THERE'S NO PLACE LIKE HOME: THE U.S. SUPREME COURT EMPHASIZES THE CONSTITUTIONAL LIMITS ON PERSONAL JURISDICTION AND CONSTRAINS FORUM SHOPPING

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Complex Commercial Litigation and Disputes Alert

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Almost any business whose products or services reach customers in multiple states knows that there are some jurisdictions thought to be friendlier to plaintiffs. Plaintiffs' lawyers know about those jurisdictions too, and they sometimes try to file lawsuits there with the hope of ratcheting up settlement value.

The U.S. Supreme Court's May 30, 2017, decision in *BNSF Railway Co. v. Tyrrell,* No. 16-405, will provide businesses with some protection from such forum shopping. *BNSF* deals with personal jurisdiction, the collective term for the statutory and constitutional principles that allow the courts of a state to exercise jurisdiction over a defendant only if the defendant has sufficient contacts with the state.

The Supreme Court long ago divided personal jurisdiction into two categories: (1) specific or "case-linked" jurisdiction that applies when a defendant has sufficient contacts with the state *and* the lawsuit arises from those contacts, and (2) general or "all-purpose" jurisdiction that applies when the lawsuit does not arise from the defendant's contacts with the state *but* those contacts are so pervasive that the defendant is generally subject to suit in the state.

BNSF deals with the latter, general form of personal jurisdiction. In that case, two workers claimed on-the-job injuries during their employment with a railroad. The workers did not live in Montana and the injuries did not occur there, but that is where they filed their lawsuits. The Montana Supreme Court held that Montana's courts could exercise general personal jurisdiction over the railroad because it has more than 2,000 miles of track and more than 2,000 employees in Montana.

The U.S. Supreme Court disagreed and reiterated its three-year-old holding in *Daimler AG v. Bauman* that the Fourteenth Amendment does not allow an out-of-state defendant to be brought before a state's courts under a general personal jurisdiction theory unless the defendant's affiliations with the state are so "continuous and systematic" that the defendant is essentially "at home" in the state.

Justice Ginsburg wrote the majority opinion in *BNSF,* and all of the other justices except Justice Sotomayor joined that majority. Justice Ginsburg's opinion makes it clear that plaintiffs relying on general personal jurisdiction will have a particularly high hurdle to clear. If the defendant is neither incorporated in a state nor has its principal place of business there, she wrote, general personal jurisdiction will be appropriate only in "exceptional cases" in

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which the defendant has contacts "so substantial and of such a nature" that the defendant is "at home" in the state. Owning railroad tracks and having employees in a state is not enough.

Notably, in *BNSF,* the Montana Supreme Court sought to distinguish *Daimler* because *BNSF* arose under the Federal Employers' Liability Act. The U.S. Supreme Court quickly dispatched that argument and noted that the constitutional constraints on personal jurisdiction apply no matter the nature of the claim or the industry affected.

BNSF is a particularly important decision for the business community because, taken together with *Daimler* and the Supreme Court's 2011 decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown,* it tightens considerably the requirements for general personal jurisdiction. Before *Goodyear,* when the standard was described more amorphously as requiring "continuous and systematic" contacts, some courts exercised general personal jurisdiction simply because an out-of-state defendant advertised in in-state publications, attended in-state trade shows, or paid occasional service calls on in-state customers. Now, it will likely be rare for a court to exercise general personal jurisdiction over a defendant that is neither incorporated nor physically based in the state in which suit was filed. Indeed, in her dissent, Justice Sotomayor wrote that it is now "virtually inconceivable" that a corporation could be subject to general personal jurisdiction in a state other than where it is incorporated or has its principal place of business.

What does that mean as a practical matter for a business defendant? It will be more difficult for a plaintiff to sue in a jurisdiction unless the claim arises from the defendant's contacts with the jurisdiction and, accordingly, it will be harder for a plaintiff to forum shop for strategic reasons. While business defendants likely already consider at the outset of each new case whether they are subject to personal jurisdiction, *BNSF* should give them added incentive and ammunition to treat the propriety of the court's exercise of personal jurisdiction as anything but a foregone conclusion.

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