

***Mallory v. Norfolk Southern Railway Co.***

600 U.S. \_\_

United States Supreme Court

Pursuant to *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), Pennsylvania courts can exercise personal jurisdiction over any cause of action brought against out-of-state entities that register to do business in Pennsylvania without offending the Due Process Clause of the Fourteenth Amendment.

**FACTS AND PROCEDURAL HISTORY**

Petitioner Robert Mallory (“Mallory”) is a retired freight-car mechanic with cancer attributable to his work for Defendant Norfolk Southern (“Norfolk”) in Ohio and Virginia. Although a resident of Virginia, Mallory filed suit in Pennsylvania where he resided for a short while after leaving Norfolk. Norfolk filed for a preliminary injunction arguing that a Pennsylvania court’s exercise of personal jurisdiction over the company would violate the Due Process Clause of the Fourteenth Amendment. Norfolk observed that jurisdiction was lacking because Mallory resided in Virginia; Mallory alleged his carcinogenic exposure occurred in Ohio and Virginia; and Norfolk was incorporated and headquartered in Virginia. Mallory argued that those facts were irrelevant because Norfolk had extensive business in Pennsylvania and Norfolk Southern had registered to do business in Pennsylvania. Pennsylvania law requires out-of-state companies that register to do business in the State to agree to appear in its courts on “any cause of action” against the companies. The trial court granted Norfolk’s preliminary injunction and dismissed the case for lack of personal jurisdiction, stating that the Due Process Clause limits the scope of personal jurisdiction. On appeal, the Pennsylvania Supreme Court sided with Norfolk. The Pennsylvania Supreme Court noted that the United States Supreme Court (“U.S. Supreme Court”) had upheld a similar state law in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U. S. 93 (1917), but concluded that subsequent U.S. Supreme Court decisions “implicitly overruled” the decision. Mallory filed and won a petition for writ of certiorari. The U.S. Supreme Court agreed to hear and decide “whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there.”

**DISCUSSION**

Justice Gorsuch authored the opinion of the Court. Justice Jackson filed a concurring opinion. Justice Alito filed an opinion concurring in part and concurring in the judgment. Justice Barrett filed a dissenting opinion, in which the Chief Justice, Justice Kagan, and Justice Kavanaugh joined.

The Court stated that it resolved the question posed by this case in *Pennsylvania Fire*. In *Pennsylvania Fire*, when a policyholder sought to collect on its policy, the insurance company refused to pay. The policyholder proceeded to sue in Missouri which was not where the contract

was formed, the policyholder's home state, or even the insurer's home state. The insurance company objected to the choice of forum arguing that the Due Process Clause spared it from having to answer in Missouri's courts a suit with no connection to the State. For more than a decade, the insurance company had complied with Missouri law requiring out-of-state insurance companies "desiring to transact any business" in the State to file paperwork agreeing to appoint a state official and accept service on that official as valid in any suit. The U.S. Supreme Court unanimously held that there was "no doubt" that the insurance company could be sued in Missouri by an out-of-state plaintiff 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 there. Here, the Court interprets the *Pennsylvania Fire* decision as holding that laws like Pennsylvania's comport with the Due Process Clause. Accordingly, the Court holds that *Pennsylvania Fire* controls. The Court noted that the Pennsylvania statute is explicit 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." The Court stated that although the statute does not use the term "consent," a "variety of legal arrangements have been taken to represent express or implied consent' to personal jurisdiction consistent with due process." The Court further noted that Norfolk has complied with the law at issue for decades.

The Court disagreed with Norfolk's argument that: (1) *Pennsylvania Fire* should be overruled; and (2) *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), undermined *Pennsylvania Fire*'s foundations. Norfolk argued that after *International Shoe*, no other bases for personal jurisdiction over a corporate defendant are permissible. The Court stated that *International Shoe* expanded—not contracted—upon the traditional grounds of personal jurisdiction recognized by *Pennsylvania Fire*. The two cases are not inconsistent. *Pennsylvania Fire* held that an out-of-state corporation that *has* consented to in-state suits in order to do business in the forum is susceptible to suit there. *International Shoe* held that an out-of-state corporation that *has not* consented to in-state suits may also be susceptible to claims in the forum State based on "the quality and nature of [its] activity" in the forum. The Court asserted that *International Shoe* merely provided another road to securing personal jurisdiction over out-of-state corporations.

Next, the Court disagreed with Norfolk's argument that it would be unfair to allow Mallory's suit to proceed in Pennsylvania because "doing so would risk unleashing 'local prejudice' against a company that is 'not "local" in the eyes of the community.'" In summarily dismissing Norfolk's fair play and substantial justice arguments as a "dead end," the Court placed great emphasis on the fact that, at the time the suit was filed, Norfolk Southern had a substantial presence in Pennsylvania: it employed nearly 5,000 people there (more than in its home state of Virginia); maintained more than 2,400 miles of railroad track there (more than in any other state); maintained the largest locomotive shop in all of North America there; and advertised itself as being part of the "Pennsylvania community."

Further, the Court dismissed Norfolk's federalism argument. Norfolk suggested that "the Due Process Clause separately prohibits one State from infringing on the sovereignty of another State through exorbitant claims of personal jurisdiction." The Court responded that Supreme

Court “personal jurisdiction cases have never found a Due Process Class problem sounding in federalism when an out-of-state defendant submits to suit in the forum state[, and] personal jurisdiction is a personal defense that may be waived or forfeited.”

Finally, the Court stated that Norfolk cannot dismiss its compliance with Pennsylvania’s statutory scheme as meaningless formalities. The Court stated that under its precedent, a variety of “‘actions of the defendant’ that may seem like technicalities nonetheless can ‘amount to a legal submission to the jurisdiction of a court.’” Thus, Norfolk cannot assert that it never *really* submitted to proceedings in Pennsylvania.

### **HOLDING**

The U.S. Supreme Court vacated the judgement and remanded the case.