

5/23/2023 | Articles

Personal Jurisdiction Issues in Select Other States

In 2011, starting with *Goodyear Dunlop Tires Operations, S.A. v. Brown*,¹ the United States Supreme Court began placing limits on the general jurisdiction a state could assert against out-of-state entities (primarily businesses). Currently to comply with the Due Process Clause of the Fourteenth Amendment, a court may only exercise general jurisdiction over out-of-state entities when the foreign entity's contacts are so continuous and systematic that the entity is "at home" in the foreign jurisdiction.² Generally that means either where the foreign corporation has its principal place of business or where it was incorporated.³

Until recently, Pennsylvania courts have avoided limitations over personal jurisdiction set by the United States Supreme Court by relying on a statute⁴ that requires any foreign business entity seeking to conduct business in the Commonwealth to register and submit itself to the jurisdiction of the Pennsylvania courts.⁵ Prior to the *Mallory* decision, plaintiffs' lawyers were using the statute to circumvent the jurisdictional limits SCOTUS placed on a state's ability to exercise general jurisdiction over an out-of-state company and force those defendants to litigate in Pennsylvania venues favorable to plaintiffs. For more information on *Mallory* and those issues, please see *Mallory v. Norfolk Southern Railway Co.'s Impact on Tort Litigation*. For an analysis of another Pennsylvania statute affecting tort claims for employers, please see *Recent Efforts to Redirect Employer-Related Claims for Asbestos-Related Occupational Disease in Pennsylvania Back to the Administrative Arena*.

While that case is now before the United States Supreme Court, below is a brief overview of how the issue of personal jurisdiction is addressed in some other states impacting Dickie, McCamey & Chilcote, P.C. clients:⁶

Delaware

Delaware requires a foreign business to have a registered office in the state⁷ and a registered agent for service of process and related issues,⁸ but the statutes lack any language that would automatically subject a registering foreign business to the personal jurisdiction of the Delaware courts.

An out-of-state entity will be subject to personal jurisdiction in Delaware only under certain conditions. Those conditions include, but are not limited to: causing tortious injury in the state; transacting business or performing work in the state; and having an interest in or possessing property in the state.⁹ While "transacting business" could be broadly interpreted to give the Delaware courts a wide array of potential reasons to find personal jurisdiction over a foreign entity, in *Genuine Auto Parts v. Cepec*,¹⁰ the Delaware Supreme Court has followed the United States Supreme Court's precedent on limiting personal jurisdiction.¹¹

Cepec recognized that recent United States Supreme Court decisions "made a major shift in our nation's personal jurisdiction jurisprudence."¹² As the Delaware Supreme Court stated, "*Daimler* makes plain that it is inconsistent with principles of due process to exercise general jurisdiction over a foreign corporation that is not 'essentially at home' in a state for claims having no rational connection to the state."¹³ Of course, Delaware is unique in that many corporations have incorporated in the state which would make them subject to the general jurisdictions of the Delaware courts.

New Jersey

New Jersey's appellate courts have followed the trend in recent United States Supreme Court decisions on personal jurisdiction. In *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, the court held that "[t]he mandate of personal jurisdiction does not rely on a plaintiff's convenience or forum choice. Rather, it emanates from the Fourteenth Amendment's Due Process Clause, which 'protects an individual's right to be deprived of life, liberty or property only by the exercise of lawful power.'"¹⁴

The standard for establishing general jurisdiction is fairly high and requires that the Defendant's contacts be of the sort that approximate physical presence.¹⁵ Typically a corporation's principal place of business and place of incorporation establishes where the corporation is "at home" and "subject to general jurisdiction."¹⁶

New York

New York's statutory scheme (similar to that in Pennsylvania) requires an out-of-state corporation to register to do business in the State of New York and to appoint an agent for service of process.¹⁷ Until recently (again similar to Pennsylvania), such registration was considered consent by the company to the general jurisdiction of New York courts.¹⁸ However, the New York Court of Appeals decided to examine the issues again "in light of recent Supreme Court precedent."¹⁹ The *Aybar* court concluded that the statutes at issue required registration and appointment of an agent to accept service of process, but that those statutes do not require an entity to consent to the general jurisdiction of New York simply by doing business in New York.²⁰ The Court went on to conclude that under New York law, "a foreign corporation does not consent to general jurisdiction in this state merely by complying with the Business Corporation Law's registration provisions."²¹ The New York legislature introduced a bill that would have required a registering corporate entity to consent to the general jurisdiction of the New York state courts, but the Governor vetoed the bill on December 31, 2021.

South Carolina

To analyze questions of personal jurisdiction, South Carolina adopted the two-step approach set forth by the Supreme Court of the United States in *World Wide Volkswagen Corp. v. Woodson*,²² which satisfies South Carolina's long arm/personal jurisdiction statutes and notions of federal due process. South Carolina's Long Arm Statute²³ provides the list of contacts sufficient to establish jurisdiction, including, but not limited to: transacting any business in the State, contracting to supply services or things in the State, entry into a contract to be performed in whole or in part by either party in this State, and the production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in the State. Plaintiffs must also satisfy federal due process requirements, establishing: 1) minimum contacts; 2) that the action arose out of defendant's contacts with the forum state; and 3) it is reasonable to require defendant to litigate in the forum state.

In a recent 2021 case,²⁴ the court applied a three-prong test to determine whether it could exercise specific jurisdiction: (1) whether the defendant purposely availed itself of the privileges of conducting activities in the forum state and thus invoked the benefits and protections of its laws, (2) whether the plaintiff's claims arose out of or related to those forum-state activities, and (3) whether the exercise of jurisdiction was constitutionally reasonable. The facts of this case involved a franchisor-franchisee relationship where the court held that a "garden-variety" relationship between a franchisor and franchisee was insufficient to establish jurisdiction.

Ohio

Ohio's long arm statute grants personal jurisdiction over an out of state defendant if the defendant's conduct falls within one of nine enumerated bases for jurisdiction.²⁵ The provisions of the statute are fairly broad and allows the Ohio courts to exercise personal jurisdiction over any entity acting directly or through an agent for a cause of action arising from (for example) the entity's (1) transaction of any business in Ohio, (2) contract to supply services (including insurance) or goods to the state, (3) or causing tortious injury in the state under one of several scenarios.²⁶

Even when the statute does confer personal jurisdiction to the Ohio courts, they are still required to conduct an analysis whether the personal jurisdiction will comport with the actor's right to due process.²⁷ In a recent decision, the Ohio Supreme Court examined an issue relative to specific jurisdiction.²⁸

South Korean based LG Chem was sued in Ohio and served with a complaint alleging the company had supplied lithium-ion batteries in e-cigarettes that exploded in Ohio.²⁹ When examining the issues surrounding LG Chem's challenge to personal jurisdiction, the court reasoned that specific jurisdiction exists when a defendant purposefully avails itself of the privilege of conducting activities within the forum state.³⁰ A corporate defendant purposely avails itself when it reaches out beyond its home (for example) by exploiting a market in the forum state or entering a contractual relationship centered there.³¹ When there is an affiliation between the forum and the controversy – including “an activity or an occurrence that takes place in the forum,” specific jurisdiction will apply.³² Here, because defendant shipped over a thousand batteries to Ohio as part of a contract with a manufacturer based in Macao, the Court found the Ohio Courts had jurisdiction.³³

¹ 564 U.S. 915 (2011).

² *Daimler A.G. v. Bauman*, 571 U.S. 117 (2014).

³ *Id.* at 760.

⁴ 42 Pa. C.S. § 5301(a)(2)(i).

⁵ *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542 (Pa. 2022), *cert. granted*, 2022 WL 1205835, 212 L.Ed. 2d 605 (2022)

⁶ For more information on the below or to find out how this issue is treated in your jurisdiction, please contact Dickie, McCamey & Chilcote, P.C.

⁷ 8 Del. C. § 131.

⁸ 8 Del. C. § 132.

⁹ 10 Del. C. § 3104(c).

¹⁰ 137 A.3d 123 (Del. 2016).

¹¹ *Id.* at 133.

¹² *Id.*

¹³ *Id.* at 128.

¹⁴ *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 450 N.J. Super. 590, 604, 164 A.3d 435, 443 (App. Div. 2017) (citations omitted).

¹⁵ *Id.* at 600, 164 A.3d at 441 (citing *Wilson v. Paradise Vill. Bach Resort & Spa*, 395 N.J. Super. 520, 528, 929 A.2d 1122 (App. Div. 2007)).

¹⁶ *FDASmart, Inc. v. Dishman Pharms. & Chems. Ltd.*, 448 N.J. Super. 195, 202, 152 A.3d 948 (App. Div. 2016) (citations omitted).

¹⁷ Article 13 New York Bus. Corp. Law § 1301.

¹⁸ *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432, 111 N.E. 1075 (1916).

¹⁹ *Aybar v. Aybar*, 37 N.Y.3d 274, 282, 177 N.E. 3d 1257, 1259 (N.Y. 2021).

²⁰ *Id.* at 283, 177 N.E. at 1260.

²¹ *Id.* at 290, 177 N.E. at 1266.

²² 444 U.S. 286 (1980).

²³ S.C. Code Ann. § 36-2-803.

²⁴ *Madden v. Petland Summerville*, 2021 WL 5770294 (D.S.C. Dec. 6, 2021), 2021 U.S. Dist. LEXIS 232951.

²⁵ O.R.C. § 2307.382.

²⁶ *Id.*

²⁷ *Nationwide Mut. Inc. v. Tryg Int'l. Ins.*, 91 F.3d 790, 793 (6th Cir. 1996).

LG Chem, Ltd. v. Goulding, 194 N.E. 3d 355 (Ohio 2022).

²⁹ *Id.* at 357.

³⁰ *Id.* at 359 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

³¹ *Id.* (citations omitted).

³² *Id.* (citations omitted).

³³ *Id.* at 361.



William R. Adams
302-428-6133
wadams@dmclaw.com



Brandy G. Price
803-285-0049
bprice@dmclaw.com