

Where Can Your Company Be Sued? A 2022 Update on All Things Personal Jurisdiction

General, Specific, Digital and Consent by Registration

By: William D. Kennedy, Marc L. Penchansky and Kimberly M. Collins

Litigation Alert

1.4.22

In 2021, thanks to the seventh “personal jurisdiction” opinion decided by the U.S. Supreme Court in just over a decade, as well as some state-based legal developments, we now have firm guidelines about where all types of companies — from financial services such as banks and insurers, to service providers such as the health care industry, to manufacturers — can be forced to defend themselves. Specifically, a 2021 U.S. Supreme Court decision, a late-December Pennsylvania Supreme Court decision, and a New Year’s Eve veto of hostile legislation by New York Governor Kathy Hochul have defined the domain of places where a company may be forced to defend itself in court in clearer terms than ever. A plaintiff may sue a corporate defendant — for-profit or non-profit — in courts located: (1) in the company’s home state, meaning the state of incorporation or in which the company maintains its principal place of business; and (2) in those states where the company systematically served that state’s market for a specific company product or service that gives rise, in-state, to the lawsuit.

Although the term “personal jurisdiction” might seem to apply to flesh-and-blood people, the concept has long held far more importance to corporations. “Personal jurisdiction” refers to the authority of federal or state judges to issue orders, rulings, and opinions over a case’s litigants. The Fourteenth Amendment guarantees that “[n]o State shall ... deprive any person” — including corporations — of “property, without due process of law.” Part of the protected “due process” is the right not to be forced to defend yourself in courts in states to which you have no real connection. The U.S. Supreme Court serves as the ultimate arbiter of the acceptable limits of personal jurisdiction.

Once upon a time, courts had personal jurisdiction over any defendant — human or corporate — which had received within that state’s boundaries proper “service of process,” the initial provision to a defendant of legal papers which notify it of the lawsuit. Applying that 19th century standard often resulted in shielding corporations from litigation outside of their home states in light of limitations on “service of process.”

An otherwise obscure lawsuit over payments into a state’s unemployment compensation fund changed the personal jurisdiction landscape in 1945. Arguably straining to make corporations responsive to lawsuits beyond their home state’s borders, the groundbreaking U.S. Supreme Court decision in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), moved the personal-jurisdiction to a “contacts focused” analysis. The Supreme Court held that the Fourteenth Amendment’s Due Process Clause would protect a corporation from suits in states where the company had no meaningful “contacts, ties, or relations.” The Court ruled that a tribunal’s authority depends upon the corporation’s “minimum contacts” with the state in which the lawsuit was brought such that the maintenance of the action would not “offend traditional notions of fair play and substantial justice.”

Over half a century, judges finetuned the *International Shoe* criteria. Two categories of personal jurisdiction arose: general personal jurisdiction and specific personal jurisdiction.

GENERAL JURISDICTION

"General jurisdiction" is the power of the court to adjudicate any claim over which the court has subject-matter jurisdiction against a corporation, regardless of where the claim arose. Thus, for example, a Delaware company with a principal place of business in New York can be sued for all manner of claims in Delaware and New York, regardless of where the action arose. Taken together, U.S. Supreme Court rulings hold that general jurisdiction over a corporation exists only in states where the company's continuous operations are so substantial and of such a nature as to "justify suit against it on causes of action arising from dealings entirely distinct from those activities." Accordingly, a court may assert general jurisdiction over an out-of-state corporation to hear any and all claims against it only when the corporation's affiliations with the State in which suit is brought are so substantive, deep, constant and pervasive as to render it essentially at home in the forum State. Most companies will be subject to general jurisdiction only in the state of their incorporation and in the state in which they maintain a principal place of business.

SPECIFIC JURISDICTION

"Specific jurisdiction" is the power of a judge to adjudicate claims that arose out of an out-of-state corporation's continuous and systematic in-state business activities. Specific personal jurisdiction exists where the corporation's activity within the forum state is "continuous and systematic" and that activity gives rise to the episode-in-suit. Whether a court may assert specific jurisdiction over an out-of-state defendant depends on the relationship among the defendant-company, the forum, and the litigation. The company's suit-related conduct must create a substantial connection with the forum State. Due process requires that specific jurisdiction over a company be based on its own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts with the state. The proper analysis looks to the defendant's contacts with the forum State itself, rather than any given plaintiff domiciled there.

The evolution of specific jurisdiction caselaw has become a barrier to forum-shopping plaintiffs seeking the most pro-plaintiff court in which to bring a lawsuit. Out-of-state plaintiffs can no longer sue in "plaintiff-friendly" courts unless that court can exercise specific jurisdiction over the defendant. The focus of specific personal jurisdiction is on the defendant-company's conduct within the forum state, and the lawsuit must arise from that conduct.

Sometimes, a single contact by an out-of-state defendant with the forum can support specific jurisdiction, depending on the nature, quality, and circumstances of the contact. Cases in which one party contends that a company is subject to the forum state's jurisdiction by virtue of a single act or contact within the forum state are very fact-sensitive. In 2021, the U.S. Supreme Court put more of a frame on the concept of specific personal jurisdiction when it held that a car company that advertised, sold, and serviced a specific vehicle model within a state would have to defend a tort case arising from that vehicle model within that state. The Court ruled that if a company serves a market for a product within a state in which that same product causes injury to one of the state's residents, there existed specific personal jurisdiction and the company must defend itself there.

CORPORATE REGISTRATION IS NOT CONSENT TO JURISDICTION

An out-of-state corporation may consent to defending itself before an out-of-state court even where neither general nor specific personal jurisdiction would otherwise exist. Likewise, while state registration statutes vary, in general, companies are required to "register" in any state in which they conduct any business. Drawing from that mandated-registration requirement, plaintiffs have argued that out-of-state corporations have "consented" to the general jurisdiction of every state in which they register. In light of the U.S. Supreme Court's decisions, many courts have rejected such pitches. A well-reasoned, persuasive pro-defendant decision from the historically pro-plaintiff Pennsylvania Supreme Court at the end of 2021 may be the strongest, if not the final, nail in the coffin of the "registration equals consent" argument.

The Pennsylvania Court noted that the U.S. Supreme Court decisions in the prior decade “dramatically altered” the analysis of general personal jurisdiction. In *Mallory v. Norfolk Southern Railway Company*, ___ Pa. ___, ___ A.3d ___, 2021 Pa. LEXIS 4318 (Dec. 22, 2021), the unanimous, bipartisan Court exhaustively analyzed the history, nature, and extent of general personal jurisdiction. It concluded that the Pennsylvania “scheme of conditioning the privilege of doing business in the Commonwealth on the submission of the foreign corporation to general jurisdiction in Pennsylvania courts strips foreign corporations of the due process safeguards guaranteed” by the U.S. Constitution.

In so holding, Pennsylvania joined the wide majority of courts in sister states which had ruled similarly. Though the Georgia Supreme Court recently came to a contrary conclusion, an appeal to the U.S. Supreme Court is pending. Also in 2021, New York’s high court rejected a “registration is consent” argument. The pro-plaintiff New York legislature passed a bill which would have converted registration by an out-of-state company into consent to general jurisdiction for all claims by all plaintiffs, regardless of where the cause of action arose or where the parties were domiciled. The last day of 2021 saw Governor Kathy Hochul veto that legislation.

JURISDICTION IN THE DIGITAL AGE

Although the digital age is hardly new, the U.S. Supreme Court has yet to issue any rulings interpreting how the technologies of this era affect personal jurisdiction. In the absence of such decisions, lower federal and state courts have been left to pave their own path. Some early internet-age decisions held that a company was subject to specific jurisdiction in any state in which it advertised on the web a good or service from which the cause of action arose. More recent cases distinguished between interactive websites (for which they held there was specific personal jurisdiction) versus passive, advertising-only websites (for which there was no specific personal jurisdiction). In 2021, two California-based decisions found specific personal jurisdiction over people or companies whose websites targeted in-state residents. Companies who want to understand and plan for potential claims may want to act as if these newest decisions will become a trend.

STRATEGIC ANALYSIS

The last decade of decisions from the U.S. Supreme Court and state courts on the confines of personal jurisdiction provide companies with more robust due process protection from defending themselves in hostile, foreign states. Still, companies are best advised to weigh the strategic pros and cons of litigating each state. Factors to consider with experienced litigators include the relative strength (or weakness) of a state’s judiciary, the “choice of laws” issues involving liability and damages, limitations or caps on damages, and the availability of punitive damages. Other key factors may include the likelihood of the adverse party filing suit within the company’s home jurisdiction — which might be a less desirable forum, all things considered. Likewise, a company may need to analyze its ability to join other companies into the litigation, to obtain set-offs from settlements involving putative co-defendants, or to weather unfavorable media coverage of the lawsuit.

Experienced counsel can help companies navigate these waters. Transactional and corporate lawyers can help a company form — or reform — a business to minimize the risk of litigation in hostile forums. Experienced litigators can assess the advantages or disadvantages of any given forum within the tight time deadlines — often a matter of days — in which a company needs to make key strategic decisions about personal jurisdiction.

If you have any questions or would like additional information, please contact William D. Kennedy (kennedyw@whiteandwilliams.com; 215.864.6816), Marc L. Penschansky (penschanskym@whiteandwilliams.com; 215.864.6279) or Kimberly M. Collins (collinskm@whiteandwilliams.com; 856.317.3655).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.