

APPENDIX

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1a

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 305 EAL 2025

NORFOLK SOUTHERN RAILWAY COMPANY,
Petitioner

v.

ROBERT WILLMORE MALLORY AND MICHELLE YVONNE
GIVENS, AS ADMINISTRATORS OF THE ESTATE OF
ROBERT THURSTON MALLORY,
Respondents

Petition for Allowance of Appeal from the
Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 27th day of January, 2026, the
Petition for Allowance of Appeal is DENIED.

2a

APPENDIX B

IN THE SUPERIOR COURT OF PENNSYLVANIA

—————
No. 77 EDM 2025
—————

NORFOLK SOUTHERN RAILWAY COMPANY,

Petitioner

vs.

ROBERT WILLMORE MALLORY AND MICHELLE YVONNE
GIVENS, AS ADMINISTRATORS OF THE ESTATE OF
ROBERT THURSTON MALLORY,

—————
Philadelphia County Civil Division

170901961

————— Filed 07/21/2025

ORDER

Upon consideration of the June 30, 2025 petition for permission to appeal, and the answer thereto, the petition is DENIED. *Hunt Refining Co. v. Gray*, 59 & 60 EDM 2024 (Pa. Super. Mar. 26, 2025).

Petitioner's request for a stay of trial court proceedings pending appeal is DENIED.

PER CURIAM

3a

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

Case No. 170901961
Control No. 25025005

ROBERT WILLMORE MALLORY AND MICHELLE YVONNE
GIVENS as Administrators of the Estate of
ROBERT THURSTON MALLORY,

Plaintiffs,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

September Term 2017

ORDER

AND NOW, this 7th day of April 2025, upon consideration of Defendant Norfolk Southern Railway Company's Preliminary Objections to Plaintiffs Amended Complaint, and Plaintiffs response in opposition thereto, it is hereby ORDERED and DECREED that Defendant's Preliminary Objections are OVERRULED. Defendant shall file an Answer to the Amended Complaint within twenty (20) days of the docketing of this Order.

BY THE COURT:

/s/ Denis P. Cohen

DENIS P. COHEN, J.

4a

APPENDIX D

SUPERIOR COURT OF PENNSYLVANIA

Docket No. 60 EDM 2024

HUNT REFINING COMPANY,

Petitioner

v.

GARY GRAY; SAFETY-KLEEN SYSTEMS, INC.; ENERGY TRANSFER (R&M), LLC F/K/A SUNOCO, INC. (R&M) F/K/A SUN CO., INC., AND F/K/A SUN OIL CO., INC.; CRC INDUSTRIES, INC.; GENUINE PARTS COMPANY D/B/A NAPA; SHELL USA, INC. F/K/A SHELL OIL COMPANY; UNITED STATES STEEL CORP.; UNIVAR SOLUTIONS USA, INC. F/K/A UNIVAR USA, INC. F/K/A AND SUCCESSOR-IN-INTEREST TO UNIVAR CORP., VWR UNITED, AND VAN WATERS & ROGERS, INC. AND SUCCESSOR-IN-INTEREST TO CHEMCENTRAL CORP., SUCCESSOR-IN-INTEREST TO SOUTHWEST SOLVENTS & CHEMICALS, AND AS SUCCESSOR-IN-INTEREST TO UNITED PACIFIC CORPORATION; ASHLAND, INC. F/K/A ASHLAND, LLC; ILLINOIS TOOL WORKS, INC. D/B/A PERMATHEX AND D/B/A GUMOUT; RADIATOR SPECIALTY Co.; CHEVRON USA, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO GULF OIL Co.; UNION OIL Co. OF CALIFORNIA D/B/A UNOCAL, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO AMERICAN MINERAL SPIRITS COMPANY; HENKEL US OPERATIONS CORP. F/K/A HENKEL CORP., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO LOCTITE CORP. AND HENKEL LOCTITE CORP.; ATLANTIC RICHFIELD Co.; TEXACO INC.; TECHNICAL CHEMICAL COMPANY; THE PEP BOYS - MANNY, MOE & JACK

RELEVANT DOCKET ENTRIES

Miscellaneous Docket Sheet

Superior Court of Pennsylvania

Docket Number: 60 EDM 2024



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February 18, 2026

Filed Date	Docket Entry / Representing	Participant Type	Filed By
June 21, 2024	Petition for Permission to Appeal	Petitioner	Hunt Refining Company
June 27, 2024	Other	Petitioner	Hunt Refining Company
July 1, 2024	Other	Petitioner	Hunt Refining Company
Comment: Proof of Service			
Document Name: NOTICE OF RELATED PENDING APPEALS			
July 5, 2024	Answer to Petition for Permission to Appeal	Respondent	Gray, Gary
July 10, 2024	Entry of Appearance - Private Hunt Refining Company Hunt Refining Company	Petitioner Petitioner	Del Sole, Joseph A. McKeegan, Hugh Terence
August 16, 2024	Order Denying Ancillary Petition for Permission to Appeal		Per Curiam
Comment: Upon consideration of the June 21, 2024 petition for permission to appeal, wherein Petitioner relies upon Justice Alito's concurrence in <i>Mallory v. Norfolk Southern Railroad Co.</i> , 600 U.S. 122 (2023), to argue that it presents a controlling question of law as to which there is substantial ground for difference of opinion, and the answer thereto, the petition is DENIED.			
August 16, 2024	Remitted - No Trial Court Record		Superior Court of Pennsylvania
September 13, 2024	Petition for Allowance of Appeal to PA Supreme Court Filed	Petitioner	Hunt Refining Company
Comment: 305 EAL 2024			
January 22, 2025	Remanded from Supreme Court		Supreme Court of Pennsylvania
Comment: AND NOW, this 22nd day of January, 2025, upon consideration of the Petition for Allowance of Appeal, this matter is REMANDED to the Superior Court for an opinion supporting its order dated August 16, 2024. The Superior Court is ORDERED to enter its opinion regarding this remand within 90 days and to notify this Court promptly of its opinion.			
Jurisdiction is retained.			
March 25, 2025	Order		Per Curiam
Comment: AND NOW, this 25th day of March 2025, the above-captioned miscellaneous dockets are CONSOLIDATED.			



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
March 26, 2025	Order Denying Petition for Permission to Appeal - Other		Per Curiam
<p>Comment: OPINION PER CURIAM: On August 16, 2024, this Court entered Orders at Superior Court docket Nos. 59 EDM 2024 and 60 EDM 2024 that denied the petitions for permission to appeal.¹ On January 22, 2025, the Supreme Court of Pennsylvania directed this Court to provide its rationale for the denial of the petitions. This Court addresses both petitions in this Opinion. The petitions have the following in common: (1) the petitions came before this Court in the wake of <i>Mallory v. Norfolk Southern Railroad Co.</i>, registration jurisdiction statute³ violates the Dormant Commerce Clause of the United States Constitution;⁴ (3) the preliminary objections were overruled; (4) certification pursuant to 42 Pa.C.S. § 702(b) or, in the alternative, Pa.R.A.P. 311(b)(2) was timely sought and denied; (5) petitions for permission to appeal were timely filed with this Court; and (6) the petitions relied on Justice Alito's concurrence in <i>Mallory</i> discussing the potential Dormant Commerce Clause issue as a basis for claiming the orders involve a controlling question of law as to which there is substantial ground for difference of opinion. registration jurisdiction statute³ violates the Dormant Commerce Clause of the United States Constitution;⁴ (3) the preliminary objections were overruled; (4) certification pursuant to 42 Pa.C.S. § 702(b) or, in the alternative, Pa.R.A.P. 311(b)(2) was timely sought and denied; (5) petitions for permission to appeal were timely filed with this Court; and (6) the petitions relied on Justice Alito's concurrence in <i>Mallory</i> discussing the potential Dormant Commerce Clause issue as a basis for claiming the orders involve a controlling question of law as to which there is substantial ground for difference of opinion. (5) Preliminarily, with respect to civil orders, Pa.R.A.P. 1311 permits an appeal to be taken by permission only from an interlocutory order. (1) certified under Section 702(b) or for which certification pursuant to Section 702(b) was denied; or (2) for which certification pursuant to Pa.R.A.P. 341(c) was denied. Pa.R.A.P. 1311(a)(1)-(2). Nothing in Chapter 13 presently permits an appeal to be taken by permission from an interlocutory order denying certification under Rule 311(b)(2). Indeed, as recognized in <i>West's Pennsylvania Practice</i>, "[i]f the trial court refuses to amend its order, Rule 311(b)(2) offers no opportunity for discretionary appellate review." 20 WEST'S PA. PRAC., Appellate Practice § 311:94 (G. Ronald Darlington, et al., 2024). Accordingly, the Rules of Appellate Procedure do not permit a petitioner to seek permissive review of an order or a portion of an order that, as here, denied certification under Rule 311(b)(2). With respect to Section 702(b), a petition for permission to appeal an order for which interlocutory certification pursuant to Section 702(b) was denied or deemed denied must contain "a statement of reasons why the order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an appeal from the order may materially advance the ultimate termination of the matter, and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction." Pa.R.A.P. 1312(a)(5)(ii). The petitions fail to satisfy the three requirements</p>			



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
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under Rule 1312(a)(5)(ii).

First, the petitions fail to establish a controlling question of law with substantial ground for difference of opinion. Specifically, the petitions do not cite any binding federal or Pennsylvania authority demonstrating grounds for difference of opinion regarding the trial court's application of the rules governing personal jurisdiction as those rules relate to whether Pennsylvania's consent-by-registration jurisdiction statute violates the Dormant Commerce Clause. While Petitioners invoke Justice Alito's concurring opinion in Mallory for support, that opinion is insufficient to establish substantial grounds for difference of opinion. While it is true enough that Justice Alito's concurrence provides a window into the workings of that jurist's mind, concurring opinions have no legal effect and, therefore, are not binding on any court. See, e.g., *Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (stating that concurrence does not constitute binding precedent). The musings of one Justice in a concurring opinion, which has not been joined by another Justice, does not give rise to the overarching difference of opinion upon which we rely in granting interlocutory review. See, e.g., *Philadelphia Ent. & Dev. Partners, L.P. v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007) (stating that courts should not give answers to academic questions or render advisory opinions). Any lingering questions regarding the interplay between Pennsylvania's consent-by-registration jurisdiction statute and the Dormant Commerce Clause will come before the appellate courts on direct appeal in due course.

Moreover, any claim that Pennsylvania's consent-by-registration jurisdiction statute presents due process concerns is unavailing post-Mallory. As the Supreme Court stated, "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*, 600 U.S. at 146; see also *Pa. Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94-95 (1917) (holding suit against foreign corporation in forum state by out-of-state plaintiff on out-of-state contract does not violate Due Process Clause because corporation agreed to accept service of process in forum state on any suit as condition of doing business there). The Supreme Court's decision in *Mallory* re-affirming the holding in *Pennsylvania Fire* closes the door on due process challenges to Pennsylvania's consent-by-registration jurisdiction statute.

Second, the petitions fail to establish that an immediate appeal may materially advance the ultimate termination of the matter. The petitions fail to cite any authority that resolution of personal jurisdiction over a single defendant in multi-party litigation may materially advance the ultimate termination of a matter. A defendant's potential dismissal from an action, while a boon to that defendant, does not resolve the outstanding claims against the other defendants. At this point, the ultimate termination of the matter is more likely to be materially advanced by the parties proceeding to discovery and trial. Interlocutory review now would undermine judicial economy, which is generally best served by delaying appellate review pending the completion of all phases of the underlying proceedings in the trial court. *Kensey v. Kensey*, 877 A.2d 1284, 1289 (Pa. Super. 2005). Lastly, considering that the petitions fail to satisfy the other two criteria under Rule 1312(a)(5)(ii), the trial court's denial of certification cannot



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
April 8, 2025	Trial Court Acknowledgement of Order	Philadelphia County Court of Common Pleas	
April 8, 2025	Trial Court Acknowledgement of Order	Philadelphia County Court of Common Pleas	
October 6, 2025	Order Denying Petition for Allowance of Appeal to PA Supreme Court	Per Curiam	

reasonably be construed as an abuse of discretion so egregious as to justify prerogative appellate correction. Accordingly, this Court denied the petitions for permission to appeal

Comment: 304 EAL 2024

November 3, 2025 Remitted - No Trial Court Record

Superior Court of Pennsylvania

SESSION INFORMATION

Journal Number: J-M07001-25
Consideration Type: Motions Panel
Listed/Submitted Date: February 27, 2025

Panel Composition:
The Honorable Timika Lane
Judge

DISPOSITION INFORMATION

Final Disposition: Yes
Related Journal No: J-M07001-25
Disposition: Order Denying Petition for Permission to Appeal - Other
Judgment Date:
Disposition Author: Per Curiam
Disposition Date: March 26, 2025

**DISPOSITION INFORMATION**

Disposition Comment:

OPINION PER CURIAM:

On August 16, 2024, this Court entered Orders at Superior Court docket Nos. 59 EDM 2024 and 60 EDM 2024 that denied the petitions for permission to appeal.¹

On January 22, 2025, the Supreme Court of Pennsylvania directed this Court to provide its rationale for the denial of the petitions. This Court addresses both petitions in this Opinion.

The petitions have the following in common: (1) the petitions came before this Court in the wake of *Mallory v. Norfolk Southern Railroad Co.*, registration jurisdiction statute³ violates the Dormant Commerce Clause of the United States Constitution;⁴ (3) the preliminary objections were overruled; (4) certification pursuant to 42 Pa.C.S. § 702(b) or, in the alternative, Pa.R.A.P. 311(b)(2) was timely sought and denied; (5) petitions for permission to appeal were timely filed with this Court; and (6) the petitions relied on Justice Alito's concurrence in *Mallory* discussing the potential Dormant Commerce Clause issue as a basis for claiming the orders involve a controlling question of law as to which there is substantial ground for difference of opinion. registration jurisdiction statute³ violates the Dormant Commerce Clause of the United States Constitution;⁴ (3) the preliminary objections were overruled; (4) certification pursuant to 42 Pa.C.S. § 702(b) or, in the alternative, Pa.R.A.P. 311(b)(2) was timely sought and denied; (5) petitions for permission to appeal were timely filed with this Court; and (6) the petitions relied on Justice Alito's concurrence in *Mallory* discussing the potential Dormant Commerce Clause issue as a basis for claiming the orders involve a controlling question of law as to which there is substantial ground for difference of opinion.

(5) Preliminarily, with respect to civil orders, Pa.R.A.P. 1311 permits an appeal to be taken by permission only from an interlocutory order: (1) certified under Section 702(b) or for which certification pursuant to Section 702(

Dispositional Filing:
Filed Date:

Filing Author:

CROSS COURT ACTIONS

Docket Number:	305 EAL 2024
Court Name:	Supreme
Short Caption:	Hunt Refining Company v. Gray, G., Pet.
Case Status:	Closed
Disposition:	Order Denying Petition for Allowance of Appeal
Disposition Date:	October 6, 2025
Petition Reargument/Reconsideration Filed Date:	
Reargument Disposition:	
Reargument Disposition Date:	
Cross Court Action Type:	Filing of Decision or Opinion