

# Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference

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## Personal Jurisdiction and Legislative Updates

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# Personal Jurisdiction and Legislative Updates

- ▶ *Mallory* and the lead up to *Mallory*
- ▶ Background on *Mallory*
- ▶ Short term application

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

DAIMLER AG *v.* BAUMAN ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 11–965. Argued October 15, 2013—Decided January 14, 2014

Plaintiffs (respondents here) are twenty-two residents of Argentina who filed suit in California Federal District Court, naming as a defendant DaimlerChrysler Aktiengesellschaft (Daimler), a German public stock company that is the predecessor to petitioner Daimler AG. Their complaint alleges that Mercedes-Benz Argentina (MB Argentina), an Argentinian subsidiary of Daimler, collaborated with state security forces during Argentina’s 1976–1983 “Dirty War” to kidnap, detain, torture, and kill certain MB Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991, as well as under California and Argentina law. Personal jurisdiction over Daimler was predicated on the California contacts of Mercedes-Benz USA, LLC (MBUSA), another Daimler subsidiary, one incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent dealerships throughout the United States, including California. Daimler moved to dismiss the action for want of personal jurisdiction. Opposing that motion, plaintiffs argued that jurisdiction over Daimler could be founded on the California contacts of MBUSA. The District Court granted Daimler’s motion to dismiss. Reversing the District Court’s judgment, the Ninth Circuit held that MBUSA, which it assumed to fall within the California courts’ all-purpose jurisdiction, was Daimler’s “agent” for jurisdictional purposes, so that Daimler, too, should generally be answerable to suit in that State.

*Held:* Daimler is not amenable to suit in California for injuries allegedly caused by conduct of MB Argentina that took place entirely outside the United States. Pp. 6–24.

Syllabus

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**SUPREME COURT OF THE UNITED STATES**

Syllabus

**GOODYEAR DUNLOP TIRES OPERATIONS, S. A.,  
ET AL. v. BROWN ET UX., CO-ADMINISTRATORS OF  
THE ESTATE OF BROWN, ET AL.**

**CERTIORARI TO THE COURT OF APPEALS OF NORTH CAROLINA**

No. 10–76. Argued January 11, 2011 —Decided June 27, 2011

Respondents, North Carolina residents whose sons died in a bus accident outside Paris, France, filed a suit for wrongful-death damages in North Carolina state court. Alleging that the accident was caused by tire failure, they named as defendants Goodyear USA, an Ohio corporation, and petitioners, three Goodyear USA subsidiaries, organized and operating, respectively, in Luxembourg, Turkey, and France. Petitioners’ tires are manufactured primarily for European and Asian markets and differ in size and construction from tires ordinarily sold in the United States. Petitioners are not registered to do business in North Carolina; have no place of business, employees, or bank accounts in the State; do not design, manufacture, or advertise their products in the State; and do not solicit business in the State or sell or ship tires to North Carolina customers. Even so, a small percentage of their tires were distributed in North Carolina by other Goodyear USA affiliates. The trial court denied petitioners’ motion to dismiss the claims against them for want of personal jurisdiction. The North Carolina Court of Appeals affirmed, concluding that the North Carolina courts had general jurisdiction over petitioners, whose tires had reached the State through “the stream of commerce.”

*Held:* Petitioners were not amenable to suit in North Carolina on claims unrelated to any activity of petitioners in the forum State. Pp. 6–14.

(a) The Fourteenth Amendment’s Due Process Clause sets the outer boundaries of a state tribunal’s authority to proceed against a defendant. The pathmarking decision of *International Shoe Co. v. Washington*, 326 U. S. 310, provides that state courts may exercise

## Syllabus

FORD MOTOR CO. *v.* MONTANA EIGHTH JUDICIAL  
DISTRICT COURT ET AL.

## CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 19–368. Argued October 7, 2020—Decided March 25, 2021\*

Ford Motor Company is a global auto company, incorporated in Delaware and headquartered in Michigan. Ford markets, sells, and services its products across the United States and overseas. The company also encourages a resale market for its vehicles. In each of these two cases, a state court exercised jurisdiction over Ford in a products-liability suit stemming from a car accident that injured a resident in the State. The first suit alleged that a 1996 Ford Explorer had malfunctioned, killing Markkaya Gullett near her home in Montana. In the second suit, Adam Bandemer claimed that he was injured in a collision on a Minnesota road involving a defective 1994 Crown Victoria. Ford moved to dismiss both suits for lack of personal jurisdiction. It argued that each state court had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, according to Ford, only if the company had designed, manufactured, or sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. The vehicles were designed and manufactured elsewhere, and the company had originally sold the cars at issue outside the forum States. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. Both States' supreme courts rejected Ford's argument. Each held that the company's activities in the State had the needed connection to the plaintiff's allegations that a defective Ford caused in-state injury.

**Held:** The connection between the plaintiffs' claims and Ford's activities in the forum States is close enough to support specific jurisdiction. Pp. 358–371.

(a) The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co. v. Washington*, 326 U. S. 310. There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Id.*, at 316–317. In apply-

\*Together with No. 19–369, *Ford Motor Co. v. Bandemer*, on certiorari to the Supreme Court of Minnesota.

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**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**MALLORY v. NORFOLK SOUTHERN RAILWAY CO.  
CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA,  
EASTERN DISTRICT**

No. 21–1168. Argued November 8, 2022—Decided June 27, 2023

Robert Mallory worked for Norfolk Southern as a freight-car mechanic for nearly 20 years, first in Ohio, then in Virginia. After he left the company, Mr. Mallory moved to Pennsylvania for a period before returning to Virginia. Along the way he was diagnosed with cancer. Because he attributed his illness to his work at Norfolk Southern, Mr. Mallory sued his former employer under the Federal Employers’ Liability Act, 45 U. S. C. §§51–60, a federal workers’ compensation scheme permitting railroad employees to recover damages for their employers’ negligence. Mr. Mallory filed his lawsuit in Pennsylvania state court. Norfolk Southern—a company incorporated in Virginia and headquartered there—resisted the suit on the basis that a Pennsylvania court’s exercise of personal jurisdiction over it would offend the Due Process Clause of the Fourteenth Amendment. Norfolk Southern noted that when the complaint was filed, Mr. Mallory resided in Virginia, and the complaint alleged that Mr. Mallory was exposed to carcinogens only in Ohio and Virginia. Mr. Mallory pointed to Norfolk Southern’s presence in Pennsylvania, noting that Norfolk Southern manages over 2,000 miles of track, operates 11 rail yards, and runs 3 locomotive repair shops in Pennsylvania. In fact, Norfolk Southern has registered to do business in Pennsylvania in light of its “regular, systematic, [and] extensive” operations there. 266 A. 3d 542, 562; see 15 Pa. Cons. Stat. §411(a). And Pennsylvania requires out-of-state companies that register to do business in the Commonwealth to agree to appear in its courts on “any cause of action” against them. 42 Pa. Cons. Stat. §5301(a)(2)(i), (b). By complying with this statutory scheme, Mr. Mallory submitted, Norfolk Southern had consented to suit in Pennsylvania on claims just like his.

The Pennsylvania Supreme Court sided with Norfolk Southern.

# The Pennsylvania Business Registration Statute:

15 Pa.C.S. § 411

- **(a) Registration required.** — Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.
- **(f) Registered office.** — Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

# The Pennsylvania Personal Jurisdiction Statute:

42 Pa.C.S. § 5301

- General rule. — **The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person**, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:
  - (2) Corporations
    - (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.**
    - (ii) Consent, to the extent authorized by the consent.
    - (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.



# Effects of Mallory

- ▶ Plaintiff's Perspective
- ▶ Defendant's Perspective
- ▶ Illinois, New York, and Missouri

# New York's Business Registration Statute

- ▶ **NY CLS Bus Corp § 1301**

- ▶ (a) A foreign corporation shall not do business in this state until it has been authorized to do so as provided in this article. A foreign corporation may be authorized to do in this state any business which may be done lawfully in this state by a domestic corporation, to the extent that it is authorized to do such business in the jurisdiction of its incorporation, but no other business.

# *Aybar v. Aybar*, 37 N.Y.3d 274 (NY 2021)

- ▶ **Holdings:**
- ▶ Business Corporation Law §§ 1301(a), 1304(a)(6), (7), 304(a), (b) do require that in order to do business in New York, a foreign corporation must register and designate an in-state agent for service of process.
- ▶ The statutes do not, however, condition the right to do business on consent to the general jurisdiction of New York courts or otherwise afford general jurisdiction to New York courts over foreign corporations, simply for complying with these statutes
- ▶ Accordingly, a foreign corporation's registration to do business and designation of an agent for service of process in New York, does not constitute consent to general jurisdiction

# Proposed Additions to New York Statutes to Create Consent-By-Registration Jurisdiction

- ▶ Section 1301 of the business corporation law is amended by adding a new paragraph (e) to read as follows:
  - ▶ (e) A foreign corporation's application for authority to do business in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such corporation. A surrender of such application shall constitute a withdrawal of consent to jurisdiction.
- ▶ Section 18 of the general associations law is amended by adding a 17 new subdivision 5 to read as follows:
  - ▶ 5. An association's certificate of designation prescribed by this section, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such association. A revocation of such designation shall constitute a withdrawal of consent to jurisdiction.

- ▶ Section 802 of the limited liability company law is amended by adding a new subdivision (c) to read as follows:
  - ▶ (c) A foreign limited liability company's application for authority to do business in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such limited liability company. A surrender of such application shall constitute a withdrawal of consent to jurisdiction.
  
- ▶ Section 1301 of the not-for-profit corporation law is amended by adding a new paragraph (e) to read as follows:
  - ▶ (e) A foreign corporation's application for authority to conduct activities in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such corporation unless such corporation is exempt from any law requiring it to designate the secretary of state as agent of the corporation upon whom process against it may be served and it has made no such designation. A surrender of such application shall constitute a withdrawal of consent to jurisdiction.

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- ▶ Section 121-902 of the partnership law is amended by adding a new subdivision (e) to read as follows:
    - ▶ (e) A foreign limited partnership's application for authority to do business in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such foreign limited partnership. A surrender of such application shall constitute a withdrawal of consent to jurisdiction.
  - ▶ Section 121-1502 of the partnership law is amended by adding a new subdivision (r) to read as follows:
    - ▶ (r) A foreign limited liability partnership's notice to carry on or conduct or transact business or activities as a New York registered foreign limited liability partnership in this state, whenever filed, constitutes consent to the jurisdiction of the courts of this state for all actions against such foreign limited liability partnership. A withdrawal of such notice shall constitute a withdrawal of consent to jurisdiction.

# December 22, 2023: Governor Hochul Vetoes A7351 and S7476

- ▶ New York declines to adopt consent-by-registration statutes
- ▶ As of today, *Aybar v. Aybar* is still good law. Simply registering to do business in New York will not confer general jurisdiction

# Punitive Damages and Seeking Leave

- ▶ Missouri – Need to Seek Leave
- ▶ Illinois – No Longer Limited to Living Plaintiff



# Pre-Judgment Interest

- ▶ Illinois and Status of Appeal
- ▶ Other States

# Bankruptcy Legislation

- ▶ Alabama 2019
- ▶ Arizona 2018
- ▶ North Carolina 2018
- ▶ West Virginia 2020
- ▶ Wisconsin 2014