

Two 2017 U.S. Supreme Court Rulings Restricting Plaintiffs' Efforts to Forum Shop Should Benefit Trucking Companies

The United States Supreme Court issued two significant jurisdiction-related rulings in 2017 which, although they addressed railroad and toxic tort claims, should significantly benefit trucking company defendants victimized by forum shopping plaintiffs. These rulings will likely have a significant impact on personal injury cases where plaintiffs sue companies based upon their "connections" to the jurisdiction and nothing more.

As trucking defense attorneys, we are familiar with lawsuits where a motor carrier is sued in a particular jurisdiction because it conducts "significant business" there, even if the plaintiff does not live there and the accident did not occur there. The motor carrier, while it may, indeed, conduct "significant business" in the jurisdiction (including terminals, service centers and drop yards), is not incorporated there and does not have its principal place of business there. Nonetheless, desiring the "friendly" jurisdiction, plaintiff files suit there. The Supreme Court, it appears, has made this much more difficult to do.

Specifically, in its recently concluded term, the Supreme Court issued two opinions further defining when and how courts can exercise general personal jurisdiction and specific personal jurisdiction over corporations. The 2017 decisions follow the Court's 2014 landmark decision in *Daimler AG v. Bauman*, ___ U.S. ___, 134 S. Ct. 746 (2014), which held that general personal jurisdiction can only be exercised over a corporation in the state of its incorporation or where it has its principal place of business.

Prior to *Daimler*, plaintiffs brought lawsuits in favorable jurisdictions against corporate defendants who were not incorporated in the state, even when the cause of action did not arise in the jurisdiction. Since *Daimler*, defendant corporations have been successful in getting dismissed from these types of suits, arguing that the court lacked general personal jurisdiction over them. Predictably, plaintiffs then explored a variety of arguments to distinguish *Daimler* and to maintain jurisdiction over the corporate defendants in the plaintiff-friendly jurisdictions. With its new decisions, the Supreme Court has authoritatively rejected such tactics.

In May 2017, the Supreme Court issued its opinion in *BNSF Railway Co. v. Tyrrell*, No. 16-405, 581 U.S. ___, 137 S. Ct. 1549 (2017), wherein it confirmed the central holding in *Daimler* that the proper forum for the exercise of general personal jurisdiction over a corporation is its state of incorporation or its principal place of business. In *BNSF*, two plaintiffs sued defendant BNSF (a railroad) in Montana state court, alleging that they developed a fatal cancer while working for BNSF. Neither plaintiff resided in Montana and neither was injured there. BNSF was not incorporated and did not maintain its principal place of business in Montana, although it conducted substantial business there. In fact, BNSF employed more than two thousand employees in Montana and had more than two thousand miles of track in Montana! Regardless, the Court did not focus on the magnitude of the contacts. Rather, the Court said, the inquiry "calls for an appraisal of a corporation's activities in their entirety." Significantly, and simply, the Court stated: "A corporation that operates in many places can scarcely be deemed at home in all of them."

The Montana state courts ruled that *Daimler* did not apply to the *BNSF* case because plaintiffs' claims were brought under the Federal Employers' Liability Act ("FELA") and *Daimler* did not involve a FELA claim or a railroad defendant. The Supreme Court, in an 8-1 decision, soundly rejected this logic. The U.S. Supreme Court found that the Montana Supreme Court's exercise of general personal jurisdiction under Montana law violated the Fourteenth Amendment's Due Process Clause. The Court again emphasized that under *Daimler*, a state court may exercise general jurisdiction over out-of-state corporations only when their "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." Even though *Daimler* did not involve a FELA claim or railroad defendant, the Supreme Court

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found that the due process requirement applies to all state-court assertions of general personal jurisdiction over nonresident defendants. Thus, absent an "exceptional case," a court may exercise general personal jurisdiction against a corporate defendant only where the corporation is incorporated or has its principal place of business.

A few weeks after its decision in *BNSF*, the Court addressed the same issue in a toxic tort case, in *Bristol-Myers Squibb Co. v. Superior Court of California*, No. 16-466, 582 U.S. ____ (2017). In another 8-1 opinion, the Court clarified the scope of when a court can exercise specific personal jurisdiction over a corporate defendant. This case, filed in California state court, concerned the alleged ill-effects of a drug (Plavix) sold by Bristol-Myers in California. However, Bristol-Myers did not develop, manufacture, label, package, or seek regulatory approval for Plavix in California. However, it did sell large amounts of Plavix in California. Most significantly, none of the non-resident plaintiffs were injured in California, obtained Plavix through any California source or obtained treatment for their injuries in the state. The California Supreme Court, while admitting that California lacked general personal jurisdiction over the non-resident plaintiffs under *Daimler*, found that it was appropriate for California courts to exercise specific personal jurisdiction over Bristol-Myers under a "sliding scale approach" because of its extensive contacts with California and the claims of the nonresident-plaintiffs were substantially similar to those of the California resident plaintiffs.

Again, the U.S. Supreme Court reversed, this time finding that California's exercise of specific personal jurisdiction violated the Fourteenth Amendment's Due Process Clause. The Supreme Court characterized the "sliding scale approach" as a "loose and spurious form of general jurisdiction," in violation of the Fourteenth Amendment. In other words, an out-of-state defendant cannot sue in California simply because other plaintiffs, who were California residents, could.

The rulings in *BNSF* and *Bristol-Myers* should assist trucking defense attorneys responding to lawsuits in plaintiff-friendly jurisdictions where (1) the accident did not occur in that particular jurisdiction; (2) the plaintiff does not live in that particular jurisdiction; (3) the trucking company is not incorporated in that particular jurisdiction; and, (4) the trucking company does not have its principal place of business in that particular jurisdiction. This would appear to apply even where the trucking company conducts a significant amount of business in that jurisdiction. Absent exceptional circumstances, a plaintiff should only be able to assert general personal jurisdiction against a corporate defendant where the defendant is incorporated or has its principal place of business. Plaintiffs likewise will not be able to establish specific personal jurisdiction based on a defendant's contacts with a state, even if substantial, when there is no connection between the alleged injury and defendant's actions in the jurisdiction.

The plaintiffs' bar has responded to the rulings in *BNSF* and *Bristol-Myers* by arguing that a corporation's actions in registering to do business or in designating an agent to accept service in a state constitute consent to the jurisdiction in that state. This issue is presently making its way through the lower courts, and there is a split in the authority. Regardless, the *BNSF* and *Bristol-Myers* cases should go into the "toolbox" of every trucking defense lawyer faced with a forum-shopping plaintiff.

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