
Supreme Court Holds that Consent to General Jurisdiction Through Registration to Do Business Satisfies Due Process

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Over a century ago, the Supreme Court of the United States held in *Pennsylvania Fire Ins. Co. v. Gold Issue Mining Co.*, 243 U.S. 93 (1917), that a state could require out-of-state corporations to consent to general jurisdiction as a condition of registering to do business in that state. Out-of-state companies could, therefore, be sued in a state where they had registered to do business, even if the events giving rise to the suit occurred outside the forum state and were not otherwise sufficiently connected to the state. This so called “consent to jurisdiction-by-registration” theory was thrown into doubt in 2014 when the Supreme Court held in *Daimler AG v. Bauman*, 571 U.S. 117 (2014), that, except in extraordinary cases, a corporate defendant is only subject to general jurisdiction where it is “at home,” meaning where the company is incorporated or has its principal place of business. After *Daimler*, a split emerged among the lower courts as to whether “consent to jurisdiction-by-registration” survived *Daimler*. On the one hand, the Pennsylvania Supreme Court had held that, after *Daimler*, consent to jurisdiction-by-registration violated due process because it was essentially an end-run around *Daimler*. On the other hand, the Georgia Supreme Court held that consent to jurisdiction-by-registration survived *Daimler* because *Pennsylvania Fire* remained the law of the land until the Supreme Court revisited the decision.

The Supreme Court granted certiorari to resolve the split, and on June 27, 2023 issued its decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023). In a 5-to-4 decision, the majority sided with the Georgia Supreme Court and concluded that state statutes that require out-of-state corporations to consent to general jurisdiction are consistent with due process, even after *Daimler*. However, one justice in the majority, Justice Alito, filed a concurring opinion that questioned whether other provisions of the U.S. Constitution, including the Dormant Commerce Clause, might render “consent to jurisdiction-by registration” unconstitutional. It remains to be seen whether “consent to jurisdiction-by-registration” will survive future challenges on these grounds.

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