



U.S. Supreme Court Limits Forums for Suits Against Corporations

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Plaintiffs seeking damages typically choose to file suit in a state where the dispute or injury occurred, or in the state where the plaintiffs reside. Yet sometimes, plaintiffs may pick a state that has no such connection to them, their injuries, or their dispute—but one that does have a favorable legal climate—so long as it has some arguable connection to the defendant. Recently, the U.S. Supreme Court issued a decision that will make it more difficult to engage in this sort of "forum shopping."

In *BNSF Railway v. Tyrrell* (decided May 30, 2017), the U.S. Supreme Court held that due process restricts a plaintiff's ability to sue in a forum where the injury did not occur and the plaintiff did not reside. In that case, two BNSF employees alleging work-related injuries filed suits in Montana. BNSF is not incorporated in Montana and does not maintain its principal place of business there. Similarly, neither of the plaintiffs resided in Montana, nor had they worked for BNSF or been injured in Montana. Instead, they argued that BNSF has over 2,000 employees and 2,000 miles of track in Montana, so according to a Montana statute, there was personal jurisdiction over BNSF as a person "found within" the state.

The Supreme Court held that the exercise of personal jurisdiction over BNSF pursuant to the state statute failed to comply with federal due process. As the Supreme Court explained in a 2014 opinion (*Daimler AG v. Bauman*), a state court may exercise "general" (i.e. all-purpose) jurisdiction to hear any and all claims against a company incorporated in a different state or foreign country only when the company's affiliations with the state are so "continuous and systematic" as to render it essentially "at home" in the forum state. In *BNSF*, the Court explained this due process constraint "does not vary with the type of claim asserted or business enterprise sued." Thus, there can be no special rule for jurisdiction over railroads, manufacturers, banks or other categories of businesses.

Under current Supreme Court standards, a corporation is typically "at home" and amenable to any and all suits only in its place of incorporation or its principal place of business. Merely because a corporation operates in many places does not make it "at home" in all of them. Instead, business activity or statistics must be evaluated in the overall company context. Thus, even though BNSF had some 2,000 employees and 2,000 miles of track in Montana, they represent only about 5 percent or 6 percent of its total employees and total track, and BNSF operations in Montana generate less than 10 percent of its total revenue.



The rule in *Daimler* and *BNSF* does not limit a plaintiff's ability to sue a business according to the specific facts of each case, such as where a transaction or injury occurred. But in cases where the plaintiff contends a corporation is "at home" and must defend any and all claims, the outcome of a forum battle will likely turn more on a company's choices as to its state of incorporation and principal place of business than on the plaintiff's choice of forum.

Many factors (e.g., taxation, regulation, geography, markets, or tradition) may influence a company's choice on where to incorporate and where to maintain its principal place of business. In light of the *BNSF* decision, any company considering (or reconsidering) those key choices should not ignore the legal climate of any place where the company may be "at home."

If you have questions regarding this alert, please contact your Lathrop Gage attorney or the attorney listed above.