

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2020-001007

RECEIVED

Feb 16 2021

SC Court of Appeals

Joseph Dean, ... Appellant,

v.

CSX Transportation, Inc., ... Respondent.

RECORD ON APPEAL

Kathleen C. Barnes, SC Bar No. 78854
BARNES LAW FIRM, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529
kbarnes@barneslawfirmllc.com

Randolph Murdaugh, IV
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK
P.O. Box 457
Hampton, SC 29924
803-943-2111
rmurdaugh@pmped.com
Attorneys for Appellant

Ronald K. Wray, II, SC Bar No. 65246
rwwray@gwblawfirm.com
James A. Bradshaw, SC Bar No. 100548
dbradshaw@gwblawfirm.com
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
864-271-9580
Attorneys for Respondent

INDEX

	PAGE
Index.....	i
Notice of Appeal, July 16, 2020.....	1
Order granting motion to dismiss, June 17, 2020.....	3
Complaint, April 1, 2020.....	12
CSX’s Motion to Dismiss, April 15, 2020.....	18
Exhibit 1, Affidavit of Lauren M. Lamp, April 15, 2020.....	20
Plaintiff’s Memorandum in Opposition to Defendant’s Motion to dismiss, May 22, 2020.....	23
Exhibit 1, Affidavit of Joseph Dean, May 22, 2020.....	32
Exhibit 2, CSX business information, May 22, 2020.....	35
CSX’s Reply in support of motion to dismiss, May 26, 2020.....	38
Exhibit 1, Florida action, May 26, 2020.....	46
Transcript of hearing on May 26, 2020.....	60
Certificate of Counsel.....	88

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case No. 2020-CP-21-00958

Joseph Dean, ... Appellant,

v.

CSX Transportation, Inc., ... Respondent.

NOTICE OF APPEAL

Joseph Dean appeals the Order of the Honorable Michael G. Nettles filed June 17, 2020, granting CSX Transportation, Inc.'s, motion to dismiss. This Notice is timely filed. A copy of the Order appealed from is attached to this Notice.

Dated: July 16, 2020

By: s/ Kathleen C. Barnes
Kathleen C. Barnes, SC Bar No. 78854
BARNES LAW FIRM, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529
kbarnes@barneslawfirmssc.com

Randolph Murdaugh, IV
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK
P.O. Box 457
Hampton, SC 29924
803-943-2111
rmurdaugh@pmped.com

Attorneys for Appellant

RECEIVED
Jul 16 2020
SC Court of Appeals

Other Counsel of Record:

Ronald K. Wray, II, SC Bar No. 65246

rwrap@gwblawfirm.com

James A. Bradshaw, SC Bar No. 100548

dbradshaw@gwblawfirm.com

GALLIVAN, WHITE & BOYD, P.A.

55 Beattie Place, Suite 1200

P.O. Box 10589

Greenville, SC 29603

864-271-9580

Attorneys for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Joseph Dean,

Plaintiff,

v.

CSX Transportation, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2020-CP-21-00958

ORDER

RECEIVED**Jul 16 2020****SC Court of Appeals**

This matter is before the Court on CSX Transportation, Inc.'s (hereinafter "CSXT") motion to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction. The Court conducted a hearing on the motion on May 26, 2020 via Webex, which was attended by counsel for all parties. Based upon the record before the Court and arguments of counsel, the Court finds that it lacks personal jurisdiction over CSXT in this case and hereby grants CSXT's motion to dismiss and dismisses the case without prejudice for the reasons set forth below.

BACKGROUND

Plaintiff Joseph Dean brings this action pursuant to the Federal Employers' Liability Act, 45 U.S.C. § 51, *et seq.* ("FELA"). Plaintiff alleges that while residing in Virginia and working for CSXT as a trainmaster assigned to CSXT's Richmond, Virginia yard, he was injured at the yard on April 16, 2017 and then later that night in an automobile accident that also occurred in Virginia. Plaintiff claims that he recently moved to South Carolina, but admits at the time of the accident at issue he both lived and worked in Virginia. CSXT is a Virginia corporation with its principal place of business in Jacksonville, Florida.

CONCLUSION OF LAW

This is a case brought against a corporation incorporated in Virginia, seeking recovery under the FELA for alleged injuries that allegedly occurred in Virginia to an individual who resided in Virginia. The United States Supreme Court has recently considered the question of personal jurisdiction in a FELA case. In *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549 (2017), like this case, the railroad was neither incorporated nor had its principal place of business in the forum state, the plaintiff's alleged injuries occurred in a non-forum state, and the plaintiff did not live or work in the forum state. In holding that personal jurisdiction did not exist, the Supreme Court stated: "the Fourteenth Amendment's Due Process Clause does not permit a State to hale an out of state corporation before its courts when the corporation is not "at home" in the forum state and the episode in suit occurred elsewhere". *Id.* at 1554. In fact, the Court held that the fact that the railroad had 2,000 employees in the forum state of Montana and over 2,000 miles of railroad track in Montana was not sufficient to establish personal jurisdiction because "BNSF, we repeat, is not incorporated in Montana and does not maintain its principal place of business there." *Id.* at 1559.

Despite this clear ruling in *Tyrrell* and its striking similarities to this case, Plaintiff contends that the Court can nonetheless exercise personal jurisdiction over CSXT in this case for Plaintiff's alleged injuries that occurred in Virginia while Plaintiff resided in Virginia. Plaintiff admits that CSXT is not "at home" in South Carolina and is not subject to all-purpose general jurisdiction in South Carolina. See *Tyrrell*, 137 S.Ct. at 1558 (describing "general jurisdiction" over a corporation existing "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State"). However, Plaintiff

contends that CSXT is subject to “specific or case-linked” personal jurisdiction in this case. *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017).

“‘Specific’ or ‘case-linked’ jurisdiction ‘depends on an ‘affiliatio[n] between the forum and the underlying controversy.’” *Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014); *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (holding that the specific jurisdiction analysis “is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction”). “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Bristol-Myers Squibb Co.*, 137 S.Ct. at 1781 (2017). To establish this connection, the specific jurisdiction analysis focuses on “if ‘the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.’” *Fidrych v. Marriott International, Inc.*, 952 F.3d 124, 138 (4th Cir. 2020).

In arguing that the Court has specific personal jurisdiction over CSXT in this case, Plaintiff first states, “CSX maintains significant South Carolina contacts, including a division headquarters in Florence, two major rail yards, an intermodal terminal, over 1,800 miles of track, and approximately 1,000 employees.” *Id.* at 6-7. Plaintiff admits that these activities by CSXT do not make it subject to general personal jurisdiction in this State, as this is precisely the same type of argument rejected by *Tyrrell*. As “[f]or specific jurisdiction, a defendant’s general connections with the forum are not enough.” *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1781 (2017). The Supreme Court has consistently held that “[a] corporation’s ‘continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011). For instance, in *Fidrych v. Marriott*

International, Inc., 952 F.3d 124 (4th Cir. 2020), the court found that Marriott was not subject to specific jurisdiction in South Carolina for an injury occurring in Italy even though Marriott had 90 hotels in South Carolina because the activities within South Carolina had “nothing to do with the claims asserted by the Plaintiffs in this action.” *Id.* at 139. Thus, the Court finds that the fact that CSXT has miles of track or over 1,000 employees within South Carolina cannot by itself subject CSXT to specific personal jurisdiction in this State.

Plaintiff also argues that before being assigned to live and work in Virginia, he worked in South Carolina and continued to work for the Florence Division when he worked in Virginia and occasionally traveled to South Carolina for meetings. Plaintiff argues that this case arises out of this “employer-employee relationship with CSX that always remained connected to South Carolina.” However, the Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.” *Walden*, 571 U.S. at 284. “[A] defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.” *Id.* at 286. The Court finds that the fact that Plaintiff at one time was an employee of CSXT in South Carolina and worked for the Florence Division while he lived in Virginia and occasionally attended meetings in South Carolina unrelated to this particular accident do not allow the Court to exercise specific personal jurisdiction over CSXT.

Finally, Plaintiff argues that CSXT is subject to personal jurisdiction in South Carolina in this case based on the fact that not his direct supervisor, but his supervisor’s supervisor (Division Superintendent Larry Koster), allegedly was working in South Carolina at the time of the accident and allegedly instructed Plaintiff via a telephone call placed by Plaintiff to perform work in Virginia that Plaintiff claims led to his Virginia accident. Plaintiff provided an affidavit

to the Court that states in pertinent part as follows: “At the time of the derailment, my boss, the Terminal Manager, was on vacation or otherwise not working. Therefore **I reported** the derailment to the Division Manager, Larry Koster (who was my next higher up boss) as I am required to do.” Affidavit of Joseph Dean, par. 11 (emphasis added). Plaintiff argues that even though he lived and worked in Virginia and the accident and alleged injuries occurred in Virginia, this single phone he placed to Mr. Koster from Virginia is enough to subject CSXT to specific personal jurisdiction in South Carolina in this case.

There are several problems with Plaintiff’s argument. First, several courts have held that “interstate communications alone are not sufficient to confer jurisdiction.” *Bell Paper Box, Inc. v. Trans Western Polymers, Inc.*, 53 F.3d 920, 923 (8th Cir. 1995); see *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1077 (10th Cir. 1995) (“It is well-established that phone calls and letters are not necessarily sufficient in themselves to establish minimum contacts.”); *Bolinske v. Herd*, 689 N.W. 397, 402 (N.D. 2004) (holding that “contacts consisting merely of long-distance telephone calls do not satisfy the minimal constitutional contacts required by due process”). In other words, “[t]elephone calls, email and telex messages, and letters do not form a basis for personal jurisdiction.” *DeCusati v. Reiss Engineering, Inc.*, C/A No. 3:15-cv-204-JAG, 2015 WL 4622494, at *3 (E.D.Va. July 30, 2015). These courts explain that “interstate communication is an almost inevitable accompaniment to doing business in the modern world, and cannot by itself be considered a ‘contact’ for justifying the exercise of personal jurisdiction.” *Cimmaron Corp. v. Smith*, 67 P.3d 258, 261 (Mont. 2003). In fact, courts in South Carolina have held that “[a] single phone call . . . is not sufficient to establish specific jurisdiction over a defendant.” *ScanSource, Inc. v. Mitel Networks Corp.*, C/A No. 6:11-cv-00382-GRA, 2011 WL 2550719, at *3 (D.S.C. June 24, 2011).

Additionally, the specific personal jurisdiction inquiry focuses on whether a non-resident defendant “‘purposefully directs’ his activities *toward* forum residents.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (emphasis added). Thus, the relevant inquiry is whether tortious activity was directed by the defendant toward an in-state South Carolina resident, not whether an allegedly in-state employee of a defendant directed activity towards an out-of-state resident and the accident and injury occurred out-of-state. For instance, in *Sonoco Products Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398 (D.S.C. 2012), the plaintiff argued that the Court had specific jurisdiction over a Canadian insurer because the insurer had hired a South Carolina claims adjuster who wrote a letter in Columbia, SC indicating the denial of the claim by the insurer, which was “the event that set this litigation in motion.” *Id.* at 409. However, in the letter, the adjuster indicated “that relevant claim information was to be sent to Canada, notes that the loss at issue occurred in Canada, references investigations presumably performed in Canada, and explains that ACE INA is denying the claim.” *Id.* Thus, the court held:

This single correspondence from Mr. Sheets gives no indication that ACE INA directed any activities at South Carolina. To the extent this letter can be read to evidence a contact with South Carolina, the putative contact is not enough to make a *prima facie* showing that the contact was “so substantial that [it] amount to a surrogate . . . presence.”

Id.; see *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E.2d 615 (Ct. App. 2013) (“While Farina may have spoken with officers that worked in the Greenville corporate office, there was no evidence to show Farina ever traveled to South Carolina for those conversations. Thus, Farina’s contacts do not establish that he would have reasonably expected to be haled into court in South Carolina, nor were the contacts sufficient for this State to fairly exercise personal jurisdiction over him.”); *Cribb v. Spatholt*, 382 S.C. 475, 486, 676 S.E.2d 706, 712 (Ct. App. 2009) (finding that a manager’s recruitment in South Carolina and purchasing of goods in South

Carolina for a job and work that would be completed in North Carolina was not sufficient to confer personal jurisdiction in South Carolina).

In fact, the specific personal jurisdiction inquiry's focus on whether a defendant directed a tortious activity "toward" a forum resident is consistent with South Carolina's longstanding interpretation of its long-arm statute. The long-arm statute states that "[a] court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . commission of a tortious act in whole or in part in this State." S.C. Code Ann. § 36-2-803. The phrase "commission of a tortious act in whole or in part in this State" has been held as applying "to in-state injuries resulting from out-of-state acts or omissions." *International Mariculture Resources v. Grant*, 336 S.C. 434, 437, 520 S.E.2d 160, 162 (Ct. App. 1999). In fact, courts in other jurisdictions interpreting similar language have found that "when the 'tortious act' is not physically tangible, such as a telephone call, it is not the situs of where the telephone call was placed or received, but instead, the situs of where the resultant injury to Plaintiff was suffered." *Dickerson v. Perdue*, No. 07-CV-206 DRH, 2007 WL 2122418, at *4 (S.D. Ill. July 20, 2007).

Here, Plaintiff's argument regarding Mr. Koster misapplies the specific jurisdiction analysis and does not justify exercising specific jurisdiction over CSXT in this case. There is no evidence that anyone with CSXT purposefully directed any activities towards anyone in South Carolina or that anyone was injured in South Carolina, which is the forum state here. To the extent Mr. Koster directed anyone to do anything, his directions were to a citizen of Virginia, not South Carolina. To the extent any injuries occurred, they occurred in Virginia. As importantly, Plaintiff admits that it was he who directed the call from Virginia to Mr. Koster, who he claims was working in South Carolina. Plaintiff's phone call to Koster therefore does not constitute

tortious activity *by the defendant* directed at South Carolina as is required for the Court to exercise personal jurisdiction in this case. This single phone call made by Plaintiff from Virginia is simply too tenuous of a connection to comply with Due Process. As such, the Court further finds that any exercise of personal jurisdiction over CSXT in this case in South Carolina would be constitutionally unreasonable. *See Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016) (stating that one prong of the personal jurisdiction analysis is “whether the exercise of personal jurisdiction would be constitutionally reasonable”).

Finally, the Court notes that by dismissing this case, the Court does not leave Plaintiff without a remedy. It is undisputed that Plaintiff has filed an identical action in Florida, where CSXT has its principal place of business. Under the circumstances of this case, the Court finds that this case should be dismissed without prejudice and the parties can litigate in Florida whether Virginia or Florida is the proper venue for Plaintiff to pursue his claims.

CONCLUSION

IT IS THEREFORE ORDERED that CSXT’s motion to dismiss is GRANTED. This case is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

(ELECTRONIC SIGNATURE TO FOLLOW)



Florence Common Pleas

Case Caption: Joseph Dean VS Csx Transportation Inc

Case Number: 2020CP2100958

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2020-06-17 12:24:03 page 9 of 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	CIVIL ACTION NO. 2020-21-
	)	
JOSEPH DEAN	)	
	)	
Plaintiff,	)	
	)	
VERSUS	)	COMPLAINT FOR DAMAGES
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

NOW COMES, through undersigned counsel, Plaintiff Joseph Dean., who files the following Complaint for Damages against Defendant CSX Transportation, Inc., and shows the Court as follows:

I.

Plaintiff Joseph Dean is a person of the full age of majority and a citizen of the State of South Carolina, County of Richland, living in Columbia, South Carolina.

II.

Defendant CSX Transportation, Inc. (hereinafter referred to as “CSX”) is a corporation duly organized and existing under the laws of the State of Virginia, having its principal place of business in Jacksonville, Florida, with railroad tracks and facilities located in and doing business throughout the State of South Carolina including, but not limited to the County of Florence.

III.

This is an action arising under the provisions of the Federal Employers’ Liability Act, 45 U.S.C. §51, *et seq.*, to recover damages for personal injuries sustained by Plaintiff while employed by CSX and while engaged in interstate commerce.

IV.

At all times mentioned in this Complaint, CSX was a common carrier by railroad, engaged in interstate commerce through and between the several states, and Plaintiff was employed by CSX to further those activities. The injuries complained of herein were sustained within the course and scope of Plaintiff's employment with CSX.

V.

Jurisdiction is proper because this is a civil case in which the matter in controversy is within the Court's jurisdictional limits. Further, Plaintiff was hired and employed by Defendant in the State of South Carolina, and this action arises from the employer—employee relationship, granting this Court specific personal jurisdiction over Defendant in this matter.

VI.

Venue is proper as Defendant is currently doing business within the State of South Carolina and within the County of Florence.

VII.

On or about April 16, 2017, Plaintiff was injured while in the course of his employment with Defendant CSX as a Trainmaster whose home terminal was Defendant's Richmond Yard in Richmond, Virginia; and his duties then and at the time of the accident hereinafter recited, were part and parcel of the operation of Defendant CSX's rail lines in interstate commerce.

VIII.

On the aforementioned date, while working as a Trainmaster, Plaintiff was working a thirteen-hour shift on April 16, having completed a nineteen-hour shift the day before, with only four hours rest between the two. As a Trainmaster, his job duties include walking through the rail yard and inspecting rail cars for safety issues. While walking through the Richmond Yard on April

16, 2017, he encountered a broken knuckle obstructing a walking area on a switching lead. He attempted to pick up the knuckle and move it to an area where it would not present a hazardous condition to his co-employees, but in doing so he stepped into a hole, suddenly and without warning, causing an immediately painful “pop” in his back. Plaintiff reported his injury and attempted to return to the CSX office at the Richmond Yard by truck, but as he was driving he “blacked out,” likely due to the pain and his exhaustion at having worked over twenty hours of the previous twenty-four, and the truck crashed into a telephone pole. Plaintiff was left with severe and disabling injuries to his back, neck, and sternum, *inter alia*.

IX.

Under the provisions of 45 U.S.C. § 51, *et seq.*, Defendant CSX had a non-delegable duty to provide Plaintiff with a reasonably safe place in which to work; thus, CSX must stand responsible for the injuries and damages it caused to Plaintiff.

X.

At the time and place described above, Defendant CSX, its agents, its officers, and/or employees were guilty of one or more of the following negligent acts or negligent omissions which proximately caused the injuries of JOSPEH DEAN, Plaintiff, which acts and omissions are set out herein by way of illustration and not limitation:

- a. In that CSX failed to provide Plaintiff with a reasonably safe place in which to work;
- b. In that CSX failed to inspect and provide proper inspection, maintenance and repair of the Yard to be certain same was safe for its employees, including Plaintiff;
- c. In that CSX failed to exercise due care and caution commensurate with the surrounding circumstances;

- d. In that CSX failed to provide Plaintiff with reasonable equipment to perform his job safely;
- e. In that CSX failed to provide sufficient training to Plaintiff;
- f. In that CSX failed to keep the walkways in Richmond Yard clear of debris and tripping hazards resulting in dangerous walking conditions and unsafe working conditions;
- g. In that CSX failed to schedule sufficient time off for Plaintiff to adequately rest before resuming his duties for Defendant;
- h. In that CSX failed to hire an adequate number of employees to prevent the Plaintiff from having to work over twenty hours of the previous twenty-four; and
- i. Any and all other acts or omissions of negligence which will be fully demonstrated at the trial on the merits of this matter.

XI.

The aforelisted negligent acts and/or negligent omissions were committed by employees, agents, and/or representatives of Defendant CSXT, while acting in the course and scope of their employment, thereby rendering Defendant CSXT vicariously liable under the theory of *respondeat superior*.

XII.

Plaintiff was injured while engaged in the scope of his employment with CSX as a direct and proximate result of Defendant CSX's negligence, without fault on the part of Plaintiff.

DAMAGES

XV.

As a result of the aforesaid events, Plaintiff sustained serious and permanent physical injuries and disabilities to his back, neck, and sternum, *inter alia*. Furthermore, Plaintiff has suffered and will in the future suffer great physical pain, mental anguish, and physical deformity. Plaintiff has lost and will in the future lose substantial time from employment with substantial loss of earnings therefrom. Plaintiff has incurred and will in the future incur substantial expenses for medical and related treatment.

XVI.

Plaintiff avers that, at the time of the accident and concomitant injuries, he was an employee of Defendant CSX, and demands full recovery for all sums reasonable in the premises for the following items:

- a. Physical pain and suffering, past and future;
- b. Severe mental anguish, past and future;
- c. Lost wages, loss of earning capacity, and/or loss of fringe benefits, past and future;
- d. Loss of enjoyment of life, past and future;
- e. Physical scarring and/or disfigurement; and
- f. Unpaid medical expenses, past and future.

XVII.

Plaintiff demands a trial by jury for all issues triable as of right.

WHEREFORE, Plaintiff Joseph Dean seeks compensation from Defendant CSX Transportation, Inc. for actual damages, as well as physical and mental pain and suffering, in an amount to be determined by a jury after fairly considering the evidence, along with costs of this action and post judgment interest.

Respectfully submitted,
PETERS, MURDAUGH, PARKER, ELTZROTH, DETRICK

s/Randolph Murdaugh, IV
RANDOLPH MURDAUGH, IV, ESQ.

101 Mulberry Street East
P.O. Box 457
Hampton, South Carolina 29924
Telephone: (803) 943-2111
Facsimile: (803) 914-2014
Email: rmurdaugh@pmped.com

And

BLAKE G. ARATA

JASON C. MACFETTERS

ROME, ARATA, BAXLEY & STELLY, L.L.C.

650 Poydras Street, Suite 2017
New Orleans, LA 70130
Telephone: (504) 522-9980
Facsimile: (504) 522-9971
Email: barata@romearata.com
jmacfettters@romearata.com

Attorneys for Plaintiff,
Joseph Dean

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No.: 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	CSXT’S MOTION TO DISMISS FOR
Plaintiff,	)	LACK OF PERSONAL JURISDICTION
	)	
v.	)	
	)	
CSX Transportation, Inc.,	)	
	)	
Defendant.	)	
_____	)	

TO: RANDOLPH MURDAUGH, IV, BLAKE G. ARATA, AND JASON C. MACFETTERS, ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that the Defendant, CSX Transportation, Inc. (hereinafter “CSXT”), by and through its undersigned counsel, hereby moves pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for an order dismissing the Plaintiff’s Complaint for lack of personal jurisdiction. CSXT makes this motion based upon the following ground:

The Court lacks personal jurisdiction over CSXT in this action. The Due Process Clause “does not permit a State to hale an out-of-state corporation before its courts when the corporation is not ‘at home’ in the State and the episode-in-suit occurred elsewhere.” *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1554 (2017); *see Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (“South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.”). A corporation is considered to be “at home” in “the corporation’s place of incorporation and its principal place of business” in the absence of exceptional circumstances not present in this case. *See Tyrrell*, 137 S. Ct. at 1558 (citing *Daimler AG v. Bauman*, 134 S. Ct. 746). The incident giving rise to this action occurred in Richmond, Virginia and was unrelated to any activities occurring within the State of South Carolina. *See Compl.* ¶ VII. CSXT is a Virginia corporation with its principal place of business

in Jacksonville, Florida and is not considered “at home” in South Carolina. *See* Exhibit 1, Aff. of Lauren Lamp, ¶ 3; *Tyrrell*, 137 S. Ct. at 1559 (stating “[a] corporation that operates in many places can scarcely be deemed at home in all of them.”); *Grabowski v. Northrop Gumman Sys. Corp.*, C/A No. GLR-16-3492, 2017 U.S. Dist. LEXIS 120750, at *8 (D. Md. June 30, 2017) (finding that despite the fact that the defendant had 11,000 employees in Maryland and an office location, it was not considered “at home” in Maryland). Therefore, the Court cannot exercise personal jurisdiction over Plaintiff’s claims, and the Complaint should be dismissed.

WHEREFORE, CSXT respectfully requests that this Court dismiss Plaintiff’s Complaint in its entirety based on the lack of personal jurisdiction.

This motion is based upon the complaint filed in this action, Rule 12 of the South Carolina Rules of Civil Procedure, any memoranda and affidavits filed in support of this motion, and upon applicable common and statutory law.

April 15, 2020

s/Ronald K. Wray, II

Ronald K. Wray, II (S.C. Bar 65246)
James A. Bradshaw (S.C. Bar 100548)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-9580
Facsimile: (864) 271-7502

Attorneys for CSX Transportation, Inc.

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No.: 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	AFFIDAVIT OF LAUREN M. LAMP
Plaintiff,	)	
	)	
v.	)	
	)	
CSX Transportation, Inc.,	)	
	)	
Defendant.	)	
_____	)	

1. My name is Lauren M. Lamp. I am a resident of Virginia, over the age of 18, and I am competent to provide this affidavit. This affidavit is given based on my personal knowledge.

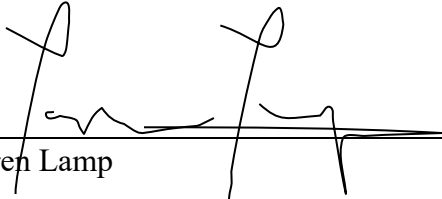
2. I am employed by CSX Transportation, Inc. (hereinafter "CSXT") as a Field Investigations Specialist II.

3. CSXT is a Virginia corporation with its principal place of business located in Jacksonville, Florida.

4. The incident involving Plaintiff Joseph Dean that is the subject of his Complaint occurred on April 16, 2017 at CSXT's ACCA Yard in Richmond, Virginia. No part of the incident occurred in the State of South Carolina.

FURTHER AFFIANT SAYETH NOT.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT BY CONTEMPT.



Lauren Lamp

April 14, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	CIVIL ACTION NO. 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF’S MEMORANDUM IN
v.	)	OPPOSITION TO DEFENDANT’S
	)	MOTION TO DISMISS FOR LACK OF
CSX Transportation, Inc.,	)	PERSONAL JURISDICTION
	)	
Defendant.	)	
	)	

Plaintiff Joseph Dean (“Mr. Dean”) submits this Memorandum in opposition to Defendant CSX Transportation, Inc.’s, (“CSX”) motion to dismiss for lack of personal jurisdiction filed April 15, 2020. For the reasons stated below, and based on the filings in this case, exhibits filed along with this motion, as well as any affidavits, other evidence or memorandum of law presented to the Court, and argument of counsel at a hearing, the Court should deny the motion.

FACTUAL BACKGROUND

Mr. Dean is a lifelong resident of South Carolina with the exception of approximately five years when he lived in Richmond, Virginia. Mr. Dean currently lives in Columbia, South Carolina. (Cmplt. ¶ I). In 2011, CSX hired Mr. Dean while he lived in South Carolina to work in South Carolina for the Florence Division. (Cmplt. ¶ V; **Exh. 1** Aff. of Dean ¶ 3). The Florence Division included South Carolina, North Carolina, and Virginia. (Aff. of Dean ¶ 3). The Division headquarters are located in Florence, South Carolina. *Id.*; **Exh. 2** CSX Documents. CSX sent Mr. Dean to Charleston, South Carolina, to undergo training for a trainmaster job. (Aff. of Dean ¶ 4). CSX then assigned Mr. Dean to work in Greenwood, South Carolina. *Id.*

In 2012, CSX told Mr. Dean to move to Virginia to continue to work for the Florence Division but to work out of a Richmond, Virginia, location. (Aff. of Dean ¶ 5). Mr. Dean worked

as a trainmaster in Richmond but his work also included assignments and meetings in South Carolina. (Aff. of Dean ¶¶ 7-8). Mr. Dean's direct boss, the Terminal Manager, worked in Richmond but his next higher-up boss, Division Manager Larry Koster, worked in Florence, South Carolina. (Aff. of Dean ¶ 6). During Mr. Dean's location in Richmond, Mr. Koster, while working in Florence, South Carolina, gave Mr. Dean direct work orders, including orders to perform work in South Carolina. (Aff. of Dean ¶ 7). Mr. Dean also attended approximately five CSX meetings per year in South Carolina. (Aff. of Dean ¶ 8).

On April 15, 2017, Mr. Dean reported to work at 5:30 pm for his usual shift. (Aff. of Dean ¶ 9). In the early morning hours of April 16, 2017, a train derailed at the Richmond, Virginia, rail yard. (Aff. of Dean ¶ 10). The Terminal Manager, Mr. Dean's direct boss was on vacation or otherwise not working at the time, so Mr. Dean reported the derailment to Mr. Koster, the Division Manager in Florence, South Carolina. (Aff. of Dean ¶ 11). From his Florence, South Carolina, office, Mr. Koster gave Mr. Dean orders to stay on duty until a resolution of the derailment occurred. *Id.* By the time he completed work on the derailment, Mr. Dean worked almost 20 hours straight. (Cmplt. ¶ VIII; Aff. of Dean ¶ 11). A short while later, Mr. Dean returned to work his normally scheduled shift at 6:00 pm on April 16, 2017. (Aff. of Dean ¶ 12). He worked without rest until approximately 2:30 am on April 17, 2017, when he suffered an injury while working as a trainmaster at the Richmond, Virginia, rail yard. (Cmplt. ¶ VII; Aff. of Dean ¶ 12).

While walking through the rail yard to inspect rail cars for safety issues, Mr. Dean found a broken knuckle part obstructing a walking area and, when he attempted to move it to a safe location, he stepped into a hole and felt a painful "pop" in his back. (Cmplt. ¶ VIII). Mr. Dean reported the injury and then began to drive back to the CSX office. *Id.* During the drive, he "blackened out" due to the pain and his exhaustion at being assigned to work for over twenty of the

last twenty-four hours. *Id.* When Mr. Dean blacked out, the truck he drove crashed into a telephone pole and resulted in severe and disabling injuries to his back, neck, and sternum, among other injuries. *Id.*

CSX is a national transportation business that is incorporated in Virginia and maintains its principal place of business in Florida. (Cmplt. ¶ II). Its major service market is the eastern United States. (Exh. 2). CSX conducts substantial activities in South Carolina. CSX operates a division headquarters and major rail yard in Florence, South Carolina. *Id.* In Charleston, South Carolina, CSX operates a major rail yard, transflo terminal, and intermodal terminal. *Id.* It also operates transflo terminals in Greenville and Spartanburg, and an auto distribution terminal in Columbia. *Id.* CSX maintains about 1,800 miles of track and over 1,750 grade crossings in South Carolina. *Id.* It also employs approximately 1,000 people in South Carolina. *Id.* CSX first registered to do business in South Carolina in 1948 and maintains a registered agent in South Carolina. *Id.*

On April 1, 2020, Mr. Dean filed this action in Florence County under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51, *et seq.*, to recover for the injuries he suffered while employed by CSX. On April 15, 2020, CSX filed a motion to dismiss for lack of personal jurisdiction. (Mot.). CSX asserts that it is not subject to general jurisdiction in South Carolina, which Mr. Dean does not dispute. CSX asserts that it is not subject to specific jurisdiction in South Carolina because "[t]he incident giving rise to this action occurred in Richmond, Virginia, and was unrelated to any activities occurring within the State of South Carolina." (Mot. p. 1). CSX submitted the affidavit of a Field Investigations Specialist who attested to only the fact that the incident occurred in its Richmond, Virginia, rail yard and not in South Carolina. (Exh. 1 to Mot.).

Plaintiff submits this memorandum in opposition to CSX's motion, and asks the Court to deny the motion.

STANDARD

“At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Id.* at 491, 611 S.E.2d at 508. “When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Cribb v. Spatholt*, 382 S.C. 490, 676 S.E.2d 714 (Ct. App. 2009) (internal quotation marks omitted). “The decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law.” *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008).

ARGUMENT

This case involves specific, not general, personal jurisdiction. “The court acquires specific jurisdiction over a cause of action arising from a defendant’s contacts with the state through the long arm statute.” *Leggett v. Smith*, 386 S.C. 63, 686 S.E.2d 699 (Ct. App. 2009) (citing S.C. Code Ann. § 36-2-803). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause,” therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *see also Cribb v. Spatholt*, 382 S.C. 490, 498-99, 676 S.E.2d 714, 718-19 (Ct. App. 2009) (noting the “more recent trend” dispenses with determining if the long arm statute applies and “compresses the analysis into a due process assessment only”).

“Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice[,] . . . [and] such that he could reasonably anticipate being haled into court there.” *Cribb*, 382 S.C. at 499, 676 S.E.2d at 719 (internal citation and quotation marks omitted). South Carolina courts use “a two-pronged analysis” to determine if the exercise of specific jurisdiction comports with due process. *Id.* “The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the ‘power’ to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair.” *Id.* (internal quotation marks omitted). CSX does not contest the second prong. (Mot.). As to the first prong, to satisfy it, “the court must find the defendant directed his activities to residents of South Carolina **and** that the cause of action arises out of or relates to those activities.” *Id.* (emphasis added). CSX does not dispute that it purposefully directed activities to South Carolina residents. (Mot.). The only dispute is whether Mr. Dean’s FELA cause of action arises out of or relates to CSX’s activities directed at South Carolina (the “relatedness requirement”). (Mot. p. 1) (“The incident giving rise to this action . . . was unrelated to any activities occurring within” South Carolina).

In this case, Mr. Dean’s litigation directly arises out of and relates to CSX’s activities in South Carolina. Mr. Koster, the CSX Division Manager located in **Florence, South Carolina**, gave Mr. Dean a direct order **from South Carolina** to work until the derailment resolved. (Aff. of Dean ¶¶ 11, 14). Mr. Dean’s exhaustion from the long hours of work directly contributed to his work injury. (Cmplt. ¶P VIII, X; Aff. of Dean ¶¶ 12-13). Therefore, this litigation arises out of CSX’s South Carolina activities. This alone is sufficient to deny the motion to dismiss. Regardless, there are additional ways in which Mr. Dean’s action arises out of or relates to CSX’s South Carolina activities.

The relatedness requirement is essentially an explanation of the difference between general and specific jurisdiction. “Adjudicatory authority is specific when the suit arises out of or relates to the defendant’s contacts with the forum.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) (internal quotation marks omitted). To analyze whether Mr. Dean satisfies the relatedness requirement for specific jurisdiction, it is necessary to understand the exact nature of “the litigation” at issue. *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014) (“The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation.” (quotation marks omitted)).

Mr. Dean brings an action under FELA, which provides that a railroad “shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier.” 45 U.S.C. § 51. “FELA is a federal statute which provides the framework for handling the injury claims of federal railroad workers.” *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 476, 567 S.E.2d 851, 853 (2002). “A FELA action brought in state court is controlled by federal substantive law and state procedural law.” *Id.* at 476, 567 S.E.2d at 853. In a FELA case, the defendant railroad causes a worker’s injury “if the railroad’s negligence played a part—no matter how small—in bringing about the injury.” *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 705 (2011) (internal quotation and alteration marks omitted). Mr. Dean alleges CSX acted negligently in numerous ways that caused his injuries, including failing to provide him with a reasonably safe workplace, failing to provide sufficient training, failing to schedule sufficient time off of work, and failing to hire an adequate number of employees. (Cmpl. ¶ X).

In this case, there is an actual and sufficient relationship among CSX (the defendant), South Carolina (the forum), and Mr. Dean’s claims (the litigation). CSX maintains significant South

Carolina contacts, including a division headquarters in Florence, two major rail yards, an intermodal terminal, over 1,800 miles of track, and approximately 1,000 employees. (Exh. 1). See *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 142 (4th Cir. 2020) (stating “the key issue in a specific jurisdiction case [is] whether the defendant has *purposefully directed* its activities at residents of the forum” (internal quotation and alteration marks omitted)). This litigation is brought by a South Carolina resident that CSX hired to work in South Carolina and, later, to continue work for a division headquartered in Florence, South Carolina. (Aff. of Dean ¶¶ 3-5). Mr. Dean’s employment with CSX never severed its initial connection to and relationship with South Carolina. One of his direct bosses, the Division Manager, was located in Florence, South Carolina, and gave him direct orders to perform work for CSX in South Carolina. (Aff. of Dean ¶ 7). Mr. Dean attended approximately five CSX meetings per year in South Carolina. (Aff. of Dean ¶ 8). CSX knowingly maintained a relationship between Mr. Dean’s employment and its South Carolina activities. Mr. Dean’s litigation is based on his employer-employee relationship with CSX that CSX purposefully and knowingly kept connected to South Carolina. Therefore, it “could reasonably anticipate being haled into court” in South Carolina for an action related to Mr. Dean’s employment. *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct. App. 2009). Further, Mr. Dean alleges that his injuries were caused by being overworked, and the order requiring him to work more than his normal hours came directly from the CSX Division Manager located in Florence, South Carolina. (Cmplt. ¶¶ VIII, X; Aff. of Dean ¶¶ 11-14). The litigation arises out of or relates to CSX’s South Carolina activities. The Court should find Mr. Dean satisfies the relatedness requirement.

That the physical injury event occurred in Virginia is not dispositive of the relatedness requirement in this case. Specific jurisdiction exists “against out-of-state defendants when the

episode-in-suit occurred in the forum **or** the defendant purposefully availed itself of the forum.” *Daimler AG v. Bauman*, 571 U.S. 117, 128 (2014) (emphasis added). No recitation of the relatedness requirement is as rigid and mechanical as to require the injury event occur in the forum state. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (“The Court long ago rejected the notion that personal jurisdiction might turn on ‘mechanical’ tests” (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945))); *Bristol-Myers*, 137 S. Ct. at 1780-81 (referring to “an affiliation” and a “connection”); *Daimler*, 571 U.S. at 139 n.20 (stating that “when specific jurisdiction is at issue . . . a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction”). CSX’s business is inherently interstate. That Mr. Dean was physically located in Richmond at the time of the injury event does not mean that this litigation does not relate to CSX’s South Carolina activities. The litigation is based in part on a work order that came from a Division Manager located in Florence, South Carolina, and arises out of Mr. Dean’s employer-employee relationship with CSX that always remained connected to South Carolina. As explained above, even after physically moving Mr. Dean to Richmond, CSX continued to give him orders from a boss located in South Carolina, to have him perform work in South Carolina, required him to attend meetings in South Carolina, and issued an order from South Carolina requiring him to work almost 20 hours of the previous 24 that resulted in exhaustion and caused his injuries. (Cmplt. ¶¶ VIII, X; Aff. of Dean ¶¶ 11-14). Therefore, Mr. Dean’s claims relate to CSX’s conduct in South Carolina.

CONCLUSION

For these reasons, the Court should deny CSX’s motion and find specific personal jurisdiction exists over CSX in this case.

Respectfully submitted,

/s/ Randolph Murdaugh, IV

Randolph Murdaugh, IV
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
rmurdaugh@pmped.com

Blake G. Arata
Jason C. MacFetters
ROME, ARATA, BAXLEY & STELLY, LLC
650 Poydras Street, Suite 2017
New Orleans, LA 70130
(504) 522-9980
barata@romearata.com
jmacfetters@romearata.com

Attorneys for Plaintiff Joseph Dean

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	CIVIL ACTION NO. 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF JOSEPH DEAN IN
	)	SUPPORT OF PLAINTIFF'S
v.	)	MEMORANDUM IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO DISMISS
CSX Transportation, Inc.,	)	FOR LACK OF PERSONAL
	)	JURISDICTION
Defendant.	)	
	)	

I, Joseph Dean, depose and say:

1. I am over the age of twenty-one, am competent to give this affidavit, have personal knowledge of the matters set forth herein, and make the following statements to the best of my knowledge.

2. I have been a life-long resident of South Carolina with the exception of approximately five years when I resided in Virginia.

3. CSX hired me in January 2011 as a trainmaster for the Florence Division. During my employment with CSX, the Florence Division included South Carolina, North Carolina, and Virginia, and the Division Headquarters were located in Florence, South Carolina.

4. Upon my hire in 2011, CSX sent me to training in Charleston, South Carolina, and then first assigned me to work in Greenwood, South Carolina, within the Florence Division.

5. In 2012, CSX told me I would have to move to Virginia but that I would continue to work for the Florence Division out of a Richmond, Virginia, location. The job relocation is the sole reason I moved.



6. While I worked for CSX in Richmond, my direct boss was the Terminal Manager located in Richmond, and his boss (who was my next higher-up boss) was the Division Manager located in Florence, South Carolina, Larry Koster.

7. Several times per year I received direct orders from the Division Manager in Florence, South Carolina, some of which included orders to perform work in South Carolina.

8. Approximately five times per year I attended CSX meetings at the CSX Florence Division Headquarters in South Carolina.

9. On April 15, 2017 I reported to work as usual at approximately 5:30 PM to work my normal shift which would ordinarily end at 6:30 AM on April 16, 2017.

10. In the early AM hours of April 16, 2017 before daylight, a train derailed in the Richmond, VA yard as a result of a mistake of a CSX employee under my supervision.

11. At the time of the derailment, my boss, the Terminal Manager, was on vacation or otherwise not working. Therefore, I reported the derailment to the Division Manager, Larry Koster (who was my next higher up boss) as I am required to do. Larry Koster required me to remain on duty to take care of the derailment which required me to remain on the job almost 20 hours.

12. With virtually no rest, I was required to begin my normal shift at about 6:00 PM on April 16, 2017 and I worked without rest until 2-2:30 AM on April 17, 2017 when I was injured. It had been over 30 hours from when I reported to work on April 15, 2017 until my injury on April 17, 2017 with virtually no rest.

13. On April 17, 2017, I suffered personal injuries at a CSX rail yard in Richmond, Virginia, and was further injured in a motor vehicle accident on my way back to the CSX office, as described in the Complaint in this action. Part of the cause of my injuries was having to work many hours without adequate rest. Had Larry Koster not ordered me to remain on duty to complete

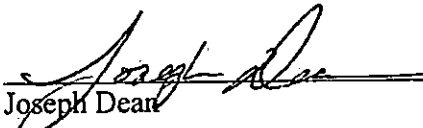
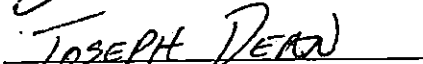
the derailment work, I would have had normal and adequate rest and I likely would not have been injured as I was.

14. When Larry Koster required me to work almost 20 of the previous 24 hours leading up to my injury, he was working in Florence, SC.

15. After the injuries, CSX informed me that I would no longer be allowed to work in Richmond, VA.

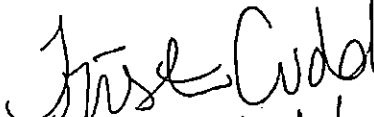
16. I continued to receive treatment for my physical and mental injuries in Virginia but later moved to South Carolina. The counselor treating me for my injuries recognized that I did not have support network in Virginia but had a good support network in South Carolina. My counselor believed that in moving back to South Carolina would help me, and she supported that move so that I could be closer to my family support network during my recovery. I initially moved back to Florence, SC and then moved to Columbia, South Carolina to live with my mother.

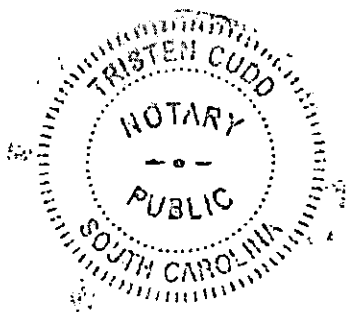
I the undersigned acknowledged that after being placed under oath I make the above declaration of my own knowledge and belief and the statements herein are true to the best of my knowledge and belief. I further recognize, declare and verify that I am making the above declarations under the penalty of perjury that the foregoing is true and correct.


Joseph Dean

Printed Name

Sworn to before me this
22 day of May, 2020.

Notary Public for South Carolina
My Commission Expires: 02/09/2029


Tristen Cudd



CSX IN SOUTH CAROLINA



CSX Operations in South Carolina

- Operates and maintains nearly 1,800 miles of track*
- Maintains more than 1,750 public and private grade crossings
- Handled more than 1 million carloads of freight on the state's rail network
- At the end of 2015, CSX employed nearly 1,000 people
- Throughout 2015, CSX reported more than \$100.2 million in compensation for employees**
- In 2015, CSX invested more than \$100.2 million in its South Carolina network. In addition, the company invested more than \$1 billion in freight cars and other rolling assets to serve customers throughout its rail system.
- CSX carries a variety of commodities important to our economy and way of life, including consumer products, automobiles, food and agriculture products, and coal. Products shipped within the state include containerized consumer goods, coal, textile chemicals, plastics, and aggregates.

CSX Facilities in South Carolina

- Major rail yards in Charleston and Florence
- Intermodal terminal in Charleston
- TRANSFLO terminals in Charleston, Greenville (two), and Spartanburg
- Automotive distribution center in West Columbia (Dixiana)
- LEED® certified building in Florence
- Dispatch center in Florence
- Division headquarters in Florence

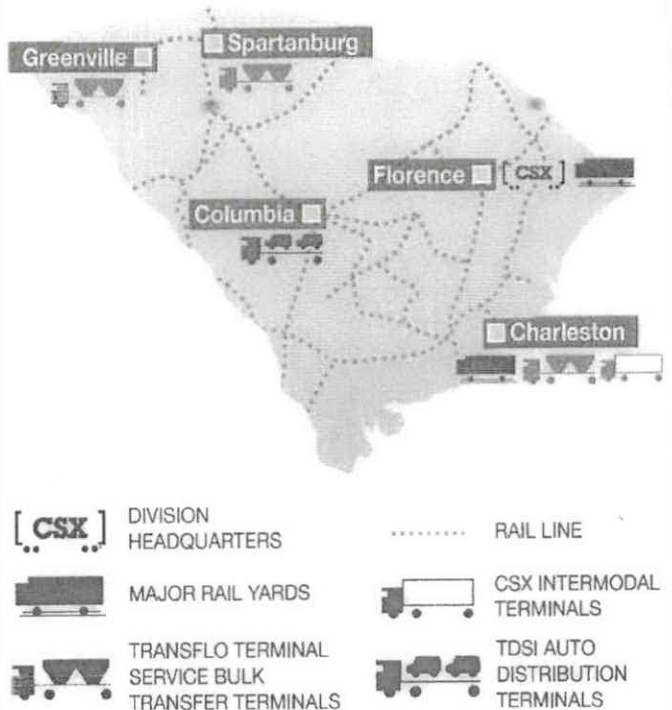
CSX and the South Carolina Community

- In partnership with state and local economic development agencies, South Carolina businesses invested approximately \$173.3 million in new or expanded rail-served facilities on CSX or its connecting regional and short lines in 2015. These investments will generate nearly 120 new jobs at those businesses.

* Miles of track includes single main track, other main track, yard tracks and sidings as of December 31, 2015.

** This figure includes current and former employees.

CSX OPERATING FACILITIES: SOUTH CAROLINA



- CSX has designated White Hawk Commerce Park in Florence, the I-26 Mega Site in Newberry County and the West Branch Commerce Park in Moncks Corner as "Select Sites," rail-served, ready-to-build locations for industrial development and expansion. The "Select Site" program is part of CSX's network-wide economic development initiative.
- CSX is a team sponsor of the Columbia, S.C., City Year site. Through its partnership with City Year, CSX is helping to strengthen education in major cities throughout the United States.
- In 2015, CSX contributed more than \$293,000 to organizations in South Carolina, including the South Carolina National Safety Council, Lowcountry Open Land Trust, the James E. Clyburn Scholarship and Research Foundation, and Camp Pee Dee Pride.



Revised on July 20, 2016



About Us / Company Overview

Company Overview

Organization

Corporate Governance

CSX Leadership

CSX Police Department

Network and
OperationsAwards and
Recognition

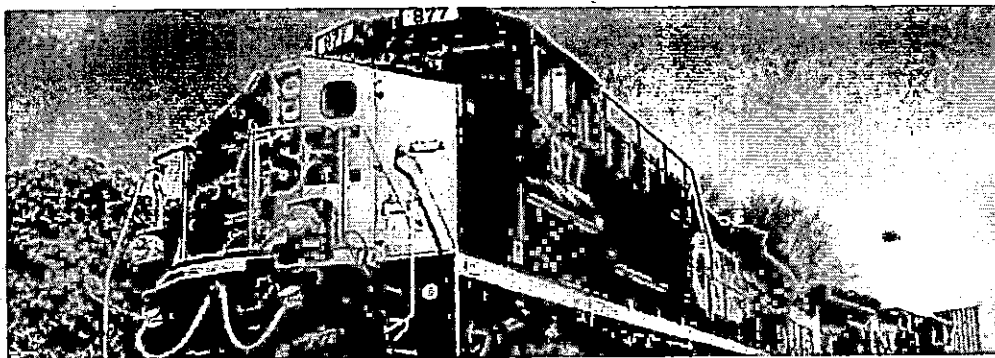
Political Contributions

Website Accessibility

Colocation Services

Railroad Dictionary

Company Overview



CSX Corporation, together with its subsidiaries based in Jacksonville, Fla., is one of the nation's leading transportation suppliers. The company's rail and intermodal businesses provide rail-based transportation services including traditional rail service and the transport of intermodal containers and trailers.

Overall, the CSX Transportation network encompasses about 21,000 route miles of track in 23 states, the District of Columbia and the Canadian provinces of Ontario and Quebec. Our transportation network serves some of the largest population centers in the nation. Nearly two-thirds of Americans live within CSX's service territory.

Our transportation network serves some of the largest population centers in the nation. Nearly two-thirds of Americans live within CSX's service territory.

CSX serves major markets in the eastern United States and has access to over 70 ocean, river and lake port terminals along the Atlantic and Gulf Coasts, the Mississippi River, the Great Lakes and the St. Lawrence Seaway. The company also has access to Pacific ports through alliances with western railroads.

CSX moves a broad portfolio of products across the country in a way that minimizes the effect on the environment, takes traffic off an already congested highway system, and minimizes fuel consumption and transportation costs.

Related Links

[Safety](#)
[Environment](#)
[Annual Reports](#)

[Press Releases](#)

Business Entities Online

File, Search, and Retrieve Documents Electronically

CSX TRANSPORTATION, INC.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated State: Virginia

Important Dates

Effective Date: 05/03/1948

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: CT CORPORATION SYSTEM

Address: 2 OFFICE PARK COURT SUITE 103
COLUMBIA, South Carolina 29223

Official Documents On File

Filing Type	Filing Date
Change of Agent or Office	09/21/2016
Change of Agent or Office	08/31/2011
Amendment	08/08/1986
Amendment	11/21/1963
Amendment	05/29/1956
Authority	05/03/1948

Former Names

Name	Filing Date
SEABOARD AIR LINE RAILROAD COMPANY	N/A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No.: 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	CSXT’S REPLY IN SUPPORT OF ITS
Plaintiff,	)	MOTION TO DISMISS FOR LACK OF
	)	PERSONAL JURISDICTION
v.	)	
	)	
CSX Transportation, Inc.,	)	
	)	
Defendant.	)	
	)	

This is a case brought by a Virginia resident¹, against a corporation incorporated in Virginia, seeking recovery for alleged injuries that allegedly occurred in Virginia. In *BNSF Ry. Co. v. Tyrell*, 137 S.Ct. 1549 (2017) the United States Supreme Court considered an identical case and ruled that exercising personal jurisdiction over a foreign corporation in these circumstances violates due process. Like here, *Tyrell* was an FELA case brought in a forum by a plaintiff who neither lived nor worked in the forum state, against a railroad that was neither incorporated nor had its principal place of business in the forum state, relating to injuries that allegedly occurred in a non-forum state. In holding that personal jurisdiction did not exist, the Supreme Court stated: “the Fourteenth Amendment’s Due Process Clause does not permit a State to hale an out of state corporation before its courts when the corporation is not “at home” in the forum state and the episode in suit occurred elsewhere”. *Id.* at 1554.

Incredibly, despite the fact that *Tyrell* is directly on point and was cited as the basis for CSXT’s motion to dismiss, Plaintiff neither cites nor mentions *Tyrell* anywhere in his nine page memorandum opposing CSXT’s motion. Instead, Plaintiff makes arguments specifically rejected in *Tyrell* and relies on cases that are completely inapposite to the facts here. For example,

¹ Plaintiff claims he recently moved to South Carolina, but admits at the time of the accident at issue he both lived and worked in Virginia.

Plaintiff provides the Court an exhibit and makes arguments relating to CSXT's operations, number of employees, and presence in South Carolina. However, *Tyrell* considered and rejected these same arguments as a basis for exercising personal jurisdiction. See *Tyrell* at 1559 (fact that BNSF had 2,000 employees in Montana and over 2,000 miles of railroad track not sufficient to establish personal jurisdiction because "BNSF, we repeat, is not incorporated in Montana and does not maintain its principal place of business there.")).

Additionally, Plaintiff makes a strained argument based on the fact that not his direct supervisor, but his supervisor's supervisor (Division Superintendent Larry Koster), was in South Carolina and allegedly instructed Plaintiff to perform work in Virginia that Plaintiff claims led to his Virginia accident. But this argument stands the personal jurisdiction inquiry on its head and has the analysis completely backwards. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985), and similar cases cited by Plaintiff, hold that "a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities **toward** forum residents" (emphasis added). Here, however, Plaintiff contends the opposite. He claims that Koster, who was in South Carolina, directed his activities toward Plaintiff, who was in Virginia. Thus, unlike *Burger King*, there is no allegation that anyone purposefully directed any activities "toward forum residents".²

Last, it is important to note that following Supreme Court precedent, and rejecting Plaintiff's effort to bring this Virginia accident case against a Virginia corporation in South Carolina, would not leave Plaintiff without a remedy. Plaintiff has filed this exact same case against CSXT in Florida, where CSXT has its principal place of business and indisputably is

² The fact that Plaintiff later moved to South Carolina is completely irrelevant. Personal jurisdiction and the constitutional protections of due process focus on the defendant. Otherwise, a plaintiff could create personal jurisdiction anywhere simply by moving there post-incident. Even Plaintiff doesn't go that far in his argument.

subject to personal jurisdiction under *Tyrell* and other Supreme Court precedent.³ See Exhibit 1, Copy of Plaintiff's Florida filing which is identical to this case. Thus, as explained more fully below, this Court should dismiss this action for lack of personal jurisdiction and require Plaintiff to pursue this claim in Florida or Virginia where it should have been filed.

ARGUMENT

I. Plaintiff Conflates The General Jurisdiction Analysis With the Specific Jurisdiction Analysis.

In order for a court to exercise personal jurisdiction over an out-of-state defendant, the defendant must have "certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017). The Supreme Court distinguishes "specific or case-linked jurisdiction and general or all-purpose jurisdiction." *Id.* General jurisdiction exists over a corporation for any and all claims "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State.'" *Id.*

Plaintiff admits, as he must in light of the Supreme Court's decision in *Tyrell*, that CSXT is not subject to general jurisdiction in South Carolina. *See Pltf's Mem.*, at 3 ("CSX asserts that it is not subject to general jurisdiction in South Carolina, which Mr. Dean does not dispute."). However, in arguing that CSXT is nevertheless subject to case-linked or specific jurisdiction in South Carolina in this case, Plaintiff confuses the general jurisdiction and specific jurisdiction analyses and wrongly focuses on CSXT's general, non-case-specific activities within South Carolina.

³ CSXT makes no representations here as to whether venue should be transferred to Virginia, where the incident occurred and most witnesses are located, based on the doctrine of *forum non conveniens*.

Plaintiff first states, “CSX maintains significant South Carolina contacts, including a division headquarters in Florence, two major rail yards, an intermodal terminal, over 1,800 miles of track, and approximately 1,000 employees.” *Id.* at 6-7. Again, as admitted by Plaintiff, such activities by CSXT within South Carolina are not sufficient to render CSXT “at home” within South Carolina and subject to general jurisdiction. *See Tyrrell*, 137 S.Ct. at 1559. More importantly, as to specific jurisdiction, the Supreme Court has consistently held that “[a] corporation’s ‘continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011). In other words, “[f]or specific jurisdiction, a defendant’s general connections with the forum are not enough.” *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1781 (2017). For instance, in *Fidrych v. Marriott International, Inc.*, 952 F.3d 124 (4th Cir. 2020), the plaintiff was allegedly injured at a Marriott hotel in Italy but attempted to bring suit in South Carolina where he resided. In analyzing specific jurisdiction, the Fourth Circuit held as follows:

Marriott’s business activity in South Carolina is not insignificant, as it franchises, licenses, or manages ninety hotels in the state. Those activities, however, have nothing to do with the claims asserted by the Plaintiffs in this action. That is, the claims asserted after Bud Fidrych’s injury in a Marriott-affiliated hotel in Milan do not in any sense “arise out of or relate to” Marriott’s connections to the hotels located in South Carolina. Because the Plaintiffs’ claims do not arise from them, Marriott’s hotel-related connections to South Carolina are not relevant to our specific-jurisdiction inquiry.

Id. at 139. Thus, the fact that CSXT has miles of track or over 1,000 employees within South Carolina is not determinative of the specific jurisdiction question.

II. Plaintiff's Employer-Employee Relationship with CSXT Does Not Give Rise to Specific Jurisdiction in South Carolina.

Likewise, Plaintiff's contention that the case "arises out of Mr. Dean's employer-employee relationship with CSX that always remained connected to South Carolina" also has no bearing on the specific jurisdiction determination. *See Pltf's Mem.*, at 8. The Supreme Court holds that "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Walden v. Fiore*, 571 U.S. 277, 286 (2014). The Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* at 284. As such, the fact that Plaintiff at one time was an employee for CSXT in South Carolina and worked for the Florence Division while he lived in Virginia and occasionally attended meetings in South Carolina having nothing to do with this particular accident are also irrelevant to the specific jurisdiction analysis. *Id.* ("But the plaintiff cannot be the only link between the defendant and the forum.").

III. CSXT Did Not Purposefully Direct Any Activities Related to This Case Toward Any Residents of South Carolina.

Instead, "[s]pecific' or 'case-linked' jurisdiction 'depends on an 'affiliatio[n] between the forum and the underlying controversy.'" *Id.* at 283, n.6; *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (holding that the specific jurisdiction analysis "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction"). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb Co.*, 137 S.Ct. at 1781 (2017). To establish this connection, the specific jurisdiction analysis focuses on "if 'the defendant has purposefully directed his activities

at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.’” *Fidrych v. Marriott International, Inc.*, 952 F.3d 124, 138 (4th Cir. 2020).

The only potential case-specific argument Plaintiff presents in his Memorandum is that at the time of the derailment, Larry Koster, “the CSX Division Manager located in ***Florence, South Carolina***, gave Mr. Dean a direct order ***from South Carolina*** to work until the derailment resolved. . . . Mr. Dean’s exhaustion from the long hours of work directly contributed to his work injury. . . . Therefore, this litigation arises out of CSX’s South Carolina activities.” *See Pltf’s Mem.*, at 5 (emphasis in original). However, as noted above, this argument by Plaintiff completely turns the specific jurisdiction analysis on its head. Again, specific jurisdiction focuses on whether a non-resident defendant “purposefully directed his activities **at residents of the forum.**” *Fidrych*, 952 F.3d at 138 (emphasis added); *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (holding that “a forum legitimately may exercise personal jurisdiction over a nonresident who ‘purposefully directs’ his activities toward forum residents”). Here, the subject forum is the State of South Carolina. As such, the specific jurisdiction analysis focuses on whether CSXT purposefully directed activities at residents of South Carolina with respect to this accident. *Id.* Plaintiff admittedly was a resident of Virginia at the time of the accident on April 16, 2017 and had been a Virginia resident since 2012. *See Pltf.’s Aff.*, at ¶ 5. The derailment at issue also occurred in Virginia. *Id.* at ¶ 10. Thus, the “activities” of CSXT through its employee Mr. Koster in allegedly requiring Plaintiff to work long hours were not in any way “directed” toward or related to a resident of South Carolina; instead, they were directed at a resident of Virginia. Accordingly, a court in South Carolina cannot exercise specific personal jurisdiction over CSXT in this case. *See Tyrrell*, 137 S.Ct. at 1559 n.4 (finding that specific jurisdiction was not at issue because the plaintiff’s claims had “no relationship to anything that

occurred or had its principal impact in Montana”); *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E.2d 615 (Ct. App. 2013) (“While Farina may have spoken with officers that worked in the Greenville corporate office, there was no evidence to show Farina ever traveled to South Carolina for those conversations. Thus, Farina’s contacts do not establish that he would have reasonably expected to be haled into court in South Carolina, nor were the contacts sufficient for this State to fairly exercise personal jurisdiction over him.”).

IV. Exercising Specific Jurisdiction Over CSXT In This Case Would Be Constitutionally Unreasonable.

Additionally, any exercise of personal jurisdiction in this case in South Carolina would be constitutionally unreasonable. *See Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016) (stating that one prong of the personal jurisdiction analysis is “whether the exercise of personal jurisdiction would be constitutionally reasonable”). Again, Plaintiff’s allegations in this case are that on April 16, 2017, he responded to a derailment that occurred in Richmond, Virginia and stepped in a hole and then later had an automobile accident that also occurred in Virginia. *See Compl.* Plaintiff was a resident of Virginia at the time of the accident, his injuries occurred in Virginia, and he received treatment in Virginia. *Id.* The contention that a person in South Carolina, who was not Plaintiff’s direct supervisor, and allegedly scheduled Plaintiff to work that day, can somehow subject CSXT to specific personal jurisdiction in South Carolina is completely contrary to Supreme Court precedent. Otherwise, any time an accident occurred, a suit could be brought against CSXT in any state across its vast network where someone in the chain of command happened to reside. *Fidrych*, 952 F.3d at 143 n.6 (“If we were to conclude otherwise, then every hotel operator would be subject to personal jurisdiction in the state of residence of every guest who used the hotel’s website to make the reservation”). Such an insignificant contact with South Carolina is simply “too tenuous and too insubstantial to

constitutionally permit the exercise of specific jurisdiction over” CSXT. *Fidrych*, 952 F.3d at 143.

V. Plaintiff Can Pursue This Case in Florida Where He Has Also Filed Suit.

Last, as noted above, Plaintiff has also filed a suit relating to this exact same incident in Duval County, Florida. There is no reason Plaintiff cannot pursue his claim there or in Virginia, where personal jurisdiction would be proper.

CONCLUSION

This Court cannot exercise personal jurisdiction over Plaintiff’s claims consistent with due process and Supreme Court precedent. Accordingly, the Complaint should be dismissed.

May 26, 2020

s/Ronald K. Wray, II

Ronald K. Wray, II (S.C. Bar 65246)
James A. Bradshaw (S.C. Bar 100548)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-9580
Facsimile: (864) 271-7502

Attorneys for CSX Transportation, Inc.

EXHIBIT 1

**Service of Process
Transmittal**

04/30/2020

CT Log Number 537608806

TO: CSX Legal Papers
CSX CORPORATION
500 WATER ST # J150
JACKSONVILLE, FL 32202-4423

RE: Process Served in Florida

FOR: CSX Transportation, Inc. (Domestic State: VA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Joseph Dean, etc., Pltf. vs. CSX Transportation, Inc., etc., Dft.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 162020CA002076

NATURE OF ACTION: Personal Injury - Failure to Maintain Premises in a Safe Condition

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 04/30/2020 at 14:08

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 04/30/2020, Expected Purge Date: 05/05/2020
Image SOP
Email Notification, CSX Legal Papers legalpapersintake@csx.com
Email Notification, CATHY HILF cathy_hilf@csx.com

SIGNED: C T Corporation System
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120

For Questions: 866-401-8252
EastTeam2@wolterskluwer.com

DATE: 4-30-2020
HOUR: 12pm
DEPUTY SHERIFF
[Signature]

IN THE CIRCUIT COURT FOR THE 4th
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2020-CA-002076
DIVISION: CV-D

JOSEPH DEAN, an individual

Plaintiff,

vs:

CSX TRANSPORTATION, INC., a foreign
corporation,

Defendant.

SUMMONS

THE STATE OF FLORIDA
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint in this action on
Defendant:

CSX Transportation, Inc., a foreign corporation
c/o CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

Each defendant is required to serve written defenses to the complaint or petition on plaintiff's
attorney, whose name and address is:

Mark G. Usdin, P.A.
1920 San Marco Boulevard
Jacksonville, Florida 32207

within 20 days after service of this summons on that defendant, exclusive of the day of service, and to
file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or
immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for
the relief demanded in the complaint or petition.

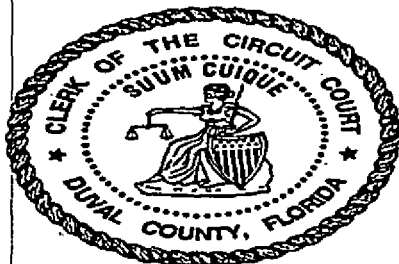
WITNESS my hand and the seal of this Court on

Apr 09 2020

RONNIE FUSSELL

As Clerk of the Court

By: [Signature]
As Deputy Clerk.



IMPORTANT

Usted ha sido demandado legalmente. Tiene veinte (20) días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá; si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas en dicho caso. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney." (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce Tribunal. Un simple coup de téléphone est insuffisant pour vous protéger; vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties mentionnées ici, si vous souhaitez que le Tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du Tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pouvez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie au carbone ou une photocopie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.



Mark G. Usdin, Esquire
 Florida Bar No.: 0476315
 Attorney for Plaintiff
 1920 San Marco Boulevard
 Jacksonville, FL 32207
 (904) 399-4070
 (904) 399-1917 Facsimile
 Email addresses for papers and pleadings:
markusdin@bellsouth.net
khickin@bellsouth.net
jlh.markqusdin@gmail.com

DATE: 4-30-2020
HOUR: 102pm
DEPUTY: [Signature]

ELECTRONICALLY FILED - 2020 May 26 8:41 AM - FLORENCE - COMMON PLEAS - CASE#2020CP2100958

IN THE CIRCUIT COURT FOR THE 4th
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2020-CA-002076
DIVISION: CV-D

JOSEPH DEAN,

Plaintiff,

vs:

CSX TRANSPORTATION, INC., a
corporation,

Defendant

COMPLAINT

COMES NOW, JOSEPH DEAN, and sues Defendant CSX TRANSPORTATION, INC.,
(hereinafter "CSX"), and alleges:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$30,000.00, exclusive of interest and costs.
2. Plaintiff, JOSEPH DEAN, is an adult resident of Columbia, South Carolina.
3. At all times material hereto, Defendant CSX, was a railroad company owned and operated as a common carrier engaged in interstate commerce which was doing business in the State of Florida with its principal place of business in Duval County, Jacksonville, Florida and is subject to the jurisdiction of this Court pursuant to F.S.A. §48.193 and subject to this venue pursuant to F.S.A. §§47.021 and 47.051.
4. This is an action arising under the provisions of the Federal Employers' Liability

Act, 45 U.S.C. §51, *et seq.*, to recover damages for personal injuries sustained by Plaintiff while employed by CSX and while engaged in interstate commerce.

THE CLAIM

5. On or about April 16, 2017, Plaintiff JOSEPH DEAN was in the course and scope of his employment as a Trainmaster for CSX Transportation, Inc., at its Richmond, Virginia Yard. He was working a thirteen-hour shift on April 16, having completed a nineteen-hour shift the day before, with only four hours rest between the two. As a Trainmaster, his job duties include walking through the rail yard and inspecting rail cars for safety issues. While walking through the Richmond Yard on April 16, 2017, he encountered a broken knuckle obstructing a walking area on a switching lead. He attempted to pick up the knuckle and move it to an area where it would not present a hazardous condition to his co-employees, but in doing so he stepped into a hole, suddenly and without warning, causing an immediately painful “pop” in his back. Plaintiff attempted to return to the CSX office at the Richmond Yard by truck, but as he was driving he “blacked out,” likely due to the pain and his exhaustion at having worked over twenty hours of the previous twenty-four, and the truck crashed into a telephone pole. Plaintiff was left with severe and disabling injuries to his back, neck, and sternum, *inter alia*.

6. Under the provisions of 45 U.S.C. § 51, *et seq.*, Defendant CSX had a non-delegable duty to provide Plaintiff with a reasonably safe place in which to work; thus, CSX must stand responsible for the injuries and damages it caused to Plaintiff.

7. At the time and place described above, Defendant CSX, its agents, its officers, and/or employees were guilty of one or more of the following negligent acts or negligent omissions which proximately caused the injuries of JOSEPH DEAN, Plaintiff, which acts and omissions are set out herein by way of illustration and not limitation:

- a. In that CSX failed to provide Plaintiff with a reasonably safe place in which to work;
 - b. In that CSX failed to inspect and provide proper inspection, maintenance and repair of the Yard to be certain same was safe for its employees, including Plaintiff;
 - c. In that CSX failed to exercise due care and caution commensurate with the surrounding circumstances;
 - d. In that CSX failed to provide Plaintiff with reasonable equipment to perform his job safely;
 - e. In that CSX failed to provide sufficient training to Plaintiff;
 - f. In that CSX failed to keep the walkways in Richmond Yard clear of debris and tripping hazards resulting in dangerous walking conditions and unsafe working conditions;
 - g. In that CSX failed to hire an adequate number of employees to prevent the Plaintiff from having to work over twenty hours of the previous twenty-four;
 - h. In that CSX failed to schedule sufficient time off for Plaintiff to adequately rest before resuming his duties for Defendant; and
 - i. Any and all other acts or omissions of negligence which will be fully demonstrated at the trial on the merits of this matter.
8. The aforelisted negligent acts and/or negligent omissions were committed by employees, agents, and/or representatives of Defendant CSX, while acting in the course and scope of their employment, thereby rendering Defendant CSX vicariously liable under the theory of *respondeat superior*.

9. Plaintiff was injured while engaged in the course and scope of his employment with CSX as a direct and proximate result of Defendant CSX's negligence, without fault on the part of Plaintiff.

10. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, JOSEPH DEAN, Plaintiff, has suffered severe injuries to his back, neck, and sternum, *inter alia*.

11. As a result of the aforesaid events, Plaintiff sustained serious and permanent physical injuries, and has suffered, and will continue to suffer in the future great physical pain and mental/psychological anguish. Plaintiff has incurred, and will in the future, incur substantial expenses for medical and related treatment.

12. Plaintiff JOSEPH DEAN demands full recovery for all sums reasonable in the premises for the following items:

- a. Physical pain, and suffering and disability, past and future;
- b. Mental/psychological anguish, past and future;
- c. Medical expenses, past and future;
- d. Loss of wages, past and future; and
- e. Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against the Defendant, CSX, for special and general damages, court costs, and any other relief deemed appropriate, and further demands a trial by jury of all issues triable as a matter of right by a jury.

DATE: April 8, 2020

Respectfully submitted,

Mark. Usdin

MARK G. USDIN, ESQUIRE

Florida Bar No. 0476315

1920 San Marco Boulevard

Jacksonville, FL 32207

Telephone: (904) 399-4070

Facsimile: (904) 1917

Email addresses for papers and pleadings:

markusdin@bellsouth.net

khickin@bellsouth.net

jlh.markusdin@gmail.com

AND

ROME, ARATA, BAXLEY & STELLY, L.L.C.

Blake G. Arata

C. Perrin, Rome, III

Jason C. MacFetters

650 Poydras Street, Suite 2017

New Orleans, Louisiana 70130

Telephone: (504) 522-9980

Facsimile: (504) 522-9971

Email: barata@romearata.com

To be admitted pro hac vice

Attorneys for Plaintiff, JOSEPH DEAN

IN THE CIRCUIT COURT FOR THE 4th
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2020-CA-002076
DIVISION: CV-D

JOSEPH DEAN,

Plaintiff,

vs:

CSX TRANSPORTATION, INC., a
corporation,

Defendant

COMPLAINT

COMES NOW, JOSEPH DEAN, and sues Defendant CSX TRANSPORTATION, INC.,
(hereinafter "CSX"), and alleges:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$30,000.00, exclusive of interest and costs.
2. Plaintiff, JOSEPH DEAN, is an adult resident of Columbia, South Carolina.
3. At all times material hereto, Defendant CSX, was a railroad company owned and operated as a common carrier engaged in interstate commerce which was doing business in the State of Florida with its principal place of business in Duval County, Jacksonville, Florida and is subject to the jurisdiction of this Court pursuant to F.S.A. §48.193 and subject to this venue pursuant to F.S.A. §§47.021 and 47.051.

4. This is an action arising under the provisions of the Federal Employers' Liability

Act, 45 U.S.C. §51, *et seq.*, to recover damages for personal injuries sustained by Plaintiff while employed by CSX and while engaged in interstate commerce.

THE CLAIM

5. On or about April 16, 2017, Plaintiff JOSEPH DEAN was in the course and scope of his employment as a Trainmaster for CSX Transportation, Inc., at its Richmond, Virginia Yard. He was working a thirteen-hour shift on April 16, having completed a nineteen-hour shift the day before, with only four hours rest between the two. As a Trainmaster, his job duties include walking through the rail yard and inspecting rail cars for safety issues. While walking through the Richmond Yard on April 16, 2017, he encountered a broken knuckle obstructing a walking area on a switching lead. He attempted to pick up the knuckle and move it to an area where it would not present a hazardous condition to his co-employees, but in doing so he stepped into a hole, suddenly and without warning, causing an immediately painful "pop" in his back. Plaintiff attempted to return to the CSX office at the Richmond Yard by truck, but as he was driving he "blacked out," likely due to the pain and his exhaustion at having worked over twenty hours of the previous twenty-four, and the truck crashed into a telephone pole. Plaintiff was left with severe and disabling injuries to his back, neck, and sternum, *inter alia*.

6. Under the provisions of 45 U.S.C. § 51, *et seq.*, Defendant CSX had a non-delegable duty to provide Plaintiff with a reasonably safe place in which to work; thus, CSX must stand responsible for the injuries and damages it caused to Plaintiff.

7. At the time and place described above, Defendant CSX, its agents, its officers, and/or employees were guilty of one or more of the following negligent acts or negligent omissions which proximately caused the injuries of JOSEPH DEAN, Plaintiff, which acts and omissions are set out herein by way of illustration and not limitation:

- a. In that CSX failed to provide Plaintiff with a reasonably safe place in which to work;
 - b. In that CSX failed to inspect and provide proper inspection, maintenance and repair of the Yard to be certain same was safe for its employees, including Plaintiff;
 - c. In that CSX failed to exercise due care and caution commensurate with the surrounding circumstances;
 - d. In that CSX failed to provide Plaintiff with reasonable equipment to perform his job safely;
 - e. In that CSX failed to provide sufficient training to Plaintiff;
 - f. In that CSX failed to keep the walkways in Richmond Yard clear of debris and tripping hazards resulting in dangerous walking conditions and unsafe working conditions;
 - g. In that CSX failed to hire an adequate number of employees to prevent the Plaintiff from having to work over twenty hours of the previous twenty-four;
 - h. In that CSX failed to schedule sufficient time off for Plaintiff to adequately rest before resuming his duties for Defendant; and
 - i. Any and all other acts or omissions of negligence which will be fully demonstrated at the trial on the merits of this matter.
8. The aforelisted negligent acts and/or negligent omissions were committed by employees, agents, and/or representatives of Defendant CSX, while acting in the course and scope of their employment, thereby rendering Defendant CSX vicariously liable under the theory of *respondeat superior*.

9. Plaintiff was injured while engaged in the course and scope of his employment with CSX as a direct and proximate result of Defendant CSX's negligence, without fault on the part of Plaintiff.

10. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, JOSEPH DEAN, Plaintiff, has suffered severe injuries to his back, neck, and sternum, *inter alia*.

11. As a result of the aforesaid events, Plaintiff sustained serious and permanent physical injuries, and has suffered, and will continue to suffer in the future great physical pain and mental/psychological anguish. Plaintiff has incurred, and will in the future, incur substantial expenses for medical and related treatment.

12. Plaintiff JOSEPH DEAN demands full recovery for all sums reasonable in the premises for the following items:

- a. Physical pain, and suffering and disability, past and future;
- b. Mental/psychological anguish, past and future;
- c. Medical expenses, past and future;
- d. Loss of wages, past and future; and
- e. Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against the Defendant, CSX, for special and general damages, court costs, and any other relief deemed appropriate, and further demands a trial by jury of all issues triable as a matter of right by a jury.

DATE: April 8, 2020

Respectfully submitted,

Mark G. Usdin

MARK G. USDIN, ESQUIRE

Florida Bar No. 0476315

1920 San Marco Boulevard

Jacksonville, FL 32207

Telephone: (904) 399-4070

Facsimile: (904) 1917

Email addresses for papers and pleadings:

markusdin@bellsouth.net

khickin@bellsouth.net

jlh.markusdin@gmail.com

AND

ROME, ARATA, BAXLEY & STELLY, L.L.C.

Blake G. Arata

C. Perrin, Rome, III

Jason C. MacFetters

650 Poydras Street; Suite 2017

New Orleans, Louisiana 70130

Telephone: (504) 522-9980

Facsimile: (504) 522-9971

Email: barata@romearata.com

To be admitted pro hac vice

Attorneys for Plaintiff, JOSEPH DEAN

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2020-CP-21-00958
	)	
Joseph Dean,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
CSX Transportation, Inc.,	)	
	)	
Defendant.	)	
	)	

May 26, 2020
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

A P P E A R A N C E S (Via WebEx):

Randolph Murdaugh IV, Esquire
Attorney for the Plaintiff

Ronald Wray II, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Dismiss.....	4
Court Reporter Certification.....	28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 MAY 26, 2020

2 (WHEREUPON, the proceedings began at 12:08 p.m.)

3 THE COURT: And I'll be glad to hear from the moving
4 party.

5 MR. WRAY: Thank you, Your Honor. This is Ron Wray.

6 MR. MURDAUGH: Judge, I think I might --

7 Ron, I apologize. I think I might be getting it to pull
8 up.

9 THE COURT: All right. Well, let's give -- we've got
10 the luxury of time. Let's -- take your time and let's see if
11 we can get it done.

12 MR. MURDAUGH: A video just came up, but then it -- but
13 then it had a little box that blocked in.

14 THE COURT: Right.

15 MR. MURDAUGH: Judge, I guess if it comes up I'll be on
16 the video. If it doesn't, I'll be by telephone. How about
17 that?

18 THE COURT: That's good. If it comes up, we'll do it
19 and you can -- we can pile on in, but, Mr. Wray, we'll hear
20 from you.

21 MR. WRAY: Thank you, Your Honor.

22 Again, this is Ron Wray on behalf of CSX. I appreciate
23 the Court accommodating us this afternoon. I'll be fairly
24 brief, because rarely do you have a case where you've got a
25 Supreme Court precedent directly on point that answers the

1 question presented to the Court, but in this case, we do.

2 No one in this case disputes that at the time of this
3 incident that's at issue, Mr. Dean, the plaintiff, was living
4 in Virginia and was working in Virginia. He'd been there for
5 about five years. No one disputes that CSX is a Virginia
6 corporation. It's incorporated in Virginia, principal place
7 of business in Florida, and no one disputes that the incident
8 that this suit arises from happened in Virginia.

9 This case is identical to the *Tyrrell* case that I sent
10 you by email. I don't know if you got it or not, but --

11 THE COURT: I did.

12 MR. WRAY: I can't hand it up like we used to, but it's
13 identical to that. The U.S. Supreme Court decided this case
14 back in 2017 and, like this case, *Tyrrell* was an FEHA claim
15 brought by a railroad worker against a railroad, which
16 *Tyrrell* lived out of state from where he filed the suit, he
17 worked out of state from where he filed the suit, the
18 incident happened out of state from where he filed the suit,
19 and the defendant was out of state. And the Supreme Court in
20 that case said that it would offend due process and be a
21 violation of the 14th Amendment to exercise personal
22 jurisdiction over the railroad in that case.

23 Now, I've read the plaintiff's brief, and I appreciate
24 their effort to muddy the waters a little bit to try to raise
25 an issue, but quite frankly, the arguments don't pass muster

1 under *Tyrrell*, Your Honor. First, they argue that CSX has a
2 strong presence in South Carolina. Of course, you're
3 familiar with it. You can see the railroad yard from your
4 courthouse almost.

5 THE COURT: Yeah.

6 MR. WRAY: But that's only pertinent to a general
7 jurisdiction argument, which they concede they don't have
8 general jurisdiction, but the fact that we have tracks and
9 employees and do a lot of work in South Carolina doesn't
10 advance the ball one bit on the personal jurisdiction
11 analysis because in *Tyrrell*, which they've conceded, the
12 Court said you only get general jurisdiction one of two ways.
13 That's the defendant has to be at home, either by being
14 incorporated in the state or having his peripheral place of
15 business there.

16 Nobody contends that either of those apply here. That
17 leaves us with specific jurisdiction, and specific
18 jurisdiction requires that there be a sufficient enough
19 connection to the forum state to satisfy due process, and we
20 just don't have that here.

21 THE COURT: All right.

22 MR. WRAY: The fact that Mr. -- I'm sorry, do you have a
23 question, Your Honor?

24 THE COURT: Yeah. I was -- Mr. Murdaugh, the case that
25 you sent me that's *Overfelt v. BNSF Railroad Company*, tell me

1 why you think that should confer jurisdiction in this case.

2 MR. MURDAUGH: Your Honor, to be honest with you, I
3 don't think it alone confers jurisdiction. I think it's an
4 unreported case out of a foreign state, but the analysis that
5 they go through in that case is, I think, illustrative of the
6 analysis that would be involved here.

7 I think that under all of the cases that are cited by
8 both me and Ron Wray that jurisdiction exists in this case
9 and I'd like to more fully develop my argument, but to put it
10 in a very concise way because what we're complaining about is
11 conduct that occurred in South Carolina. His boss -- it
12 would have been his next higher boss, but his boss was on
13 vacation so it became his boss -- ordered him to do that work
14 which had him on duty some almost 28 hours out of 32 hours,
15 and that occurred in South Carolina.

16 And there is not a single case where the analyzed
17 conduct had occurred in the forum state where they say
18 there's no jurisdiction. Those are -- those cases all come
19 out of the more complicated set of facts, which is, quite
20 frankly, our backup argument, and that is that CSX coming to
21 South Carolina and hiring him and maintaining its divisional
22 headquarters in South Carolina and conducting some business
23 that relates to him also confers jurisdiction, but, Your
24 Honor, you don't even have to get past the very first fact,
25 and that is the divisional manager ordered him to work the

1 derailment.

2 And in *Tyrrell*, I'll call your attention to page --
3 well, paragraph number 10. And I think *Tyrrell* is --
4 provides the Court with clear guidance too. *Tyrrell* is
5 actually a general jurisdiction case, and we're not arguing
6 general jurisdiction; we're arguing specific jurisdiction.

7 And if you see the very last sentence on paragraph 10,
8 and it begins -- and I'll read it to Your Honor. It says in
9 short, the business BNSF does in Montana is sufficient to
10 subject the railroad to specific personal jurisdiction in
11 that state on claims related to the business it does in
12 Montana, but in-state business we clarified under *Daimler* and
13 *Goodyear* do not suffice to permit assertion of general
14 jurisdiction.

15 And in the -- and in *Tyrrell*, Your Honor, that was the
16 most classic form of forum shopping I've ever seen. Their
17 cases had nothing to do with Montana. They had nothing to do
18 with Montana. Nothing about those cases had to do with
19 Montana except that's where they picked.

20 Unlike in our case, our case -- one of the allegations
21 is this keeping him on duty all these hours with a lack of
22 sleep and making him work. So he was on duty for almost 28
23 hours out of 32, and that's all set forth in our affidavit,
24 Your Honor, and that order came specifically from the state
25 of South Carolina.

1 And Ron raises some other arguments he hasn't gotten to
2 yet on this conference call, but I would like to address
3 those. So it's the fact that -- it's twofold, Your Honor,
4 and I'm kind of really getting ahead of myself. I'm just
5 trying to be concise and tell you. It's the acts that
6 occurred in South Carolina that are directly related to his
7 -- to his case that confers jurisdiction.

8 In all of the cases that you're going to look at, there
9 will be none. And Ron is a good lawyer, but he can't pull a
10 case up that says, listen, when the act complained of
11 occurred in the forum state, there's still not jurisdiction
12 because there's been no such holding. That is so clear that
13 that's not -- you won't find that in these appeal -- these
14 appellate cases.

15 What you find is cases related to conduct out of South
16 Carolina that affect people in South Carolina. Those are the
17 more difficult cases. And if you think about any kind of
18 tort, the defendant commits a tort, irregardless of where it
19 harms somebody, you can always go to that state where they
20 committed the tort.

21 So sale of a car, it's never an issue if you go to where
22 the car was sold. It's -- it's what happens when you sue
23 where the injury occurred outside of the state where the
24 conduct was. But what we did here was we went to the state
25 or came to the state where the conduct was.

1 Your Honor?

2 THE COURT: Yes.

3 MR. MURDAUGH: I'm sorry.

4 THE COURT: And I --

5 MR. MURDAUGH: So --

6 THE COURT: I interrupted Mr. Wray, and let's -- you

7 know, I specifically --

8 MR. MURDAUGH: Yeah.

9 THE COURT: -- was wanting to ask about this BNSF

10 Railroad Company, which to me seems almost entirely factually

11 different than what we have here.

12 Mr. Wray, go ahead.

13 MR. WRAY: Yes, sir, Your Honor.

14 Just to take up on that point, you're -- you're exactly

15 correct. In the *Overfelt* case, the plaintiff actually lived

16 in Kansas and the Court said that he performed the primary or

17 substantial majority of his work in Kansas.

18 THE COURT: The only thing that's the same is that the

19 accident happened in Texas, but they brought it in Kansas.

20 But all of the -- you know, all of his training, you know,

21 he, you know, started conducting the train, went to Texas,

22 had the accident, and came back to Kansas. I mean it just --

23 I don't -- I think it's factually different than what we have

24 here.

25 MR. WRAY: Yeah. That's exactly right. In this case,

1 Mr. Dean, of course, was hired in South Carolina, but that
2 was in 2012.

3 THE COURT: Right.

4 MR. WRAY: He left almost immediately thereafter. He
5 went to Virginia. He worked there for five years. And while
6 working in Virginia, he got hurt in Virginia. And so the
7 argument that Mr. Murdaugh made a moment ago is that the
8 conduct at issue is in South Carolina simply is not correct.

9 THE COURT: What do you think about the conduct being
10 that he was negligent in ordering him to stay on there and
11 work this wreck for such a long period of time and that the
12 direction came from South Carolina? I reckon that's --

13 MR. WRAY: The problem with --

14 THE COURT: I reckon that's what he's getting at.

15 MR. WRAY: Yes, he is, and the problem with that
16 argument, Your Honor, and with all due respect to Mr.
17 Murdaugh, we did cite cases that talk about this because the
18 cases say that you have to direct your activity, that the
19 conduct at issue has to be directed to citizens of the forum
20 state. In other words, if Mr. Koster, the boss, had called
21 Mr. Dean, the plaintiff -- you blacked out there.

22 THE COURT: Yeah. If you don't move around in here, it
23 -- we're the only people in here, so we weren't moving
24 enough. Go ahead.

25 MR. WRAY: Okay. I just wanted to make sure somebody

1 didn't get you.

2 THE COURT: All right.

3 MR. WRAY: But -- but Mr. Dean, of course, was in
4 Virginia and so the activity here -- we pointed this out in
5 our brief. The analysis is actually the opposite of what
6 they contend. It was conduct in South Carolina directed at
7 somebody in Virginia, and that's where the impact was felt.
8 That's where the incident occurred. That's where the
9 injuries and damages were sustained.

10 So the fortuity that Mr. Koster supposedly was in South
11 Carolina -- and, quite frankly, we don't know. Maybe he made
12 a phone call while he was traveling in Florida or Georgia or
13 somewhere else that CSX has tracks. I don't know where the
14 phone call was made from, but the fact that Mr. Koster has
15 his office in South Carolina does not confer personal
16 jurisdiction under the specific jurisdiction analysis in the
17 cases that we've cited and they've cited.

18 They've cited a case -- and I quoted it -- on page 7 of
19 their brief, I think it was. Let's see if I can find it.
20 Yeah. Page 7 of their brief, they've said -- and I'm
21 quoting.

22 The key issue in a specific jurisdiction case is whether
23 the defendant has purposely directed its activities at
24 residents of the forum. There was nothing directed at any
25 resident of this forum. Mr. Dean was in Virginia, and that's

1 where the actions and the directions that he says he got were
2 directed to Virginia.

3 THE COURT: What do you have to say about that, Mr.
4 Murdaugh? That really seems to be at issue with regard to
5 specific jurisdiction.

6 MR. MURDAUGH: Your Honor, I'd like to go through and
7 help you to understand just a broad view of how we have
8 jurisdiction, and I think you would get an understanding.

9 So it's -- there's obviously specific and general
10 jurisdiction. We're not claiming general jurisdiction; we're
11 only claiming specific jurisdiction. And because of the
12 unique set of facts that occurred here, there's two ways that
13 we have specific jurisdiction over CSX in this, the most
14 simple of which is the fact that the negligent conduct that
15 caused the injury occurred in South Carolina.

16 Your Honor, you can always sue the defendant where their
17 negligent conduct occurred, always. And those cases don't
18 say what Mr. Wray is saying they say. The words are the
19 words, but they're in a totally different fact scenario, and
20 they apply to what I would call our second way of having
21 jurisdiction over CSX and that is by those -- that earlier
22 conduct; in other words, let's categorize the two things that
23 CSX did.

24 One is a specific and one is a series of specific
25 things. So the specific thing is ordering him to work all

1 those long hours. That by itself, if he had never been hired
2 in South Carolina, he was never trained in South Carolina, he
3 was never a resident of South Carolina, that would be enough
4 to confer jurisdiction.

5 So like any corporation, if a corporation is negligent
6 in a particular state and that negligence injures a plaintiff
7 wherever, the plaintiff can always go to where that defendant
8 is and where that conduct was committed. Okay? And that's
9 what we have here.

10 But what we also have is purposeful conduct by CSX in
11 South Carolina that gives rise to this. So even if there had
12 not been that specific order by the divisional manager, we
13 would have jurisdiction.

14 Now, Your Honor, at this point --

15 THE COURT: Now, what do you think about Mr. Wray saying
16 that that negligence was not directed towards someone of
17 South Carolina, but it was directed towards someone in
18 Virginia where the accident happened?

19 MR. MURDAUGH: Well, because the cases that say it has
20 to be directed toward a South Carolina citizen are those
21 cases analyzing conduct outside that have -- that have
22 injured somebody inside the forum state. So I promise you
23 that the holdings don't turn on that language where -- where
24 the conduct originated from.

25 Those cases are the exception to our first point. Those

1 are cases where the conduct of the defendant was not in this
2 state. So if you think about it, they're simply saying,
3 listen, when you're doing something out of this state, the
4 question isn't did it hurt somebody here; the question was
5 were you directing your activities to here. Okay?

6 And so there's a whole set of cases that analyze was
7 that conduct out of state directed toward this state and --
8 and they use the words directed toward the citizens, directed
9 toward the plaintiff, or directed toward the activities, but
10 all of those cases, Your Honor, are dealing with activities
11 that are out of the state directed to the forum state, and
12 that's why they're using that language.

13 There's no cases. No -- no Court has ever said and they
14 wouldn't say because the activity occurred in the state or
15 when the activity occurred in the state, because it was
16 directed somewhere else, you can't sue them where they
17 conducted the activity. In fact, the contrary just is
18 absolutely true. The Courts really want you to bring the
19 cases where the conduct occurred.

20 Your Honor, don't get me wrong. They were also
21 negligent in Virginia. We could've brought this in Virginia,
22 but we brought it in South Carolina because the orders came
23 from South Carolina and because of the divisional
24 headquarters in South Carolina and all of the plaintiff's
25 ties and the origination of the -- of the employee/employer

1 relationship.

2 The mere fact that they hired him in South Carolina,
3 trained him in South Carolina, started that relationship, and
4 then moved him unilaterally to Virginia where he worked and
5 the divisional headquarters are being in South Carolina, that
6 is -- that alone would be sufficient to confer jurisdiction,
7 Your Honor, but in addition, we have that order emanating
8 from South Carolina.

9 A lot of these cases relate to sales of goods that find
10 their way into this state, and so they're -- they're
11 analyzing the conduct of defendants out of state to the forum
12 state. But again, Your Honor, this is a -- this is a -- the
13 conduct of the defendant in the forum state. This is really
14 -- the relationships are different factually, but in
15 *Overfelt*, if you think about it, those are the -- the
16 relationships in the state and the conduct in the state, even
17 though the activity -- excuse me -- the injury happened out
18 of state.

19 But, Your Honor, every single one of these cases allow
20 it. So, you know, I quoted that *Tyrrell*. *Tyrrell* -- and the
21 reason we go into all these conduct of CSX with the state of
22 South Carolina is just the analysis that *Tyrrell* did, and
23 they only did it in a one sentence because there were no
24 allegations. If you read that sentence literally, it says
25 that the -- that the contacts and the business is sufficient

1 for specific jurisdiction on claims related to business that
2 it does in Montana.

3 So if we -- we change South Carolina and CSX, it would
4 be saying the business that CSX does in South Carolina is
5 sufficient for personal jurisdiction -- excuse me -- specific
6 jurisdiction on claims related to the business it does in
7 South Carolina. It is the very business of ordering him to
8 -- to stay on the job for all those hours that is -- that we
9 are alleging here. And in fact, *Tyrrell*, the one case that
10 Ron says is completely on point, it actually says if it's
11 related to that in-state business, you can do it.

12 Your Honor, all of the -- all of the cases -- let me go
13 back and look and see. So in *Goodyear v. Dunlop*, basically
14 some North Carolina boys were killed over in Paris, France,
15 when they had a tire failure, and the plaintiffs ended up
16 suing Dunlop in North Carolina. And in that one, the Courts
17 made very clear the action is not related to the defendant's
18 activity in North Carolina.

19 That's not what we have. Our -- our cause of action is
20 directly related to the defendant's activities and orders in
21 South Carolina. There's just no -- the reason you don't see
22 those cases, Your Honor, because they just can't be appealed.
23 That's not even an issue. That's not on any Court or any --
24 anybody's radar, somebody trying to say we're going to
25 dismiss a case that's filed in the state where the activity

1 occurred. There's just no -- there is -- you know what? I
2 would actually ask Ron is there any decisions out there where
3 the activity was in the state, the forum state, that were
4 dismissed. I'd love to see those cases because they don't
5 exist.

6 So each one of these cases, Your Honor, that denies
7 general or specific jurisdiction always includes language in
8 there that the negligent acts did not occur in the state --
9 in the forum state and -- and that's why those cases deny the
10 jurisdiction.

11 Your Honor, one of the things I want to talk to you
12 about as well -- and I don't want to get out of order, but I
13 don't want to not discuss these various points. And I don't
14 know whether you want me to discuss them now or you want to
15 hear from Mr. Wray.

16 THE COURT: Well, I kind of interrupted Mr. Wray early
17 on. I'm going to let him finish his presentation.

18 MR. MURDAUGH: Okay.

19 THE COURT: Then we'll hear from you, and then we'll
20 keep going until everybody is talked out. How about that?

21 Mr. Wray, go ahead.

22 MR. WRAY: I think I'll probably be talked out before
23 Mr. Murdaugh, but I'll try to wrap up this way, Your Honor.

24 You've heard a lot about this -- this claim that the
25 conduct occurred in South Carolina; so I want to be very

1 clear factually what we have here. It's in the complaint
2 and, of course, our motion is based on the complaint.

3 You had a derailment in Virginia involving -- in which a
4 man who lived and worked in Virginia was asked to respond,
5 and the accident happened in Virginia. Mr. Dean says in his
6 affidavit that his direct supervisor, his boss, was in
7 Virginia. And the only reason we're even talking about South
8 Carolina is because allegedly his direct boss was on vacation
9 or out of work; so Mr. Koster, who was supposedly in South
10 Carolina or at least his division office was in South
11 Carolina, made a phone call.

12 And personal jurisdiction does not turn on that set of
13 circumstance, fortuity, whatever word you want to use to
14 describe it. It focuses on whether this case and the conduct
15 of CSX, who is sought to be brought into South Carolina in
16 this case, was directed at residents of this forum, and
17 there's no question that it was not. Nobody contends that.

18 The only argument that you've heard today made
19 repeatedly is because Mr. Koster was in South Carolina when
20 he supposedly made this phone call that somehow the accident
21 occurred in South Carolina. Well, keep in mind this whole
22 claim, an FELA claim, requires the plaintiff to show that he
23 was not provided with a reasonably safe place in which to
24 work.

25 Well, the workplace that we're talking about here and

1 everything related to the workplace and everything we're
2 talking about related to how this happened was in Virginia.
3 There's nothing in South Carolina.

4 And the only other thing I'll add, Your Honor -- I'll be
5 happy to answer any other questions you have -- is, as I
6 pointed out in our brief, they have also filed this case in
7 Florida, and they have a case pending in Florida where CSX
8 has its principal place of business. And nobody contends
9 that personal jurisdiction wouldn't be proper there and they
10 can litigate it there, but what wouldn't make any sense --
11 let's assume that my argument is correct and that *Tyrrell* and
12 the other cases we've cited prohibit personal jurisdiction in
13 this case, if this motion is denied, as I read the case law,
14 it's not even appealable.

15 So we would go forward for two years or whatever it
16 takes to get this case up to trial and resolved in South
17 Carolina and then on appeal we go to Columbia, and if I'm
18 correct and the Supreme Court or Court of Appeals agrees and
19 they say there never was personal jurisdiction, this case
20 gets kicked back to Florida or Virginia and we start all over
21 again. That doesn't make any sense.

22 They've got a case in Florida. Jurisdiction is clearly
23 proper in Florida, and they can litigate it there or, as Mr.
24 Murdaugh said, it would be proper in Virginia where
25 everything happened. And that would make far more sense to

1 litigate this case where personal jurisdiction is proper and
2 then go forward and get a result and the case is over.

3 So we think the case law is clearly on our side. We
4 think *Tyrrell* is directly on point. Mr. Murdaugh keeps
5 referring to that language, but it says for conduct occurring
6 in Montana.

7 There's nothing that happened here in South Carolina,
8 with all due respect. The phone call is not sufficient. The
9 conduct, the unsafe work environment, the area where this
10 occurred, all the proof that he needs to prove his case
11 occurred in Virginia, and that's where the case should have
12 been filed, but they choose to file in Florida because that's
13 where the principal place of business is. We can't stop
14 that. Then the Court can decide whether it should be
15 transferred to Virginia from there.

16 So unless you've got other questions, I'll stop there.

17 THE COURT: All right.

18 Mr. Murdaugh, I'll be glad to hear from you.

19 MR. MURDAUGH: Yes. I'll address the Florida lawsuit
20 first because, obviously, that's not something Your Honor
21 could understand what's going on here. Despite having what I
22 consider an extremely good personal specific jurisdiction
23 case, railroads across the country are challenging general
24 jurisdiction and oftentimes specific jurisdiction.

25 Because I was contacted by my co-counsel on this as the

1 statute was about to run, I called Ron Wray and I said, Ron,
2 I can't imagine under these facts you're going to challenge
3 jurisdiction, but I'm asking you ahead of time because your
4 answer won't be due until after the statute of limitations,
5 and Ron kindly got back to me and said, no, we are going to
6 challenge that. And we'd already told him that if you do,
7 it's okay, because we'll just file what's called a safety
8 suit in Florida.

9 Your Honor, just because we filed a safety suit trying
10 to be good lawyers, I mean what am I going to do? I'm not
11 going to say, well, I'm not going to file a safety suit, even
12 though I feel that there's no possible way the South Carolina
13 Supreme Court would reverse jurisdiction here. I'm still
14 going to file it. I mean that's what we're supposed to do as
15 lawyers.

16 So Ron suggested you take the easy way out because
17 there's a safety suit, and I would urge you not to do that,
18 Your Honor, because we have excellent, excellent grounds for
19 jurisdiction. You know what? In my -- in my brief I could
20 have kept it simple and not argued those earlier contacts and
21 that whole scenario, which, quite frankly, in the cases
22 becomes a little money. It's just two or three lines. The
23 order came from South Carolina to stay on the job, and we're
24 going to the state where the negligent activity was.

25 And honestly, Your Honor, that's enough, but -- but we

1 have more and I want the Courts to understand there's going
2 to be other cases where there's close calls. And so we went
3 through that analysis again, being thorough, but I don't want
4 that to confuse the Court.

5 Your Honor, if a -- if a corporation is incorporated in
6 one state but operates out of another state where they put on
7 lug nuts on somebody's wheel and they drive on up the
8 interstate to the -- to the third state and become injured,
9 there is no Court anywhere that would say you can't go back
10 to where the lug nuts were put on improperly. That's what we
11 have here.

12 We -- we don't just have coincidentally somebody --
13 somebody ordered him. It's his highest supervisor. It's the
14 head of the division headquarters that ordered him and, quite
15 frankly, Your Honor, even if his boss had been on duty, if
16 the division headquarters -- if that guy -- in other words,
17 the -- I don't -- what's his -- the terminal manager --
18 excuse me -- the division head -- the division -- oh, hell,
19 I'm drawing a blank on what his title is, but the guy that's
20 over the terminal manager.

21 So the guy that's in South Carolina, if he had ordered
22 the terminal manager in Virginia to order our guy to work all
23 those hours, we could still come to South Carolina where CSX
24 committed the negligent conduct because the guy in Virginia
25 would only be relaying an order from South Carolina, but,

1 Your Honor, it didn't happen that way.

2 The -- the higher-up boss in South Carolina is the one
3 that actually ordered it and, Your Honor, I wouldn't say this
4 without confidence. The South Carolina Supreme Court will
5 never -- will never strike down jurisdiction when the
6 negligent act complained of occurred in the state of South
7 Carolina. They're not going to do it, and there's no Courts
8 in the -- in the nation that's going to do that.

9 And that's what sets this case apart from all others,
10 and this -- this language about directing your conduct to the
11 forum state, that's in those cases where the conduct is out
12 of the state. That's our -- that's our second argument.
13 It's not our primary argument because of the conduct inside
14 South Carolina.

15 THE COURT: All right.

16 MR. MURDAUGH: So, Your Honor, under any of these cases
17 -- and I would still challenge Ron. He's not going to give
18 you a case because there is none to show any case that says
19 despite the conduct being in the state of -- the forum state,
20 there's no jurisdiction.

21 THE COURT: Right.

22 MR. MURDAUGH: There's not any. Those don't make it up
23 on appeal, and that's why we don't -- we don't see those.
24 There are none.

25 All of these cases that deny jurisdiction -- Your Honor,

1 I'll be glad to analyze them for you and do a supplemental,
2 but I didn't do that because I thought it was so very clear.

3 THE COURT: All right.

4 MR. MURDAUGH: All of them relate to activities that did
5 not occur in the forum state, every single one.

6 THE COURT: All right. Well --

7 MR. MURDAUGH: And if you would -- if Your Honor would
8 like for me to, I'll be glad to go through.

9 THE COURT: I think --

10 MR. MURDAUGH: And I'll analyze any case that you have
11 or Ron has --

12 THE COURT: I think that --

13 MR. MURDAUGH: -- and you want me to.

14 THE COURT: I think that the issues are fairly clear,
15 and what I'm going to do, if y'all don't mind, is I'm going
16 to ask y'all to send in proposed orders, and I'm going to
17 take a look and go through these cases and y'all can address
18 them in your order as y'all see fit. But I want to take an
19 opportunity to kind of think about this, mull over it, and
20 I'll take into consideration your orders presented.

21 MR. WRAY: That would be fine, Your Honor. I appreciate
22 it.

23 THE COURT: Mr. Wray, do you have --

24 MR. MURDAUGH: Yes. Thank you, Your Honor.

25 THE COURT: Mr. Wray, do you have anything else you'd

1 like -- Mr. Wray, do you have anything else you'd like to
2 add?

3 MR. WRAY: No, sir. I think we covered everything and
4 we'll address it in our proposed order.

5 THE COURT: All right. Mr. Murdaugh, anything else you
6 would like to say?

7 MR. MURDAUGH: Not a thing, unless you need us to do any
8 kind of supplemental or if you want us to analyze those
9 cases, I'll be glad to assist in any way.

10 THE COURT: All right. I think we're in good shape.
11 Anything that -- if you want to address it in a general way
12 with the cases in your proposed order, that'd be fine if you
13 -- however you see fit, and I'm going to take an opportunity
14 to look at them and ponder and cogitate on them a little bit
15 before I make my decision. How about that?

16 MR. WRAY: What time frame do you need them, Your Honor?

17 THE COURT: Well, when would -- when would be convenient
18 for you, Mr. Wray?

19 MR. WRAY: Fifteen days?

20 THE COURT: How about it, Mr. Murdaugh? What do you
21 think?

22 MR. MURDAUGH: Sure.

23 THE COURT: All right. Well, that -- that'll be fine.
24 If there are problems with that, let me know.

25 MR. WRAY: Okay. Thank you so much.

1 THE COURT: I'll be anxiously awaiting those very
2 entertaining orders.

3 MR. WRAY: I'm sure you will.

4 THE COURT: All right.

5 MR. WRAY: Do you want us to email those to you and your
6 law clerk?

7 THE COURT: Yeah. And you can just e-file them as a
8 proposed order, and I'll sign the one that -- or modify the
9 one that I need to execute.

10 MR. WRAY: Okay.

11 THE COURT: All right.

12 MR. WRAY: Very good.

13 THE COURT: Thank y'all. Y'all have a good --

14 MR. MURDAUGH: Very good. Thank you, Judge.

15 THE COURT: Thank you.

16 (WHEREUPON, the proceedings ended at 12:39 p.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

19

20

21

22

23

24

25

)

)

County of Florence)

OF THE ATTACHED TRANSCRIPT FROM
KRYSTAL J. SMITH, COURT REPORTER
12TH CIRCUIT AT LARGE
P.O. BOX 13563
FLORENCE SC 29504

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Feb 16 2021

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

SC Court of Appeals

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2020-001007

Joseph Dean, ... Appellant,

v.

CSX Transportation, Inc., ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: February 16, 2021

By: s/ Kathleen C. Barnes

Kathleen C. Barnes, SC Bar No. 78854

BARNES LAW FIRM, LLC

P.O. Box 897

Hampton, SC 29924

803-943-4529

kbarnes@barneslawfirmnc.com

Randolph Murdaugh, IV

PETERS, MURDAUGH, PARKER,

ELTZROTH & DETRICK

P.O. Box 457

Hampton, SC 29924

803-943-2111

rmurdaugh@pmped.com

Attorneys for Appellant