
Does a Corporation Consent to the General Jurisdiction of a State's Courts by Registering to Do Business There?

In order for a corporation to do business in a state other than its state of incorporation, it must register to do business and appoint a registered agent in the state. And while it is clear that by registering to do business the corporation is consenting to be sued in the courts of that state in a lawsuit arising out of its activities in the state, less clear has been whether it is also consenting to be sued in a lawsuit unrelated to its in-state activities.

If registration constitutes consent to jurisdiction regardless of where the cause of action arose, that means that corporations can be forced to defend lawsuits in any state in which they have registered. For publicly traded or other large corporations that means having to defend themselves in many, or even all states, even if the dispute is completely unrelated to their activities in the state and even if they weren't actively doing business in the state.

This article will discuss the "consent by registration" issue in light of a recent U.S. Supreme Court decision upholding a Pennsylvania statute that provided that foreign registration does constitute consent.

Specific vs. General Jurisdiction

A corporation can only be forced to defend itself in a state that has personal jurisdiction over the corporation. This is guaranteed by the Due Process Clause of the U.S. Constitution.

Personal jurisdiction can be specific or general. Specific jurisdiction exists when the claim arose out of or was related to the corporate defendant's activities in the state where the suit was filed.

General jurisdiction extends to all claims brought against the corporation, regardless of whether the dispute involved the corporation's in-state activities or had any other connection to the state.

General jurisdiction since *Daimler A.G. v. Bauman*

The law governing general jurisdiction changed dramatically in 2014 when the U.S. Supreme Court issued its decision in *Daimler A.G. v. Bauman*, 571 U.S. 117 (2014). Before *Daimler*, general jurisdiction could exist in any state in which the defendant corporation engaged in substantial, continuous, and systematic activities. However, in *Daimler*, the Court held that other than in exceptional cases, general jurisdiction over a corporation exists only in its state of incorporation and in the state where its principal place of business is located.

Daimler greatly restricted a plaintiff's ability to sue a large corporation in what the plaintiff considered a friendly state. Now, if a plaintiff wants to sue a corporation in a state other than the one where the claim arose or where the corporation was incorporated or headquartered, the plaintiff has to come up with another theory. And one that a number of plaintiffs have used is the "consent by registration" theory.

The Rise of the "Consent by Registration" Theory

Although the Due Process Clause protects corporations from being sued in states that lack personal jurisdiction over them, a corporation can waive the Due Process Clause's protection.

One way to waive that protection is to consent to the personal jurisdiction of a state's courts. The consent by registration theory alleges that a corporation, by registering to do business in a foreign state (e.g., any state other than its state of incorporation) consents to the general jurisdiction of that state's courts. As the plaintiffs making that argument point out, *Daimler* held it was unconstitutional to impose general jurisdiction based solely on the fact the corporation conducts a substantial amount of business in the state. However, the Court did not address whether or under what circumstances a corporation consents to general jurisdiction.

Recent Court Decisions on Consent by Registration

Most courts addressing the issue of consent by registration have held that a corporation does not consent to general jurisdiction by registering to do business. However, those cases tended to rely on the fact that the state had no statute conditioning foreign registration on the corporation consenting to general jurisdiction, thereby providing them with no notice of that consequence of registration. On the other hand Pennsylvania does have statutory provision stating that a foreign corporation consents to the general jurisdiction of the state's courts by registering to do business. However, in *Mallory v. Norfolk Southern Railway Co.*, 266 A.3d 542 (Pa. 2021) the Pennsylvania Supreme Court held that Pennsylvania's statutory scheme is unconstitutional. The court stated that a foreign corporation's registration to do business in Pennsylvania is not a voluntary consent to general jurisdiction, but rather is a compelled submission to general jurisdiction by legislative command. Although the statutes do provide notice that registration constitutes consent, that notice does not render the consent voluntary.

The U.S. Supreme Court's *Mallory* decision

The U.S. Supreme Court agreed to review the Pennsylvania Supreme Court's decision in order to decide whether the Due Process Clause of the 14th Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in a state. And the U.S. Supreme Court, in a 5-4 decision in *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, ruled in favor of the plaintiff, and vacated the Pennsylvania Supreme Court's decision. The Court based its decision on the U.S. Supreme Court's 1917 decision in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Mill Co.*, 243 U.S. 93 (1917) – which upheld the constitutionality of consent by registration and which the U.S. Supreme never explicitly overruled.

Implications of the *Mallory* decision

What *Mallory* basically means is that a state can enact a statute similar to Pennsylvania, providing that foreign corporations consent to the jurisdiction of the state's courts by registering to do business and appointing a registered agent, and it will not violate the Due Process Clause. And while that might seem to mean that every corporation is at

risk of having to defend itself in every state in which it has registered to do business regardless of where the plaintiff is located or the events resulting in the lawsuit took place, that is not necessarily the end of the story.

There is no guarantee that any or all of the remaining states will enact a statutory provision similar to Pennsylvania's. There is an argument to be made that such a statute is not in a state's best interests as it could deter out-of-state corporations from doing business in the state, create substantial uncertainty for businesses, and increase lawsuits over disputes with no nexus to the state. In addition, as was pointed out by Justice Alito in his concurring opinion, there is still the issue of whether consent by registration statutes violate the Commerce Clause. In addition, there has been indication that the lower courts will uphold consent by registration in the absence of a statute similar to Pennsylvania's.

No state enacted a statute in 2023 providing that a corporation consents to the jurisdiction of the state's courts in any action brought against it there by registering to do business. Time will tell if any state chooses to emulate Pennsylvania in 2024 and beyond.

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