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Expert Analysis

SCOTUS Tackles Venue and Jurisdiction Issues in Trio of Decisions

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The U.S. Supreme Court has handed down a trilogy of cases this term that together confront issues of venue, general personal jurisdiction, and specific personal jurisdiction. See *TC Heartland v. Kraft Foods*, 137 S. Ct. 1514 (2017); *BNSF Railway v. Tyrell*, 137 S. Ct. 1549 (2017); *Bristol-Myers Squibb v. Superior Court of Cal.*, No. 16-466, 2017 WL 2621322 (U.S. June 19, 2017). This article reviews the new trio of civil procedure cases and summarizes the impact they are likely to have on forum choice.

'TC Heartland'

TC Heartland v. Kraft Foods concerns venue in patent suits. Kraft Foods, the plaintiff, brought a patent infringement suit in the District

of Delaware against TC Heartland, Kraft's competitor. *Id.* TC Heartland's only connection to Delaware was shipping the allegedly infringing products there. *Id.* Accordingly, TC Heartland moved to transfer venue, arguing that venue was improper in Delaware based on 28 U.S.C. §1400(b), the patent venue statute.

The case revolved around the definition of "resides" in the relevant statute, which provides that patent infringement suits may be brought in the judicial district in which the defendant "resides," among other places. 28 U.S.C. §1400(b). The Supreme Court had already defined "resides" in §1400(b) as being the defendant's state of incorporation. *Fourco Glass Co. v. Transmirra Prods.*, 353 U.S. 222, 226 (1957). Since that ruling, Congress had amended a different venue statute, 28 U.S.C. §1391, to define "resides" as "any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." *TC Heartland*, 137 S. Ct. at 1517 (quoting 28 U.S.C. §1391(a), (c)). The question was whether the amendments to §1391

supplanted the court's definition of "resides" in §1400. *Id.*

Justice Clarence Thomas wrote for the unanimous court, save for Justice Neil Gorsuch who took no part in the opinion, and held that the definition was not supplanted. *Id.* at 1520. In so holding, the court noted that Congress had never provided any indication that it intended the amendment to §1391 to reach §1400, and "[w]hen Congress intends to effect a change of that kind, it ordinarily

'TC Heartland' also highlights the court's adherence to its prior decisions—even 60-year-old decisions—when Congress has not explicitly shown an intent to overrule the court's prior statutory interpretation.

provides a relatively clear indication of its intent in the text of the amended provision." *Id.* The court also rejected Kraft's argument that §1391 changed the statute because it broadly applied for "all venue purposes." *Id.* Given that §1391 had a savings clause, applying only "except

as otherwise provided by law,” the court found that its prior reading of §1400 remained compatible with the amendments to §1391. *Id.* (quoting §1391(a)).

‘BNSF Railway’

BNSF Railway v. Tyrell involved the interplay between personal jurisdiction and federal and state statutes. Employees of BNSF Railway, a railroad company, sued BNSF in Montana for injuries sustained on the job outside of Montana, relying on the Federal Employers’ Liability Act (FELA). *Id.* at 1554. BNSF moved to dismiss based on lack of personal jurisdiction in light of the Supreme Court’s recent decision in *Daimler Chrysler v. Bauman*, 134 S. Ct. 746, 760 (2014). In *Daimler*, the Supreme Court held that a corporation is subject to personal jurisdiction only where it is fairly regarded as being at home. A corporation will be at home (1) in its principal place of business, (2) in its state of incorporation, and (3) in states where its affiliation with the state is “so ‘continuous and systematic’ as to render [the corporation] essentially at home.” *Id.* (quoting *Goodyear*, 564 U.S. at 919 (2011)). When analyzing whether the defendant’s contacts with the forum are sufficiently continuous and systematic contacts, courts must consider the proportion of the company’s contacts with the proposed forum as compared to the company’s worldwide business activity. *Id.* at 762 n. 20.

Because BNSF’s principal place of business was not in Montana and

it was not incorporated there, the question was whether its connections with Montana were systematic and continuous enough to render BNSF “essentially at home” in Montana. The defendant’s only contacts with Montana were (1) employing less than 5 percent of its total workforce there, (2) generating less than 10 percent of its total revenue there, and (3) maintaining 4 percent of its automotive facilities there. *Id.* Despite this limited connection with Montana, the plaintiff-employees urged that general personal jurisdiction was proper pursuant to the FELA. *BNSF Railway*, 137 S. Ct. at 1554. Alternatively, they argued that Montana had personal jurisdiction pursuant to a Montana rule that permitted jurisdiction over “persons found within ... Montana.” *Id.* (quoting Mont. R. Civ. P. 4(b)(1) (2015)).

Section 56 of the FELA states that an action under the act may be brought in any district court in the United States “in which the defendant shall be doing business at the time of commencing such action.” *Id.* at 1555 (quoting 45 U.S.C. §56). It further provides that “[t]he jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states.” *Id.* at 1556 (quoting 45 U.S.C. §56). The plaintiffs argued these two sentences permitted both state and federal courts to exercise personal jurisdiction over the defendant. *Id.* at 1555-57.

Justice Ruth Bader Ginsberg wrote for the nearly unanimous court—excluding only Justice Sonia

Sotomayor, who filed an opinion concurring in part and dissenting in part—and rejected this argument. Relying on prior Supreme Court precedent interpreting the FELA, the court held that the first sentence of §56 concerns venue and that the second concerns subject-matter jurisdiction—neither related to personal jurisdiction. *Id.* at 1555, 1557 (citing *Baltimore & Ohio R. Co. v. Kepner*, 314 U.S. 44 (1941); *Second Employers’ Liability Cases*, 223 U.S. 1 (1912)). Regarding the argument that Montana’s state rule permitted personal jurisdiction, the court clarified, unremarkably, that states cannot legislate away the requirements of constitutional due process. *Id.* at 1558-59. Accordingly, the court held that Montana lacked personal jurisdiction over BNSF in this suit. *Id.* at 1560.

‘Bristol-Myers Squibb’

Bristol-Myers Squibb v. Superior Court of California addressed specific personal jurisdiction. Plaintiffs brought a products liability action in California state court against Bristol-Myers Squibb, alleging state-law claims arising out of the design, development, manufacture, marketing, and distribution of its drug Plavix. *Id.* at *3; *id.* at *12. Of the 678 plaintiffs, only 86 were injured in California (California residents). *Id.* at *3. Bristol-Myers Squibb did not object to California’s personal jurisdiction as to the claims by California residents. *Id.* However, Bristol-Myers Squibb argued that it was not subject to personal jurisdiction concerning

the claims of the 592 non-California residents injured outside the state. *Id.* The non-California residents did not allege any connections between their use of the drug and California. *Id.* at *4. And Bristol-Myers Squibb “did not develop Plavix in California, did not create the marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California.” *Id.* at *4.

Justice Samuel Alito penned the opinion of the court, with only Justice Sotomayor dissenting. In analyzing these facts, the court reiterated its longstanding rule for specific personal jurisdiction: For courts “to exercise specific

and the non-California residents’ suit against Bristol-Myers Squibb. *Id.* at *8. In doing so, the court explicitly rejected the argument that California courts could exercise personal jurisdiction as to the non-California residents’ claims because they were essentially identical to the California residents’ claims. *Id.* The court was also unpersuaded by the argument that it would be convenient for Bristol-Myers Squibb to litigate these claims in California given that they would already be litigating the California residents’ claims in California. See *id.* at *14 (Sotomayor, J., dissenting).

The Choice of Forum Calculus

In each of these cases, the court limited the locations in which a corporation may be sued. Each case created new obstacles for plaintiffs and new opportunities for defendants to avoid lawsuits in far-flung jurisdictions. At first blush, the reach of *TC Heartland* seems narrowly fixed to the patent litigation context. But in addition to substantially limiting the locations in which patent suits may be brought (which is no small impact), *TC Heartland* also highlights the court’s adherence to its prior decisions—even 60-year-old decisions—when Congress has not explicitly shown an intent to overrule the court’s prior statutory interpretation.

BNSF Railway and *Bristol-Myers Squibb* will operate together to limit trial courts’ abilities to exercise personal jurisdiction over a corporate defendant. *BNSF Railway*

demonstrates the court’s dedication to its announcement in *Daimler* that it is not the quantity but the proportion of contacts in a state that could give rise to general jurisdiction outside the defendant’s state of incorporation or principal place of business. It also underscores the principle that states cannot legislate away the minimum requirements of personal jurisdiction. After *BNSF Railway*, plaintiffs attempting to argue general jurisdiction based on systematic and continuous contacts must come prepared with how the defendant’s contacts with the forum state compare to the defendant’s global footprint. And in *Bristol-Myers Squibb*, the court clarified again that it does not matter how big the defendant is when it comes to assessing personal jurisdiction. The requisite connection is between the suit and the defendant’s forum state contacts. Whether the defendant might have a large presence in the state or be subject to litigation of other claims in the state will not impact the specific jurisdiction analysis.

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jurisdiction over a defendant, ‘the *suit*’ must ‘aris[e] out of or relat[e] to the defendant’s contacts with the *forum*.’” *Id.* at *6 (quoting *Daimler*, 134 S. Ct. at 754). Thus, “there must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum state.’” *Id.* at *7 (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The court determined that there was no such affiliation between California