reviews business email compromise scams and telltale signs of cyber intrusion. For skydiving enthusiasts, you may find the Workers' Compensation column interesting, as it addresses a dispute over whether an employer-employee relationship existed at a skydiving business (spoiler-alert: there was a lot of disagreement about this).

For those that deal with insurance brokers, John F. Watson's Professional Liability column will be of interest. It addresses the need for expert testimony in insurance broker liability actions, reviewing a number of important considerations for defense counsel. Pat Eckler's Civil Practice column reviews a recent forum *non conveniens* case that may be of particular interest, given developments discussed in the *Mallory* article mentioned above.

Lastly, we wanted to remind all of our readership that the *IDC Quarterly* is always interested in considering submissions from members of the Judiciary, as well as the IDC membership-at-large. If you would like to author an article for the *Quarterly*, simply email me, John Eggum, at jeggum@fgppr.com, and I will walk you through the very straightforward submission process.

Feature Article

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Expansion of Corporate Personal Jurisdiction – The United States Supreme Court's Decision in *Mallory*

Jurisdiction is the bedrock of any lawsuit. Without jurisdiction over the parties, no lawsuit can ensue. In *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2061-62 (2023) (Barrett, J., dissenting), the United States Supreme Court expanded the choice of states in which corporations may be sued. Lawmakers will likely begin passing legislation consistent with *Mallory*, which may have a chilling effect on national corporations and companies considering expansion of their businesses into additional states. Doing business across state lines will now place businesses at risk of being sued in additional forums if states follow the blueprint in the *Mallory* decision.

Before *Mallory*, prevailing federal due process clause interpretations maintained that "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011)). With the *Mallory* decision in June 2023, the Supreme Court rendered this well-established rule subject to invalidation by state statute, contradicting years' worth of precedent and eroding corporations' due process rights.

In today's post-*Mallory* world, a foreign corporation consents to general personal jurisdiction—thereby foregoing any potential due process arguments—simply by registering to do business in a state and establishing an office or agent there for service of process. If a state's long-arm statute contains a "consent" provision, any corporation doing any business there must subject itself to that forum's jurisdiction. Much like "a person is subject to general jurisdiction anywhere she is present," so too is a

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corporation "subject to general jurisdiction anywhere it does business." *Mallory*, 143 S. Ct. at 2061-62; *but see State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 51 n.6 (Mo. 2017) (noting *Daimler's* "rejection of doing business as a basis for jurisdiction").

Facts of *Mallory*

The facts of *Mallory* are straightforward. The defendant, Norfolk Southern, a railroad company headquartered and incorporated in Virginia, employed the plaintiff, Robert Mallory, as a mechanic for nearly 20 years, first in Ohio, then in Virginia. After leaving the company, Mallory lived for a time in Pennsylvania before returning to Virginia. Mallory was diagnosed with cancer, which he alleged was caused by exposure to carcinogens during his employment, which involved spraying boxcar pipes with asbestos and handling chemicals in the railroad's paint shop. Mallory later filed suit in Pennsylvania, a state that had nothing to do with his carcinogen exposure. Norfolk Southern resisted the suit on constitutional grounds, because Mallory resided in Virginia, and Norfolk Southern was incorporated and had its principal place of business in Virginia. The injuries giving rise to the cause of action did not occur in Pennsylvania; however, the Supreme Court narrowly rejected a challenge to the constitutionality of a Pennsylvania statute that allows any company doing business in that state to be sued there. Justice Neil Gorsuch wrote the majority opinion, which included Justices Clarence Thomas, Samuel Alito, Sonia Sotomayor, and Ketanji Brown Jackson. Justice Amy Coney Barrett dissented, and was joined by Chief Justice John Roberts, Justice Elena Kagan, and Justice Brett Kavanaugh.

Norfolk Southern was required to register with the state of Pennsylvania as a condition of doing business there, and under Pennsylvania law, that registration gives Pennsylvania courts jurisdiction over any company that registers to business in Pennsylvania. An out-of-state corporation "may not do business in [Pennsylvania] until it registers with" the Department of State. 15 Pa. Con. Stat. § 411(a). Foreign "companies that register to do business [there] . . . agree to appear in its courts 'on any cause of action' against them." *Mallory*, 143 S. Ct. at 2030 (citing Pa. Cons. Stat. § 5301(a)(2)(i),(b) (2019)). The registration process includes identifying an "office" it shall "continuously maintain" in Pennsylvania. 15 Pa. Cons. Stat. § 411(f); *see also* § 412(a)(5). Notably, "Pennsylvania law 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." *Mallory*, 143 S. Ct. at 2037 (quoting 42 Pa. Cons. Stat. § 5301(a)(2)(i)). In exchange, the corporation enjoys "the same rights and privileges as a domestic entity and [is] subject to the same liabilities, restrictions, duties, and penalties . . . imposed on domestic entities." 15 Pa. Cons. Stat. § 402(d), 411(f); *see also* § 412(a)(5).

Despite the clear requirements of the statute, the Pennsylvania Supreme Court agreed with Norfolk Southern that the state court exercising personal jurisdiction over the company in litigation violated the Due Process Clause of the Fourteenth Amendment. In a 5-4 decision, the United States Supreme Court reversed, holding that consent to general personal jurisdiction as a requirement for a foreign corporation to register to do business in Pennsylvania did not violate the Due Process Clause, consistent with the Supreme Court's prior decision in *Pennsylvania Fire*. "Not every case poses a new question. This case poses a very old question indeed – one this Court resolved more than a century ago in *Pennsylvania Fire*." *Mallory*, 143 S. Ct. at 2045.

> In the proceedings below, the Pennsylvania Supreme Court seemed to recognize that *Pennsylvania Fire* dictated an answer in Mr. Mallory's favor. Still, it ruled for Norfolk Southern anyway. It did so because, in its view, intervening decisions from this Court had "implicitly overruled." *Pennsylvania Fire*, See 266 A.3d at 559, 567. But in following that course, the Pennsylvania Supreme Court clearly erred.

Id. at 2038.

The United States Supreme Court's Analysis of Pennsylvania's Long-Arm Statute

Mallory is the first decision in which the Supreme Court has discussed consensual corporate general personal jurisdiction. In *Mallory*, the Supreme Court held that states, via statute, can make corporations doing business in a state subject to being sued in that state even if the corporation is not incorporated in that state, does not have its principal place of business in that state, and the conduct forming the basis of the lawsuit did not occur in that state. The Supreme Court pointed out that personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism

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when an out-of-state defendant submits to suit in a forum state, since personal jurisdiction is a personal defense that may be waived or forfeited. *Id.* at 2038. *Mallory* mentions a "legion of precedents that attach jurisdictional consequences to what some might dismiss as mere formalities" and gives some examples.

> In a typical general jurisdiction case under *International Shoe*, a company is subject to suit on any claim in a forum State only because of its decision to file a piece of paper there (a certificate of incorporation). The firm is amenable to suit even if all of its operations are located elsewhere and even if its certificate only sits collecting dust on an office shelf for years thereafter. Then there is the tag rule. The invisible state line might seem a trivial thing. But when an individual takes one step off a plane after flying from New Jersey to California, the jurisdictional consequences are immediate and serious.
>
> Consider, too, just a few other examples. A defendant who appears "specially" to contest jurisdiction preserves his defense, but one who forgets can lose his. Failing to comply with certain pre-trial court orders, signing a contract with a forum selection clause, accepting an in-state benefit with jurisdictional strings attached—all these actions as well can carry with them profound consequences for personal jurisdiction.
>
> The truth is, under our precedents 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." That was so before *International Shoe*, and it remains so today.

Id. at 2044 (citations omitted).

In *Mallory*, the Supreme Court relied heavily on its previously decided case, *Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co.*, which ruled that the Due Process Clause did not bar an Arizona company from suing a Pennsylvania company in Missouri for a cause of action arising out of a Colorado contract. 243 U.S. 93, 95 (1917) (holding that an out-of-state corporation that has consented to in-state suits to do business in the forum is susceptible to the suits there). By filing the relevant paperwork with the Missouri Secretary of State, the Pennsylvania corporation agreed to appoint an agent for service of process and to accept service on that individual as valid in any suit. *Mallory*, 143 S. Ct. at 2036 (citing *Pa. Fire*, 267 Mo. 524, 543 (1916)). Thus, like in *Mallory*, it consented to general personal jurisdiction.

The Supreme Court emphasized that neither *Mallory* nor *Pennsylvania Fire*, which govern consensual personal jurisdiction, conflict with *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), which governs nonconsensual person jurisdiction. *Mallory*, 143 S. Ct. at 2039.

> *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.

Id. at 2038 (citing *Int'l Shoe*, 326 U.S. at 319).

A foreign corporation that registers to do business in a state, establishes an office or agent there for service of process, and understands that "it would be amenable to suit on any claim," has not been denied due process of law because it has consented to general personal jurisdiction by registering to do business in the state. *Id.* at 2038. The Due Process Clause of the Fourteenth Amendment does not prohibit a state from requiring a foreign corporation to consent to personal jurisdiction to do business there. *Id.*

The Supreme Court declined to "speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit" because "the state law and facts" from *Mallory* "fall squarely within *Pennsylvania Fire's* rule." *Id.* Nevertheless, it discussed facts it found to be compelling in its decision, which may provide guidance for lower courts when applying *Mallory*.

The Supreme Court noted that Norfolk employs nearly five-thousand people, manages over two-thousand four-hundred miles of track, operates eleven rail yards, and runs three repair shops in Pennsylvania. *Id.* at 2033. The company registered to do business in Pennsylvania in 1998 and regularly updates its information on file, thereby agreeing "to be found in Pennsylvania and answer any suit there," for the past 20 years. *Mallory,* 143 S. Ct. at 2037. Additionally, it "man-

aged more miles of track in Pennsylvania than in any other State," and "employed more people in Pennsylvania than it did in Virginia, where its headquarters was located." *Id.* at 2043. Norfolk Southern took "full advantage of the opportunity to do business in the Commonwealth," proclaiming itself a proud part of "the Pennsylvania Community." *Id.* at 2041-43 (citing Norfolk Southern Corp., State Fact Sheets-Pennsylvania (2018)). If Illinois adopts the statutory scheme upheld in *Mallory*, Illinois courts may consider facts such as these where parties claim that not all elements are met for a corporation to consent to general personal jurisdiction.

Mallory's Influence in Illinois

Mallory has not changed the plaintiff's burden of establishing a prima facie basis to exercise personal jurisdiction over a nonresident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶ 28. *Mallory* does, however, have the potential to significantly increase the number of lawsuits filed in Illinois against out-of-state corporations if the Illinois legislature takes one small step.

State legislatures, including Illinois, can easily take advantage of *Mallory's* ruling by requiring consent to general jurisdiction as a condition of registering to do business in that state. Illinois plaintiffs alleging general personal jurisdiction over nonresident corporate defendants previously had to describe business activity that was fairly measured as continued and permanent. 735 ILCS 5/2-209(b)(4); *Burgauer v. Burgauer*, 2019 IL App (3d) 170545. However, if the Illinois legislature passes a statute consistent with *Mallory*, then corporations doing business in Illinois may be sued in Illinois by anyone for anything, regardless of whether the cause of action or other deciding facts of a case occurred in Illinois. Under a *Mallory* statute, for a corporation to consent to general personal jurisdiction within the state of Illinois, it must: (1) register to do business under the Business Corporation Act of 1983; (2) identify an office address and agent for service of process within the state; and (3) understand that it is amenable to suit in conjunction with the potential statute. *Mallory*, 143 S. Ct. at 2037-38.

If the Illinois legislature follows *Mallory*, plaintiffs' attorneys will be able to file many more cases in Illinois, and defense counsel will encounter cases which have virtually no connection to Illinois.

The Illinois legislature will need not to take any additional actions to satisfy the first two requirements of *Mallory*, as Illinois already has enacted a statute which satisfies the first two requirements. Corporations already must register to do business under the Business Corporation Act of 1983. 805 ILCS 5/13.05. The registration process includes identifying an office and agent within the state. Failure to maintain a registered agent may result in revocation of a foreign corporation's authority to transact business in Illinois. *Id.* In the past, such registration with the Illinois Secretary of State did not equal consent to general personal jurisdiction over all causes of action. *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281; *see also Sheikholeslam v. Favreau*, 2019 IL App (1st) 181703. However, if the Illinois legislature were to enact a statute consistent with *Mallory*, cases like *Aspen* and *Sheikholeslam* would no longer be applicable. Illinois courts' jurisdiction over corporations would expand to causes of action arising in other states. *Contra Daimler AG,* 571 U.S. at 138 (rejecting "the exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'"); *see also Simon v. S. Ry. Co.*, 236 U.S. 115, 130 (1915) ("statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other states").

To achieve the third *Mallory* element, the Illinois legislature will only have to enact a statutory provision which notifies corporations of their consent to general personal jurisdiction in Illinois. In *Mallory*, the Supreme Court upheld both of the statutes in *Mallory* and *Pa. Fire,* so the Illinois legislature could adopt either verbiage. If the Illinois legislature follows Mallory, plaintiffs' attorneys will be able to file many more cases in Illinois, and defense counsel will encounter cases which have virtually no connection to Illinois.