



U.S. SUPREME COURT LIMITS FORUM SHOPPING IN FELA CASES

In its recent opinion in *BNSF Railway Co. v. Tyrrell, et al.*, No. 16-405 (U.S. May 30, 2017), the U.S. Supreme Court clarified the jurisdictions in which a plaintiff may bring a claim under the Federal Employers' Liability Act (FELA), and significantly limited FELA plaintiffs' ability to "forum shop." The FELA provides for concurrent state and federal jurisdiction, and permits plaintiffs to bring FELA suits in both state and federal courts. Until the *Tyrrell* decision, it was commonplace for FELA plaintiffs to file suit in state courts outside their home state of residence, the state where the alleged injuries occurred, or the defendant company's primary place of business. This flexible interpretation of the FELA's jurisdictional standards permitted plaintiffs to, in effect, shop for the most favorable forum, and resulted in cases being filed in states reputed to be plaintiff-friendly, regardless of whether the cases had any connection to the state in which they were filed. Hall & Evans attorneys filed the initial motions to dismiss and were involved in the appellate process that resulted in this major victory for the railroad industry.

In an opinion by Justice Ginsburg, joined in whole by the Chief Justice and six other justices, and joined in part by Justice Sotomayor, the Court abolished this practice, ruling that 45 U.S.C. § 56 does not confer personal jurisdiction but merely addresses venue. The Court held that Montana's exercise of general personal jurisdiction over a Class I railroad which was not "at home" in Montana, and in a case which did not involve injuries connected to the railroad's operations in Montana violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Respondent Robert Nelson was a North Dakota resident and BNSF employee who claimed he suffered knee injuries while working as a truck driver for BNSF, and Respondent Kelli

Tyrrell was a South Dakota resident who sued on behalf of her deceased husband, Brent Tyrrell, alleging he contracted cancer due to exposure to toxic substances while in BNSF's employ. Both Nelson and Tyrrell filed suit in Montana under the FELA, despite the fact "neither plaintiff alleged injuries arising from or related to work performed in Montana..." BNSF filed motions to dismiss for lack of personal jurisdiction in both cases; Nelson's case was dismissed, but Tyrrell's case was not, and both cases were consolidated and considered by the Montana Supreme Court.

Montana's Supreme Court ruled the cases were properly filed in Montana for two reasons: First, it held that under 45 U.S.C. § 56, the railroad could be properly haled into Montana courts on cases unrelated to Montana because the railroad "did business" within the state; and second, that the railroad could properly be sued in Montana under the FELA because it was "found within" the state as provided by Mont. Rule Civ. Proc. 4(b)(1).

The Court reversed these rulings, and held that Montana could not exercise jurisdiction over the railroad. First, the Court clarified that the first relevant sentence of 45 U.S.C. § 56 ("an action may be brought in a district court of the United States ... [in the district] in which the defendant shall be doing business at the time of commencing such action") merely addresses the venues in which a FELA suit may be filed, and does not confer personal jurisdiction. The Court next held the second relevant sentence ("The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several States") simply refers to concurrent subject-matter jurisdiction; in other words, the Court held 45 U.S.C. § 56 does not address or confer personal jurisdiction.



Having ruled Section 56 did not give Montana jurisdiction over the cases, the Court next held that Montana's exercise of jurisdiction over the railroad simply because it was "found within" the state violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution under the Court's earlier ruling in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Because the cases had no factual connection to Montana (there was no specific personal jurisdiction), the Court considered whether Montana could properly exercise general personal jurisdiction over the railroad. Relying upon *Daimler* and related opinions, the Court explained that a state can exercise general personal 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." The Court found the railroad's contacts with Montana, as compared with its contacts with other states, were not sufficient to render it "at home" in Montana. The Court also dismissed the Montana Supreme Court's argument that *Daimler* did not apply to cases involving railroads or brought under the FELA, and affirmed that "[t]he Fourteenth Amendment due process constraint described in *Daimler* ... applies to all state-court assertions of general jurisdiction over nonresident defendants," and that "the constraint does not vary with the type of claim asserted or business enterprise sued."

Many cases in jurisdictions nationwide are potentially impacted by the *Tyrrell* decision. Whether those cases will be dismissed and re-filed will depend on the facts and circumstances of each case; however, what is clear from *Tyrrell* is that the Supreme Court does not favor the flagrant forum-shopping engaged in by FELA plaintiffs up to this point and that going forward, FELA cases will need to be filed in the states where either: (1) the underlying accident occurred; (2) the railroad defendant has its primary place of business; or (3) the railroad defendant's state of incorporation.

A copy of the Court's opinion in *Tyrrell* is available at the following link: <https://www.supremecourt.gov/opinions/slipopinion/16>

If you have questions or would like to discuss these issues further, please contact the author, attorney Andrew Reitman, reitmana@hallevans.com.