

Reaffirming Personal Jurisdiction Limits At High Court

By **Grant Esposito, Brian Matsui and Bryan Leitch**

Law360, New York (June 1, 2017, 11:13 AM EDT) -- It seems like it happens every spring: Once again, the U.S. Supreme Court has reversed a state court's expansive view of personal jurisdiction. In *BNSF Railway Co. v. Tyrrell*, the Supreme Court reversed the Montana Supreme Court's ruling that state courts may exercise general personal jurisdiction over out-of-state defendants when adjudicating claims under the Federal Employers' Liability Act (FELA).

In an 8-1 decision authored by Justice Ruth Bader Ginsburg, the Supreme Court held that (1) FELA did not address the personal jurisdiction of state courts, and (2) the U.S. Constitution's due process guarantees prohibited Montana courts from exercising general personal jurisdiction over the defendant in that case. As we discussed (and predicted) in recent articles, yesterday's decision in *BNSF Railway* is the latest in a series of recent efforts by the Supreme Court to curtail state court expansion of personal jurisdiction over nonresident defendants.

General Versus Specific Personal Jurisdiction

Broadly speaking, personal jurisdiction involves the question of whether a court may exercise power over an out-of-state defendant consistent with the due process clauses of the U.S. Constitution's Fifth Amendment (as applied to federal courts) and 14th Amendment (as applied to state courts). In its most recent decisions, the Supreme Court has reemphasized its long-standing, bifurcated framework for addressing personal jurisdiction. On one hand, courts may exercise specific personal jurisdiction over an out-of-state defendant only where "the defendant's suit-related conduct" creates "a substantial connection with the forum state." *Walden v. Fiore*, 134 S. Ct. 1115, 1121-22 (2014); *Goodyear Dunlop Tires Operations SA v. Brown*, 564 U.S. 915 (2011); *J. McIntyre Machinery Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality opinion).

On the other hand, courts may exercise general or "all-purpose" personal jurisdiction over an out-of-state defendant "to hear any and all claims against it" only when the defendant's affiliations with the



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forum state “are so constant and pervasive as to render it essentially at home in the forum State.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014) (internal quotation marks and brackets omitted). In *Daimler*, plaintiffs from Argentina sued a German defendant in federal court in California based on injuries suffered in Argentina. Because the foreign defendant had no connection to California or the United States more generally, the court held that due process protected the defendant from being subject to specific or general personal jurisdiction in California. While acknowledging that there may be a rare “exceptional case,” the court made clear that *Daimler*’s “at home” rule would in practice render corporations subject to general jurisdiction only where they are incorporated and/or have their principal place of business.

The Supreme Court’s Decision

The BNSF case involved two FELA suits brought in Montana state court by plaintiffs who were not Montana residents and who were not injured in Montana, against a defendant railroad that neither was incorporated in Montana nor maintained its principal place of business there. The railroad argued that it could not be sued in Montana for claims arising outside that state because it was not “at home” in Montana and therefore Montana courts lacked general personal jurisdiction over it. But the Montana court concluded that state courts had personal jurisdiction over the railroad on two grounds: (1) Congress had conferred on state courts personal jurisdiction over nonresident railroads by giving state courts “concurrent” jurisdiction over FELA claims; and (2) in the alternative, the state court had personal jurisdiction over the railroad because it was “found within” the state and because the Supreme Court’s decision in *Daimler* did not apply to domestic, nonresident defendants — but only applied to foreign, transnational entities.

The Supreme Court rejected the Montana court’s ruling across the board. The court first held that FELA’s relevant provision, Section 56, addressed only venue (whether the court is a convenient forum), and subject matter jurisdiction (whether the court has power over a claim). But it did not address personal jurisdiction (whether the court has power over a party), which Congress typically confers by authorizing service of process — a prerequisite to the exercise of personal jurisdiction that Congress did not provide for in Section 56 of FELA.

The Supreme Court also concluded that the 14th Amendment’s due process clause prohibited the state court from exercising general personal jurisdiction over BNSF simply because it conducted substantial business in Montana. The court summarily rejected the state court’s effort to narrow the reach of *Daimler*, holding that the Constitution’s due process guarantee “does not vary with the type of claim asserted or business enterprise sued,” but instead “applies to all state-court assertions of general jurisdiction over nonresident defendants.”

Following *Daimler*’s rule, the court held general jurisdiction could not be asserted over BNSF consistent with due process because BNSF was not incorporated in Montana and did not maintain its principal place of business there. Just as importantly, the court concluded that BNSF’s activities in Montana also did not justify general jurisdiction, even if “BNSF has over 2,000 miles of railroad track and more than 2,000 employees in Montana.” That is because, as *Daimler* held, the permissibility of general jurisdiction

turns on the defendant's "activities in their entirety" — not simply "the magnitude of the defendant's in-state contacts." After all, "[a] corporation that operates in many places can scarcely be deemed at home in all of them." Accordingly, the court held that, while BNSF's in-state business activities were "sufficient to subject the railroad to specific personal jurisdiction in that State on claims related to the business it does in Montana," those activities did not make BNSF "at home" in Montana or otherwise render it amenable to suit for claims that are "unrelated to any activity occurring in Montana."

Implications

That ruling is important for several reasons. First, given the scope of the railroad defendant's activities in Montana, BNSF underscores that Daimler's "at home" rule for general jurisdiction is effectively limited to its "paradigm" examples: the defendant's state of incorporation and/or its principal place of business. Second, BNSF also signals that Daimler's recognition of a possible "exceptional case" beyond those paradigmatic examples will indeed be rare, and may in fact be limited to situations where a defendant is forced to temporarily relocate the center of its activities outside its "home" forum, as was the case in *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). Litigants should think twice before wasting time and money trying to define the contours of this elusive third exception, as it is unlikely to exist in the typical dispute.

In a separate opinion, Justice Sonia Sotomayor lamented these implications of the majority's decision. Justice Sotomayor agreed with the court's conclusions regarding FEHA, but she voiced her continuing disagreement with Daimler's "at home" rule for general jurisdiction, arguing that it "grants a jurisdictional windfall to large multistate or multinational corporations that operate across many jurisdictions." Justice Sotomayor further argued that the court had nullified Daimler's possibility of an "exceptional case," because "certainly a defendant with significant contacts with more than one State falls outside its ambit."

In Justice Sotomayor's view, the court should adhere to the canonical *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which she reads as establishing "a holistic, nuanced contacts analysis" for general jurisdiction that looks to the "quality and quantity of the defendant's contacts in the forum State" as well as "considerations of fairness and reasonableness." Justice Sotomayor contended that the court should eschew Daimler's at home rule because it purportedly involves only "the rote identification of a corporation's principal place of business or place of incorporation," and because the court in *International Shoe* did not apply anything like Daimler's "comparative contacts analysis" in concluding that the state court there could exercise personal jurisdiction over an out-of-state shoe company.

But as the majority decision noted in response to the dissent, *International Shoe* involved only specific personal jurisdiction; not "an exercise of general, dispute-blind jurisdiction" of the kind at issue in BNSF. Additionally, the dissent's concern about granting corporations a "jurisdictional windfall" is misplaced: when multistate actors cause harm in a state in which they are not at home under Daimler, they can still be sued in that forum under principles of specific jurisdiction. Moreover, the dissent's focus on a "holistic, nuanced" analysis for personal jurisdiction is at odds with the court's continuing emphasis on the need to simplify its jurisdictional frameworks as well as the court's acknowledgement that bright-

line jurisdictional rules promote predictability, which helps plaintiffs, who must decide where to sue, as well as corporations, who must know in advance where they can be sued. See *Daimler*, 134 S. Ct. at 760; see also *Bolivarian Republic of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 137 S. Ct. 1312, 1321 (2017) (stressing that “clarity is particularly important” with “respect to a jurisdictional matter”).

In sum, *BNSF* is a rather limited holding, but its reaffirmation of *Daimler*’s test for general personal jurisdiction is an important development in the Supreme Court’s continuing efforts to constrain the expansion of personal jurisdiction in state court.

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