed to a Pennsylvania statute precluding an out-of-state corporation from doing business in the Commonwealth without registering with Pennsylvania's Department of State. The statute provides that, upon completion of the registration process, the corporation enjoys the same rights and privileges as a domestic corporation—and is subject to the same burdens. Among those burdens is amenability to suit in Pennsylvania state courts on *any* claim. The statute explicitly dictates that "qualification as a foreign corporation" shall permit state courts to "exercise general personal jurisdiction" over a registered foreign corporation, just as they can over domestic corporations. *See* 42 Pa. Cons. Stat. §5301(a)(2)(i).

The Pennsylvania Supreme Court sided with Norfolk Southern, holding that the statutory scheme violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. But the United States Supreme Court disagreed and vacated the Pennsylvania Supreme Court's decision. In a plurality opinion (a decision where no single opinion receives the support of a majority of justices), Justice Gorsuch held that the Due Process Clause did not prohibit Pennsylvania from requiring an out-of-state corporation to consent to personal jurisdiction in order to do business there.

Justice Gorsuch explained that the ruling was controlled by the Court's decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co*., over one hundred years earlier. There, the Court upheld a Missouri law requiring that any out-of-state company desiring to transact business in Missouri appoint a registered agent for service of process and accept service on that agent as valid in any suit. The Court held that an out-of-state company could be sued in Missouri by an out-of-state plaintiff—and on an out-of-state contract—because it had agreed to accept service of process in Missouri on any suit as a condition of doing

business in the state. Citing the parallels between the century-old Missouri law and Pennsylvania's current statute, Justice Gorsuch emphasized that Norfolk Southern had consented to general jurisdiction in Pennsylvania by registering to do business in the state and otherwise complying with the statute's requirements.

Justice Gorsuch rejected Norfolk Southern's argument that the Supreme Court's seminal decision in *International Shoe Co. v. Washington* undermined its earlier decision in *Pennsylvania Fire*. In *International Shoe*, the Court held that the Fourteenth Amendment permits suit against a corporate defendant if the quality and nature of the company's activity in a state "make it reasonable and just" to maintain suit there. *International Shoe* gave rise to the now-routine "minimum contacts" analysis, whereby courts analyze whether an out-of-state defendant has sufficient contacts with the forum state for its courts to exercise jurisdiction over that defendant.

Norfolk Southern contended that *International Shoe* permits no basis for jurisdiction over a corporate defendant beyond general and specific. Justice Gorsuch disagreed, asserting that *International Shoe* expanded, rather than contracted, the ability of states to obtain personal jurisdiction over nonresident defendants. He explained that, as in *Pennsylvania Fire*, jurisdiction can *also* be established through a defendant's express or implied consent. Norfolk Southern, he reasoned, had consented to suit in Pennsylvania by registering to do business in the state.

In an emphatic dissent, Justice Barrett deemed Pennsylvania's statute a "power grab" that infringes on the rights of defendants and "upsets the proper role of States in our federal system." She pointed to decades of Supreme Court precedent holding that the Due Process Clause does not allow state courts to assert general jurisdiction over nonresident defendants simply because they conduct business in the state. While recognizing that consent is an established basis for personal jurisdiction, Justice Barrett denied that due process permitted states to extract consent from foreign corporations in cases where the forum state had no connection to the dispute. She cautioned that the plurality's opinion invited states to modify their long-arm statutes to "manufacture 'consent' to personal jurisdiction."

Norfolk Southern will have little immediate impact on out-of-state companies registered to conduct business in Florida. Pennsylvania's statutory regime is unique; no other state imposes consent-by-registration. Furthermore, *International Shoe*'s holding remains valid where no such consent requirement exists. Nevertheless, as Justice Barrett warned, the ruling leaves open the possibility that Florida (or any other state) could enact laws similar to Pennsylvania's. Such laws could effectively condition the ability to do business in a state on a corporation's consent to general jurisdiction, regardless of the corporation's connections to or contacts with that state. For that reason, *Norfolk Southern* is an unwelcome addition to Supreme Court jurisprudence.

If you have any questions, please contact Jessica Greenburg, or other member of the Dispute Resolution Team.

Related Practices

Complex Commercial Litigation

Related Practice Teams

Dispute Resolution

Related Team Member(s)

Jessica Greenburg