



***BNSF v. Tyrrell*: Supreme Court Discourages Forum Shopping by Reaffirming Restrictive *Daimler* Test for General Jurisdiction**

By: P. Russell Perdew, J. Matthew Goodin and Nicholas O'Conner

The U.S. Supreme Court in *BNSF Railway Co. v. Tyrrell*, 2017 WL 2322834 (2017) made it harder for plaintiffs to sue in states where their alleged injury did not occur by reversing the Montana Supreme Court's attempt to assert general personal jurisdiction over defendant BNSF. The Court overwhelmingly affirmed (by an 8-1 majority) the new and restrictive test for general personal jurisdiction announced in its 2014 *Daimler* decision and made clear that *Daimler's* test applies in all civil cases and not just cases involving non-U.S. companies. The *Tyrrell* decision will make it easier for defendants to use personal-jurisdiction motions to deter any attempted forum shopping by plaintiffs.

Plaintiffs sue in Montana state court although their injuries occurred elsewhere.

This case started with two plaintiffs filing separate cases against their employer BNSF Railway Co. under the Federal Employers' Liability Act ("FELA") for alleged on-the-job injuries. The Montana connections were limited: plaintiffs didn't live or work in Montana and weren't injured in Montana, and BNSF is a Delaware corporation with its principal place of business in Texas. Plaintiffs argued that BNSF had some connections with Montana because it had over 2,000 miles of railroad and over 2,000 employees there. The two trial courts reached different results on whether personal jurisdiction existed over BNSF—dismissing one action and allowing the other to proceed—and the two actions were consolidated on appeal to the Montana Supreme Court.

Montana Supreme Court: BNSF is subject to general personal jurisdiction in Montana.

The Montana Supreme Court held that, although the injuries did not occur in Montana, BNSF's contacts with Montana were sufficient to create general personal jurisdiction. The court relied on BNSF's Montana offices, employees, and rail lines to find that BNSF's Montana contacts were "substantial, continuous, and systematic" enough to satisfy due process. The court concluded that jurisdiction was appropriate both under FELA and under Montana state law.

The Montana Supreme Court acknowledged that under *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014)—a U.S. Supreme Court case that presumptively limits general jurisdiction over corporations to states where the corporation is incorporated or has its principal place of business—general jurisdiction would not exist over BNSF. But the Montana Supreme Court distinguished *Daimler* because it "did not involve a FELA claim or a railroad defendant", and because it involved exclusively foreign parties and claims stemming from injuries alleged to have taken place abroad.

U.S. Supreme Court: No general jurisdiction under *Daimler* despite some Montana contacts.

The Supreme Court began by finding that FELA did not confer personal jurisdiction because the statutory language relied on by the Montana Supreme Court only related to venue and subject-matter jurisdiction. *Tyrrell*, 2017 WL 2322834, at * 5-8.

But more importantly, and regardless of the FELA statutory analysis, the Court found that general personal jurisdiction over BNSF would violate due process. The Court began by noting that, under *Daimler*, general jurisdiction is typically only appropriate over a company in the state where the company is incorporated or has its principal place of business. *Id.* at * 9. The Court easily and



quickly rejected the Montana Supreme Court's attempt to distinguish *Daimler* as not involving a FELA claim or a railroad defendant because the due-process clause "applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued." *Id.* at * 10.

The Court repeated the narrow exception from *Daimler* for exercising general jurisdiction in states other than where a corporation is incorporated or has its principal place of business. *Id.* at * 9. ("The exercise of general jurisdiction is not limited to these forums; in an 'exceptional case', a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.'"). But the Court found that BNSF's Montana contacts were not "so substantial" because although BNSF had offices, railroad track, and employees in Montana, those contacts represented a relatively small (less than 10% each) portion of BNSF's total presence throughout the United States. *Id.* at * 10.

In dissent, Justice Sotomayor was concerned that this "exceptional case" may never be found in practice. The example the Court cited—a company that had to temporarily relocate from the Philippines to Ohio because of war—seemed so extreme to Justice Sotomayor as to suggest that this exception will rarely, if ever, be appropriate. *Id.* at 10. (Court's application of exception "sends a signal to the lower courts that the exceptional-circumstances inquiry is all form, no substance." *Id.*, Dissenting op. at * 13.

Impact: Forum Shopping Will Be Much More Difficult.

Although *Tyrrell* largely reaffirms and applies *Daimler*, it is significant that *Daimler*'s restrictive "at-home" test for general jurisdiction was been reaffirmed by an 8-1 majority in a run-of-the-mill personal-injury case rather than the unusual factual circumstances of *Daimler*, which involved a foreign plaintiff and defendants.

Tyrrell will essentially limit plaintiffs to filing suit in either the defendant's home state(s) or the state where the injury occurs. Thus, plaintiffs will have a very limited ability to forum shop by filing in plaintiff-friendly jurisdictions that have little connection to the case or defendant at issue.

With general jurisdiction now very limited, plaintiffs will virtually always have to rely on specific jurisdiction to sue companies outside of those companies' home states. Thus, it will be important to watch for the Court's upcoming decision on specific jurisdiction in *Bristol-Myers v. Sup. Ct.*, No. 16-466, addressing whether injury-causing conduct that occurred outside the forum state can support jurisdiction where the company engaged in similar conduct (unrelated to the injury) inside the forum state. The California Supreme Court found specific personal jurisdiction under those circumstances, and a reversal would represent yet another significant limitation on personal jurisdiction.

P. Russell Perdew | 312-443-1712 | rperdew@lockelord.com

J. Matthew Goodin | 312-443-0472 | jmgoodin@lockelord.com

Nicholas O'Conner | 312-443-0494 | noconner@lockelord.com



Practical Wisdom, Trusted Advice.

www.lockelord.com

Atlanta | Austin | Boston | Chicago | Cincinnati | Dallas | Hartford | Hong Kong | Houston | London | Los Angeles | Miami
Morristown | New Orleans | New York | Providence | Sacramento | San Francisco | Stamford | Washington DC | West Palm Beach

Locke Lord LLP disclaims all liability whatsoever in relation to any materials or information provided. This piece is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. If you wish to secure legal advice specific to your enterprise and circumstances in connection with any of the topics addressed, we encourage you to engage counsel of your choice. If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive similar mailings.

Attorney Advertising © 2017 Locke Lord LLP