

BNSF Railway v. Tyrrell

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- Introduction to BNSF
- Experience in Montana Courts
- Jurisdictional jurisprudence
- BNSF v Tyrrell
- Next Steps

BNSF's history dates back more than 160 years to 1849, when the 12-mile Aurora Branch Railroad was founded in Illinois.

Rail network of 32,500 route miles in 28 states and three Canadian provinces.

Roughly 41,000 employees. 2,100 employees in Montana.

Casualty portfolio

- FELA claims

- Third Party claims
 - Asbestos
 - Trespasser incidents
 - Grade crossing incidents
 - Property damage

- Unique challenges
 - FELA interpretation
 - Apportionment of medical conditions
 - Statute of Limitations
 - *Forum Non Conveniens*
 - Asymmetrical Discovery
 - Stale claims
 - Out of state litigants

Personal Jurisdiction



- There are two types of personal jurisdiction – general and specific.
- “When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum, the State has been said to be exercising ‘general jurisdiction’ over the defendant.” Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415 n.9 (1984).
- By contrast, “when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant’s contacts with the forum, the State is exercising ‘specific jurisdiction’ over the defendant.” Id. at 415 n.8.

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564
U.S. 915, 919, 131 S. Ct. 2846, 2851 (2011)

- In Goodyear, North Carolina teenagers were killed in a bus accident while traveling in France. Their parents brought a wrongful-death suit in North Carolina state court against, among others, three overseas Goodyear affiliates, including the one who had manufactured the bus's tires.
- Those affiliates manufactured and distributed tires primarily for Europe and Asia, and the tire at issue had never been distributed in North Carolina.
- Nevertheless, the North Carolina court exercised general jurisdiction over the Goodyear affiliates on the ground that a relatively small but continuous flow of other tires they made or distributed had reached North Carolina through the "stream of commerce"—i.e., they had been sold to other entities, which in turn distributed them in North Carolina.

Goodyear (cont.)

- The Court addressed general personal jurisdiction, which permits a state to assert all-encompassing jurisdiction over any and all suits against a defendant—regardless of whether the suit relates to the defendant's contacts with the state—when the defendant has sufficiently significant contacts with the state.
- In a unanimous opinion, the Court held that general jurisdiction was reserved for a state in which the defendant was at "home:"

"For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home."

Daimler AG v. Bauman, 134 S. Ct. 746, 751 (2014)

- Twenty-two Argentinian residents filed suit in the Northern District of California, against Daimler a German public stock company that manufactures Mercedes-Benz cars, alleging that their subsidiary Mercedes-Benz Argentina (MBA) worked with Argentinian security forces to “kidnap, detain, torture, and kill certain MBA workers.”
- The district court purportedly had jurisdiction over the case based on the California contacts of another one of Daimler’s subsidiaries, Mercedes-Benz USA, LLC (MBUSA). MBUSA, incorporated in Delaware with its principal place of business in New Jersey, distributes Defendants’ cars to California.

Daimler (cont.)

- The Court held that the standard of “substantial, continuous, and systematic course of business” was “unacceptably grasping” and “exorbitant,” explaining that the Due Process Clause imposes a more stringent standard for state courts attempting to exercise general jurisdiction. Daimler, 134 S. Ct. at 761.
- The proper inquiry for purposes of general jurisdiction “is not whether a foreign corporation’s in-forum contacts can be said to be in some sense ‘continuous and systematic,’” but rather “whether that corporation’s affiliations with the State are so ‘continuous and systematic’ as to render it essentially at home in the forum State.” Daimler, 134 S. Ct. at 752.
- A corporation is “essentially at home,” the Court instructed, where it is incorporated or where it has its principal place of business. Daimler, 134 S. Ct. at 760. The Court explained that only in an “exceptional case” will a corporation be deemed essentially at home in another State. Daimler, 134 S. Ct. at 761 n.19.

Are Daimler and Goodyear applicable in Montana?



Tyrrell v. BNSF; Nelson v. BNSF

- Cases filed in 2014 in Yellowstone County.
- Tyrrell – Estate of former employee alleged that the employee's death was caused by BNSF negligently exposing him to chemicals over his career. Mr. Tyrrell worked in South Dakota, Minnesota and Iowa. The personal representative of his Estate is from South Dakota. Judge Moses denied BNSF's Motion to Dismiss.
- Nelson – North Dakota resident working in Washington alleged BNSF was negligent for his slip and fall incident resulting in knee pain. Judge Baugh granted BNSF's Motion to Dismiss.

Tyrrell v. BNSF, 383 Mont. 417, 373 P.3d 1 (2016)



- The Court held BNSF is "doing business" in Montana, and Montana courts have general personal jurisdiction over BNSF under 45 U.S.C. § 56.
- This conclusion is in line with the U.S. Supreme Court's "liberal construction" of the FELA in favor of injured railroad workers. Tyrrell, 373 P.2d at 7.
- Attempted to distinguish Daimler based on:
 - 1) the nature of business (railroad v. other);
 - 2) transnational fact pattern; and
 - 3) injustice plaintiffs would face travelling to corporate defendant's home state.
- Interpreted the FELA statute as conferring personal jurisdiction
 - The text of the statute refers to venue in federal court.
 - The statute's text on jurisdiction deals with *subject matter jurisdiction*.

Dissent by Justice McKinnon

In sum, the Due Process Clause of the Fourteenth Amendment . . . provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.”

That Clause prohibits a state court from exercising general jurisdiction over a nonresident defendant unless the defendant’s contacts with the State are so pervasive as to render the defendant essentially “at home” in the State. Daimler, 134 S. Ct. at 751.

Because there is no dispute that BNSF’s contacts are not so pervasive as to render it essentially at home in Montana, I would conclude that the two Montana State District Courts in the consolidated appeals lack general jurisdiction over BNSF under the Due Process Clause of the Fourteenth Amendment.

Petition for *Writ of Certiorari*



- Filed September 28, 2016
- Petition granted on January 13, 2017
- *Amicus curiae* briefs submitted by: The United States Chamber of Commerce, National Assoc. of Manufacturers, AAR, Washington Legal Foundation, Allied Educational Foundation and the United States Government.
- Oral argument April 25, 2017

Magnet jurisdiction?

CHIEF JUSTICE ROBERTS: What's -- what's the good reason they would want to sue in Montana?

MS. MURRAY: Well, from a litigant's perspective, if you want predictability, you want to know that the court that you're going to know the specialized area of law like the back of their hand, that is Montana. These judges know FELA cases because they see a lot of them. So I -- I think there is good reason for some --

CHIEF JUSTICE ROBERTS: That seems -- that seems a little circular.

BNSF Railway Co. v. Tyrrell, 581 U.S. ____, 137 S. Ct. 1549 (2017)



- **Holding:**

- (1) Section 56 of the Federal Employers' Liability Act -- which provides that "an action may be brought in a district court of the United States," in, among other places, the district "in which the defendant shall be doing business at the time of commencing such action" -- does not address personal jurisdiction over railroads; and
- (2) the Montana courts' exercise of general personal jurisdiction under Montana law does not comport with the 14th Amendment's due process clause.

- **Judgment:**

- Reversed and Remanded, 8-1, in an opinion by Justice Ginsburg on May 30, 2017. Justice Sotomayor filed an opinion concurring in part and dissenting in part.

Next Challenges



- Montana Supreme Court
 - DeLeon and Beck – two Texas residents; never worked in Montana.
 - Kingery – Missouri resident; never worked in Montana.
 - Plaintiffs are appealing the dismissal of their cases arguing:
 - BNSF has consented to general jurisdiction; or
 - Plaintiffs are entitled to jurisdictional discovery; and
 - BNSF should be estopped from denying its consent to jurisdiction in Montana.
- Statute of Limitations once refiled in proper jurisdictions

QUESTIONS?

