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U.S. Supreme Court restricts personal injury claim filings

By Eli Wolfe
Daily Journal Staff Writer

Plaintiffs' attorneys will face further restrictions on where they can file personal injury claims following a Tuesday ruling by the U.S. Supreme Court, which threw out a lower court decision in Montana allowing out-of-state plaintiffs to sue BNSF Railway Company in Montana for injuries allegedly suffered across its multi-state network.

Justice Ruth Bader Ginsburg, writing the 8-1 majority opinion, stated that while BNSF has 2,000 employees and thousands of miles of train track in Montana, the company can't be held liable for claims brought on behalf of two former employees because they didn't reside in the state and neither of their allegations originated there. *BNSF Railway Co. v. Kelli Tyrell, et al.*, 581 U.S. ___ (2017).

In her dissenting opinion, Justice Sonia Sotomayor wrote that the court's decision "grants a jurisdictional windfall to large multistate or multinational corporations that operate across many jurisdictions."

She added that, under this reasoning, it is inconceivable that corporations will be subject to general jurisdiction in any place other than their principal place of business.

"The result? It is individual plaintiffs, harmed by the actions of a farflung foreign corporation, who will bear the brunt of the majority's approach and be forced to sue in distant jurisdictions," she continued.

Plaintiffs' attorney Brian Kabateck of

Kabateck Brown Kellner LLP, who is not involved in the case, echoed Sotomayor's sentiment, noting that while the ruling specifically addresses railway claims brought under the Federal Employers Liability Act (FELA), it may end up having a wider impact on the ability of plaintiffs to file suits in jurisdictions where defendants have had some contact.

"It would have been fine if they stopped at the FELA analysis, but the court seemed intent going one step forward and giving an analysis that it expands beyond these railroad cases," he said.

Several attorneys said the ruling is essentially an extension of the Supreme Court's 2014 decision in *Daimler AG v. Bauman*, which created a bright-line test for proving that a defendant is "at home" in a particular area before exercising general personal jurisdiction. *Daimler AG v. Bauman*, 571 U.S. ___ (2014)

The plaintiffs suing BNSF did not come close to meeting the general jurisdiction formula established by *Daimler*, as indicated by the nearly unanimous majority opinion, according to Matthew S. McNicholas, a trial attorney with McNicholas & McNicholas LLP who was not involved in the case.

He added that the BNSF ruling will give far less leeway for arguments brought by future aggrieved plaintiffs, and it will bolster the defense of companies that frequently face out-of-state personal injury claims.

"With eight justices, both liberal and conservative, on board, this is the law, this is the way it is," he said. "It seems to be a fairly

straightforward jurisdictional analysis and Sotomayor's opinion is getting no traction."

Attorney Paul Kiesel of Kiesel Law LLP, who also did not participate, added that the Supreme Court may continue to introduce broader restrictions on venue-shopping once it makes a ruling on a separate matter involving the drug maker Bristol-Myers Squibb Company.

The drug maker is appealing a California Supreme Court ruling that allowed state courts to hear claims from out-of-state plaintiffs regarding its blood-thinning medication Plavix.

"There's no question that the Supreme Court has made it far more difficult to bring a lawsuit against a corporation in anywhere other than where they are located," Kiesel explained.

He added that the BNSF decision indicates that the court will likely continue to narrow the scope of general jurisdiction.

Defense attorneys are skeptical of assertions that the Supreme Court's ruling will prevent plaintiffs from pursuing personal injury matters.

Attorney Michael Nebenzahl, another independent observer, said that after reading the syllabus for the BNSF ruling, it appeared the plaintiffs were merely seeking a state or court that was more favorable to them.

"I don't see this as a having a huge chilling effect against being able to sue, or being beneficial for the defendant," Nebenzahl said. "It certainly seems that if you file in the right jurisdiction, there wouldn't be a problem."