

Doing Business in the Commonwealth No Longer a ‘Hobson’s Choice’



state whose statute expressly permitted its courts to exercise personal jurisdiction over out-of-state businesses registered to do business here.

In *Mallory v. Norfolk Southern Railway Co.*, a unanimous Pennsylvania Supreme Court recently held that a business that is neither incorporated nor has a principal place of business in the Commonwealth cannot be subject to personal jurisdiction simply because it registered to conduct business here.

In *Mallory*, a Virginia resident filed a claim against a Virginia corporation in a Pennsylvania court, even though none of the relevant activity occurred in Pennsylvania. The Court held that Pennsylvania's statute created a “Hobson's choice,” forcing entities seeking to do business here to either register and submit to personal jurisdiction or not do business in Pennsylvania at all. Accordingly, because the statute conditioned business registration on consenting to personal jurisdiction, the Court struck down the statute as an unconstitutional violation of the Fourteenth Amendment right to due process. With the decision, Pennsylvania has now joined the vast majority of states that are “anti-consent” states, including New York and Ohio.

Tips For Pennsylvania Business Owners

Businesses would be wise to weigh the cost and benefits of potentially litigating in the states where they register to conduct business. You should be aware of whether such states are consent-by-registration or anti-consent states, as anti-consent states provide more robust due process protection.

In addition, you should ensure that your transactional documents — all of your contracts, grants and leases — include provisions that expressly set forth the law that governs the contract and the proper venue for litigating disputes. Some advance consideration, as well as carefully crafting the terms and conditions that govern your contractual relationships, can go a long way toward providing peace of mind. ■

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The Pennsylvania Supreme Court recently answered a lingering question: Can businesses be sued in Pennsylvania based solely on being registered to do business here?

What is Personal Jurisdiction?

Personal jurisdiction refers to the authority of a court to issue orders, rulings and opinions over litigants. The Fourteenth Amendment of the U.S. Constitution guarantees that no person, including business entities, shall be deprived of due process of law. Part of the right to due process is the right not to be forced to defend yourself in courts in a state where your business has no real connection.

The U.S. Supreme Court has established that personal jurisdiction is warranted where a defendant's contacts with a state are so significant that they render

the corporation “at home” there. Under established case law, a business is “at home” in two states: where it is incorporated and where its principal place of business is located. Additionally, personal jurisdiction may be warranted wherever the business continuously and systematically serves that state's market.

Corporate Registration in the Commonwealth

Generally, companies are required to register in all states where they conduct business, and plaintiffs have historically argued that registration amounts to a consent to personal jurisdiction. Until recently, Pennsylvania's long-arm statute, i.e., the law that permits a state to exercise personal jurisdiction over out-of-state defendants, supported this argument. In fact, the Commonwealth was the only