

Mass Tort Litigation Update

***Mallory v. Norfolk Southern Railway Co.* – The Constitutionality of Requiring a Corporation to Submit to Jurisdiction as a Condition to Conducting In-State Business**

By Ezra Alter

Later this year, in *Mallory v. Norfolk Southern Railway Co.*, the United States Supreme Court will review the constitutionality of a Pennsylvania statute allowing any corporation to be sued in Pennsylvania simply because it registered to do business in the commonwealth.

Under the current Supreme Court framework as announced in *Daimler* and *Goodyear*, a court can exercise general (“all purpose”) jurisdiction over a corporate defendant if it is incorporated or has its principal place of business in the forum state. While all other states require foreign companies to register and appoint an agent for service of process as a condition to conducting business within the state, only Pennsylvania asserts (general) jurisdiction based on registration.

In *Mallory*, the plaintiff asked the court to exercise general jurisdiction over a Virginia corporation for an accident that happened in Virginia based solely on the theory that the defendant consented to jurisdiction in Pennsylvania by registering to business in Pennsylvania. The Pennsylvania Supreme Court sided with defendant and upheld the lower court’s ruling, dismissing the case and finding that Pennsylvania’s statute violated the due process clause of the Fourteenth Amendment to the US Constitution. It reasoned that compelling a foreign corporation to consent to jurisdiction as a condition of doing business in the state “eviscerates the Supreme Court’s general jurisdiction framework set forth in *Goodyear* and *Daimler*” and is “contrary to the concept of federalism” *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 566 (Pa. 2021), cert. granted, 212 L. Ed. 2d 605 (2022). It specifically rejected the plaintiff’s argument that registration-based jurisdiction was explicitly permitted under older US Supreme Court decisions from 1877 and 1917, finding that later US Supreme Court decisions implicitly overruled these cases.

The United States Supreme Court granted certiorari on April 25, 2022, and the matter is scheduled to be argued on November 8, 2022. While a ruling upholding the statute only applies to Pennsylvania, widespread adoption of Pennsylvania’s statutory scheme would allow unprecedented levels of forum shopping— permitting Plaintiffs to sue any corporation registered in any state that adopted Pennsylvania’s scheme – no matter how disconnected the case is from the forum state.