

ARTICLES

## Specifically General or Statutory: Knowing Your Basis for Jurisdiction

By Matthew A. Moeller – March 31, 2017

A recent decision by the Missouri Supreme Court is a good reminder that while seemingly elementary, a fundamental understanding of the basis of personal jurisdiction is essential for all litigators; a flawed understanding can result in severe consequences. In *Norfolk Southern v. Dolan*, an Indiana resident railroad worker brought a personal injury action against his employer, Norfolk Southern, in Missouri State Court under the Federal Employer's Liability Act (FELA). Norfolk, a Virginia corporation with its principal place of business in Virginia, owned and operated train tracks in over 20 states, including Missouri. Norfolk registered under the Missouri foreign business registration statute and maintained an agent in the state for service of process. The only basis set forth by the plaintiff for specific or general personal jurisdiction over the railroad company was that Norfolk conducted substantial business and owned property in Missouri. At trial, Norfolk moved to dismiss, alleging that Missouri lacked personal jurisdiction over the company because the injury was sustained in Indiana by an Indiana resident as a result of work for the company in Indiana. Agreeing with Norfolk, the Missouri Supreme Court found that Missouri did not have specific or general jurisdiction over the Virginia railroad company.

The court held that despite Norfolk having tracks in Missouri, the *specific action* at issue was unrelated to the company's Missouri activities; therefore, specific jurisdiction did not exist. Concerning general jurisdiction, the court resolved that issue in the same manner, reasoning that although Norfolk did substantial and continuous business in Missouri, it also conducted business in over 20 other states, and its business in Missouri was only about two percent of its total business. The court relied on the U.S. Supreme Court's opinion in *Daimler AG v. Bauman*, where the plaintiff asserted personal jurisdiction on the basis that the defendant conducted substantial and continuous business in California. After determining that the defendant's California business was only about 2.5 percent of its sales, the court held that the mere conduct of considerable business activities in the state was insufficient to subject the corporation to general jurisdiction for causes of action not related to that state. Moreover, the court refused to uphold jurisdiction on the grounds that FELA provided an independent basis for jurisdiction over Norfolk. The court reasoned that because the FELA statute pertains to venue and subject matter jurisdiction there is no statutory basis for jurisdiction of FELA cases in state courts that do not otherwise have personal jurisdiction over the defendant. The court also rejected plaintiff's contention that Norfolk impliedly consented to general jurisdiction in Missouri by complying with Missouri's foreign corporation registration statute, namely because Missouri's registration statute does not require foreign corporations to consent to suit over activities unrelated to Missouri.

This decision is significant because it emphasizes the importance of litigators and their clients realizing that simply doing business in a forum state—even as significant as that business may be—may not be enough to subject a defendant to personal jurisdiction. The analysis involved in

determining the proper court to bring an action against a defendant with far-flung, nationwide activities should always include a strong consideration of the defendant's state of incorporation and principal place of business. Otherwise, counsel will have to show that the facts and circumstances amount to an exceptional case, which demonstrates that the forum state is essentially a surrogate place of incorporation or home office. That could be a tough burden to carry, and such a position could initiate a lengthy and expensive jurisdictional dispute which could result in a dismissal. Furthermore, in rejecting the FELA jurisdictional argument, the court noted the sometimes confused concepts of jurisdiction and venue and reiterated that jurisdiction cannot be conferred by venue provisions of a federal statute. As usual, the devil lies in the details. Any statutory basis relied on for jurisdiction should be scrutinized to determine that there is in fact such a basis and that the statute doesn't simply provide a venue option for asserting a cause of action.

Consequently, when seeking to bring an action in a forum where a defendant is registered to do business, litigators should take a discerning eye to the specific state statutory language and related jurisprudence to avoid baseless positions. *Norfolk* and its predecessor cases provide many helpful lessons, but one of the most universal is simple: If your client is going to pay for a trial, make sure you have a basis to have one.

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