

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK CIVIL TERM PART 46

2 -----X

3 IN RE: NEW YORK CITY ASBESTOS LITIGATION

3 -----X

4 SEAN SNOWDALE and RYAN SNOWDALE, as
5 EXECUTORS OF THE ESTATE OF
6 DONALD KENNETH SNOWDALE, deceased,

5

Plaintiffs

6

- against -

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8 A.O. SMITH WATER PRODUCTS, A.W. CHESTERTON COMPANY,
9 AIR & LIQUID SUPPLY SYSTEMS CORPORATION, ALFA LAVAL,
10 INC., ARMSTRONG INTERNATIONAL, INC., et al,

10

Defendants.

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INDEX NUMBER 190202/2015

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71 Thomas Street
New York, New York
September 7, 2017

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B E F O R E:

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HONORABLE LUCY BILLINGS,
Supreme Court Justice.

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A P P E A R A N C E S:

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Gloria Ann Brandon,
Senior Court Reporter.

1 THE COURT: So, I would prefer to issue a written
2 decision here, but because of the time constraints and the
3 fact that the trial is ongoing, I am going to give you my
4 ruling this morning.

5 Now Mr. Sampar, right?

6 MR. SAMPAR: Correct, your Honor.

7 THE COURT: I think I may have signed an order
8 permitting your admission pro hac vice, or not?

9 MR. SAMPAR: Unlikely, your Honor.

10 THE COURT: You're a New York attorney?

11 MR. SAMPAR: I'm a New York attorney, yes.

12 THE COURT: I'm sorry, your name is familiar to me
13 and I'm sure it will become more familiar.

14 MR. SAMPAR: Hopefully.

15 THE COURT: Now the D&R Global Selections decision
16 that you cite, the First Department decision that was
17 actually reversed by the Court of Appeals on other grounds
18 finding that jurisdiction was confirmed by CPLR 302(a)1,
19 right?

20 MR. SAMPAR: Well, I think, your Honor, what we need
21 to focus on are the more recent Supreme Court decisions,
22 both --

23 THE COURT: New York Supreme Court?

24 MR. SAMPAR: No, no, United States Supreme Court.

25 THE COURT: Since 2015?

1 MR. SAMPAR: Correct. BNSF Railways, which was
2 handed down May, 2017, which affirmed Daimler and Bristol
3 Myers Squibb, which was handed down in June, 2017 on the
4 issue of specific jurisdiction.

5 THE COURT: In other words, not merely elaborating
6 on anything, any circumstances under which a corporation
7 would be quote, "at home," end quote, other than the
8 principle place of business, or the state of incorporation.

9 MR. SAMPAR: Correct. That is the law, your Honor
10 --

11 THE COURT: Right, okay.

12 MR. SAMPAR: -- in Daimler and BNSF Railways.

13 THE COURT: Mr. Dymond, on the authority that you
14 cite, particularly the more recent, I don't think any of it
15 is First Department authority, but more recent, 2nd and 3rd
16 Department decisions, particularly the Jaramillo --

17 Is that how you pronounce it, J A R A M I L L O?

18 MR. DYMOND: That's as good a guess as I have, your
19 Honor.

20 THE COURT: From the Second Department in 2017,
21 and then there was the Third Department decision Sessa, S E
22 S S A, that's actually about ten years old, but I think it's
23 probably the case with all of the authority that you cite
24 with respect to waiving personal, lack of personal
25 jurisdiction, all of that authority is where personal

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1 jurisdiction was challenged based on inadequate service as
2 opposed to the Defendants present within New York, right,
3 which is quite a different matter?

4 MR. DYMOND: I'm not exactly sure if the --

5 THE COURT: Well, certainly, the case in
6 Jaramillo.

7 MR. DYMOND: That's true.

8 THE COURT: And it's certainly the case by your
9 own characterization in Sessa.

10 MR. DYMOND: That is true, and Sessa was also
11 somewhat administrative in nature, but the Bivona Realty
12 Corp. Case --

13 THE COURT: Yes, this is an ancient Third
14 Department decision.

15 MR. DYMOND: It's from 1957.

16 THE COURT: I think there's enough law since then
17 on this issue for me not to rely on a Third Department 1957
18 decision, isn't there?

19 MR. DYMOND: Well, I'm not so sure there is, your
20 Honor. There is law that discusses preservation of
21 personal jurisdiction, there's no dispute about that.

22 THE COURT: And also in -- was it the
23 Jaramillo? I think so.

24 There was also a prior motion to dismiss, so I
25 think there was a CPLR 3211(e) problem, right. The Court

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1 doesn't specifically say that, but I'm assuming there was no
2 prior motion to dismiss on other grounds by Barnes & Jones
3 here.

4 MR. SAMPAR: Your assumption is correct, your Honor.

5 MR. DYMOND: That's true, your Honor, but as we have
6 outlined, there was significant other actions taken,
7 affirmative actions taken.

8 THE COURT: I see that, of course. I don't know
9 why they, you know, they drag themselves through this
10 litigation for the last two years before waking up, but --

11 MR. SAMPAR: Your Honor, if you may, I note again
12 that BNSF Railway, it came down May, 2017; Bristol Myers
13 Squibb came down June, 2017, those are what we primarily
14 rely on in our moving papers. I don't see how we could
15 have filed a motion based on those cases before they came
16 down.

17 THE COURT: No, not based on those cases, but
18 based on Daimler, certainly.

19 MR. SAMPAR: Fair enough.

20 THE COURT: These motions since 2014 have been
21 fairly regular. I'm surprised there have not been more of
22 them. They seem to be just cropping up in the asbestos
23 litigation.

24 Also, there was the ruling by Justice Heitler, you
25 know, in 2014. That never went up, is that right?

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1 MR. DYMOND: Correct, your Honor. That was resolved
2 after the reargument, renewal motion was denied.

3 THE COURT: So, I believe -- I always have to
4 re-read CPLR 3211(e), but I believe if the motion to dismiss
5 has been made on other grounds previously, this motion, this
6 ground for dismissal would be raised, correct?

7 MR. SAMPAR: Correct.

8 THE COURT: But, that didn't happen here.

9 All right now, Mr. Dymond, I would permit you
10 disclosure here both under CPLR 3211(d), and under the Court
11 Rule 22, NYCRR 202 -- I can never remember the subsection.
12 I think it's --

13 Just a moment.

14 (Brief pause.)

15 THE COURT: Under 22 NYCRR Section 202.21(d), since
16 clearly this motion has been made after the note of issue,
17 if I could fathom what it is you believe you may uncover, I
18 thought it might be jurisdiction under CPLR 302 (a)2 because
19 the limitations on Mr. Snowdale, Donald Snowdale's
20 deposition testimony that he basically limited his
21 identification of Barnes & Jones products that he may have
22 been exposed to in New Hampshire may have just been the
23 product of limiting questioning by defendants, or possibly
24 that his exposure to asbestos did arise out of the
25 transaction of business by Barnes & Jones in New York, not

1 sure what that would be, but perhaps, something like Barnes
2 & Jones manufactured these steam --

3 MR. DYMOND: Traps.

4 THE COURT: -- traps, is that the right term?

5 MR. SAMPAR: Yes.

6 MR. DYMOND: Yes.

7 THE COURT: These steam traps in New York, shipped
8 them without warning to the location, they may have
9 contained asbestos, to the very location in New Hampshire
10 where Mr. Snowdale was exposed, something like that, but I
11 don't see that that's anything you're indicating, you're
12 going to find.

13 MR. DYMOND: Not that in particular. We have
14 actually had that ruling specifically in other cases, but as
15 far as the transaction, especially in light of two recent
16 Court of Appeals decisions --

17 THE COURT: You mean the D and --

18 MR. DYMOND: Yes, the Al Rushaid 2006, which is 28
19 NY 3D 316, and then the case your Honor mentioned D&R Global
20 Selections, and furthermore, the Licci case, L I C C I, from
21 2012, also a Court of Appeals case.

22 THE COURT: Well, you know, to rely on anything
23 pre-2014 here is questionable.

24 MR. DYMOND: Well, what the two recent decisions did
25 is reaffirm the principles of Licci, that you just need a
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1 relatedness between the injury and the transaction.

2 THE COURT: Right.

3 MR. DYMOND: Doesn't have to be causation.

4 THE COURT: But, you're not giving me anything
5 here.

6 MR. DYMOND: So, what we were suggesting is, for
7 example, if the banking, the funding of the manufacturer of
8 this steam traps was through New York, then arguably under
9 this case law we could have an viable means of confirmed
10 specific jurisdiction under the transaction provision.

11 THE COURT: All you say is, all you seem to rely
12 on is that there's a dealer that sells and stocks steam
13 traps made by Barnes & Jones in New York and installs them
14 in New York buildings.

15 MR. DYMOND: Which -- well that, your Honor, relates
16 to our second predicate. We have suggested two predicates;
17 the first being transaction, which it's hard for us to kind
18 of identify precisely what it would be because we don't
19 know, we don't know anything about the company in that
20 respect, so --

21 THE COURT: The standard under CPLR 3211(d) is
22 similar to the standard under CPLR 3212(f), you have to
23 identify what it is you believe you're likely to uncover in
24 disclosure.

25 MR. DYMOND: Yes, and so what we put in as the
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1 answers to interrogatories, which is to confirm that they do
2 business in New York. Now the nature of that business, in
3 addition, we know they sell steam traps here. In addition
4 to that, if the nature of that business is banking and
5 unfunded --

6 THE COURT: Well, wait a minute, you don't say
7 that Barnes & Jones sells steam traps here. You say that
8 if steam traps are sold by another dealer, right?

9 MR. DYMOND: Well, in answer to interrogatories,
10 which is Exhibit M, we have excerpted page 4.

11 THE COURT: It said it does business, but not
12 necessarily selling steam traps.

13 MR. DYMOND: That's correct, your Honor.

14 THE COURT: That's what it's business is.

15 MR. DYMOND: That's what it's business is. They're
16 the largest independent steam trap manufacturer in the
17 country.

18 So, as to the transaction what we are submitting is
19 that if they're, in fact, is banking that has funded the
20 manufacturer of the steam traps, which would be attributable
21 to the ones that Mr. Snowdale was exposed to, then that
22 under the Court of Appeals case law could be a predicate for
23 specific jurisdiction under the transaction provision.

24 THE COURT: I certainly don't see the D&R Global
25 Selections decision. I don't read it that broadly.

1 MR. DYMOND: Well, the language from the Al Rushaid
2 is that the claim needs only be in some way arguably
3 connected to the transaction, and what Licci talks about,
4 which Al Rushaid --

5 THE COURT: Here it was a breach of contract
6 action, or something like that.

7 In some way, I'm sorry, what was the term you
8 used?

9 MR. DYMOND: Arguably connected to the transaction.

10 THE COURT: Right.

11 MR. DYMOND: Somewhat.

12 THE COURT: The transaction here is Mr. Snowdale,
13 Donald Snowdale's exposure to asbestos .

14 MR. DYMOND: That's correct, from their products,
15 and what Licci says, as reaffirmed by Al Rushaid, is
16 causation is not necessarily the determination that is
17 dispositive of what constitutes a transaction related to the
18 claim, so the point simply is, your Honor, we don't have
19 this information. We know they have done business in New
20 York. If they had made this motion 18 months ago, we could
21 have sought jurisdictional discovery to determine if, in
22 fact, they had banking, where their funding was going
23 through New York for the manufacture of these valves.

24 THE COURT: So, if I allowed you that, I still
25 don't see that it does it for you, simply, the funding of

1 the manufacture of steam traps.

2 MR. DYMOND: Not just steam traps, in general, of at
3 the time and the place where these were in the plants in New
4 Hampshire where he was exposed, so it's a little more
5 specific.

6 THE COURT: How can you identify what funds funded
7 the manufacturing of the specific steam traps that were in
8 New Hampshire that Mr. Snowdale is exposed to?

9 MR. DYMOND: Well, without seeing some of their
10 records, you know, I don't know whether or not we can do
11 that. That's the entire purpose of discovery, is to find
12 out if we could, and maybe, your Honor, that's not -- that
13 would down the road be a basis for asserting jurisdiction,
14 but the point here is that we don't know, and if this would
15 have been done earlier, we could have sought and
16 definitively determined if that was an issue, and maybe at
17 the end of the day it wouldn't have been, but we don't know
18 without the discovery.

19 THE COURT: So, whose deposition would you take?
20 What documents would you request?

21 MR. DYMOND: We would take the deposition of either
22 their president or someone who is their financial officer in
23 some respect. We would seek banking, any banking records
24 related to New York. We would seek --

25 THE COURT: How would those banking records show
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1 you what that funds in an account in New York funded the
2 manufacture of specific steam traps?

3 MR. DYMOND: Well, they -- by themselves they
4 probably wouldn't. That's why there's other information
5 that could --

6 THE COURT: Such as?

7 MR. DYMOND: Such as if, in fact, all of their
8 banking was funneled through New York, then that would be an
9 indication that if all of it was there, then necessarily
10 these particular steam traps would have been part of that
11 funding.

12 THE COURT: What case would hold that that would
13 be enough?

14 MR. DYMOND: Well, there's no particular case, but
15 under the way that the Court of Appeals has worded, rather
16 interpreted the transaction statute is that it's a broad
17 inquiry, it's not narrowly tailored, and it doesn't
18 necessarily relate to causation. It's a permissive
19 standard, and so there's at least an issue as to whether or
20 not that would satisfy the statute in a products liability
21 case like this.

22 THE COURT: I could see that Mr. Sample is
23 chomping at the bit here.

24 MR. SAMPAR: Yes, your Honor.

25 Just looking at this from a slightly different
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1 angle, Barnes & Jones had raised their affirmative defense
2 of lack of personal jurisdiction in their answer.

3 THE COURT: All right, I don't see that you waived
4 it.

5 MR. SAMPAR: That's put them on notice. This has
6 been an issue since the outset of the case. They've had
7 ample time to conduct whatever discovery they would like to
8 conduct. At this point it's, you know, laches on their
9 part, you know, after having two years to, you know, engage
10 in what Mr. Dymond is describing, they have not done it. I
11 fail to see how at this juncture they can claim that now
12 they need this.

13 MR. DYMOND: Well, just by way of information, we've
14 had numerous other defendants in this case that are
15 similarly situated to this Defendant that at no point moved
16 to dismiss for personal jurisdiction, so for to us seek
17 jurisdictional discovery against every defendant in that
18 position would be a significant burden. That's why usually
19 on a motion to dismiss mit's made early in the case, and
20 that is something that alerts the Plaintiff that there's an
21 issue, and maybe we need to conduct discovery, and then come
22 back, and at the end of the day have another motion to
23 determine whether there now is enough there or not.

24 THE COURT: Practically speaking, how would you
25 see that working with the trial ongoing right now?

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1 MR. DYMOND: Well, that's one of the problems.
2 That's where the prejudice issue comes in because we're
3 currently on trial. It's almost --

4 THE COURT: I'm not sure that prejudice is a
5 factor here.

6 MR. DYMOND: Well, it would be a factor in the
7 context of a waiver if your Honor thought that was an issue.
8 Apparently, you do not, but it would be in the context of us
9 preserving our ability to maintain jurisdiction over this
10 Defendant in this case, and not having to go through the
11 expense, the client's expense of having to commence an
12 entirely different action in Massachusetts, or New
13 Hampshire, and then run the risk of having inconsistent
14 verdicts between two cases. That's unchartered territory.

15 THE COURT: I don't see how it will necessarily be
16 inconsistent when it's a trial against one Defendant.

17 MR. DYMOND: It's inconsistent because there's
18 allocation generally to non-parties, so --

19 THE COURT: Okay.

20 MR. DYMOND: So, there will be significant
21 inconsistency in the allocation, and the allocation directly
22 affects how much each particular trial Defendant is on the
23 hook for.

24 THE COURT: In other words, Barnes & Jones would
25 still be on the verdict sheet in this trial even if I were

1 to dismiss them?

2 MR. DYMOND: Not in this trial, but they would be on
3 the verdict sheet obviously on a new action commenced in
4 Massachusetts.

5 THE COURT: They'll be the sole Defendant?

6 MR. DYMOND: The other parties, the other parties,
7 the other trial defendants here.

8 THE COURT: I see. Would be on the verdict sheet
9 there?

10 MR. DYMOND: Correct, as well as other parties who
11 have resolved the action.

12 MR. SAMPAR: I don't want to represent and say I
13 know what Massachusetts law is, though.

14 THE COURT: I'm sorry, could you please speak up a
15 little.

16 MR. SAMPAR: I don't want to represent that I know
17 what Massachusetts law is, though, so to the extent that
18 we're building hypothetical on hypothetical here, your
19 Honor, this is all too late to be frank.

20 THE COURT: I think you have to be careful here
21 who you are accusing of being too late.

22 MR. SAMPAR: Fair enough, your Honor.

23 THE COURT: Now I think you have quoted from the
24 Al Rushaid decision, that's A L, new word, R U S H A I D --
25 and to the extent that you rely on the stocking and sale of
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1 Barnes & Jones steam traps in New York as an indication that
2 Defendant may be doing business to the extent of meeting the
3 Supreme Court's requirement, the U.S. Supreme Court's
4 requirement being at home here, if it were home here, you
5 would have more than that.

6 MR. DYMOND: Well, that certainly is possible, your
7 Honor.

8 THE COURT: There's no Court yet that has defined
9 what else being at home is, other than principal place of
10 business or state of incorporation, correct?

11 MR. DYMOND: That's correct, your Honor.

12 THE COURT: And I believe that the Second
13 Circuit's decision in Brown versus Lockheed Martin, L O C K
14 H E E D, it hurts you as much as helps you, doesn't it,
15 because it actually did find that the Connecticut statute
16 governing registration to do registration of out of state
17 corporations to do business in Connecticut did not allow to
18 consent to jurisdiction, correct?

19 MR. DYMOND: That's correct.

20 THE COURT: And anything that the Second Circuit
21 said about New York was dictum.

22 MR. DYMOND: About the specific New York statute was
23 dicta.

24 However, what was not dicta was the concept of
25 notice that was discussed by the Brown Court, which is that
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1 one of the main questions of personal jurisdiction
2 specifically related to a registration statute is whether it
3 provides notice to the corporation, that upon voluntarily
4 registering, they are subjecting themselves to personal
5 jurisdiction.

6 THE COURT: How does New York statute do that?

7 MR. DYMOND: Well, this is how; there's two ways.

8 THE COURT: I mean, I think I read very quickly
9 this morning, but the First Department's decision in B & M
10 Kingstone at 131 AD 3rd 259 it was basically looking for the
11 department's decisions after its decision in D & R Global
12 Selections. I think that's sort of what the First
13 Department is saying in the banking context because of the
14 significant regulation to which an out of state bank
15 subjects itself by banking, and by doing business in New
16 York, but I think that's different than just the simple
17 registration to do business --

18 MR. DYMOND: Yes.

19 THE COURT: -- statute.

20 MR. DYMOND: But, I actually think that's a slightly
21 different issue, the reason being when we are talking about
22 notice, the question becomes how --

23 THE COURT: So, how does its Business Corporation
24 Law Section 304, right, and 1304 --

25 MR. DYMOND: Correct.

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1 THE COURT: How do they give an out of state
2 corporation notice that it's subject, that it's consenting
3 to jurisdiction in New York?

4 MR. DYMOND: The way they do it is by the
5 controlling cases that have interpreted statutes.

6 So, there's one way to provide notice to by
7 following these state procedures, but the other way to do it
8 is by case law, controlling case law interpreting a statute
9 that may not have express language in it, and as you see we
10 have cited the Doubet case from the First Department, the
11 Augsbury case from the Third Department, and a number of --

12 THE COURT: All pre-Daimler decisions, of course.

13 MR. DYMOND: Yes, but the issue of consent is
14 slightly different than the issue of general jurisdiction.

15 THE COURT: Yes, but when you say consent, you're
16 basically -- when an out of state corporation registers to
17 conduct business in New York, you construe that as consent.
18 It's consent to conduct business in New York.

19 Well, before Daimler doing business in New York was
20 a basis for personal jurisdiction. After Daimler, it's
21 not, so I think you have to look at the law on consent in
22 that context.

23 MR. DYMOND: Well, your Honor, when you talk about
24 consent, there's a distinction between saying consent is
25 part of general jurisdiction. It's not. Consent can

1 confer either specific or general jurisdiction, so for
2 example, if there's a form clause in a contract, that's
3 specific consent, that's consent to specific jurisdiction,
4 and the statutes act either expressly or impliedly as
5 general jurisdiction consent, so the -- I think the
6 difference between this and Daimler is that they are
7 distinct, and the affect of the consent here may be general
8 jurisdiction. It may have the effect of a conferred general
9 jurisdiction, but the basis is completely distinct. That's
10 why the Court in Daimler didn't even address consent, and
11 cited the Perkins decision from 1952, which talked about
12 methods for conferring jurisdiction, other than consent.

13 And then, when you look at the Supreme Court, the
14 U.S. Supreme Court decision --

15 THE COURT: I think Daimler is saying, of course,
16 you can still consent to jurisdiction. It's just a question
17 of whether registering to do business is consent.

18 MR. DYMOND: And this I think is what respectfully
19 the point boils down to; when we look at Pennsylvania, for
20 example, that has express language that they're consenting,
21 that's been upheld, in fact, noted by the Brown Court that
22 that's sufficient.

23 THE COURT: That's, of course, what proponents of
24 legislation in New York are trying to do, as well.

25 MR. DYMOND: Right, and that's why Brown, that's why
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1 when you look at the Brown language, they specifically say
2 that the legislation that's to be introduced to that effect
3 is ratifying the construction that already exists.

4 THE COURT: Okay, there's another way to look at
5 it; why would you have to amend it if already says that?

6 MR. DYMOND: The reason is to avoid what we are
7 doing right now.

8 THE COURT: There's a lot of proponents to
9 legislation claiming that legislation is unconstitutional.

10 MR. DYMOND: Well, that's a question that may come
11 down the road, but I think the reason to do it is to avoid
12 this situation right now and make it clear, but one of the
13 main purposes of our Court system is to interpret statutes
14 and if express language confers jurisdiction in this manner,
15 then unequivocal controlling case law interpreting our
16 statute should have the exact same effect, and it's been
17 this way for over 60 years, so clearly --

18 THE COURT: Dictum is not unequivocal.

19 MR. DYMOND: Well, I think the First Department's
20 decision in Dobet in 2007, and the Augsburg decision --

21 THE COURT: Like I say, all of those decisions on
22 consent have to be looked at in the light of Daimler for the
23 reason that I stated.

24 MR. DYMOND: Well, I think there's two different
25 issues. The one is notice of it, and then the other issue

1 of due process I would submit is a distinct issue.

2 So, let me put it this way, your Honor, the due
3 process issue in Daimler is distinct from consent. Consent
4 may be the first step. Then the second step would be due
5 process, and what Daimler says is not looking at this in the
6 context of someone, "at home," quote, unquote. Rather, it's
7 that international shoe is still good law once you have
8 jurisdiction conferred in some respect, so for example, our
9 statute for specific jurisdiction under subsection (a)2 or
10 (a)3 requires once the initial statute is satisfied, so for
11 example, committing a tort --

12 THE COURT: Right. You also have to satisfy CPLR
13 301.

14 MR. DYMOND: Correct, and that's where international
15 shoe comes into effect. It's still good law in that
16 respect, and all that requires as your Honor knows is doing
17 business, which we have here, and we put in that they do
18 business here, so if consent is the first element, and
19 that's satisfied via the controlling interpretation of the
20 statute in the First Department --

21 THE COURT: From the First Department?

22 MR. DYMOND: The Doubet case, then the second
23 aspect, which Daimler does not address, does not vitiate,
24 which is the international shoe doing business issue.

25 THE COURT: If you are correct in that analysis,
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1 we have a lot of different decisions in D & R Global, in all
2 of the First Department and Court of Appeals decisions
3 post-Daimler.

4 MR. DYMOND: Well, the specific --

5 THE COURT: I mean, for example, D & R Global
6 would have never had to reach the CPLR 302(a)1 question, and
7 simply registering to do business in New York was enough.

8 MR. DYMOND: Well, I don't know if it was raised in
9 that case, your Honor. It does not look from my reading
10 that basis was raised.

11 THE COURT: I suppose it's possible. I can't
12 believe that the Plaintiff didn't raise it, but --

13 MR. DYMOND: So, you know, this is something that
14 has not been addressed by the Court of Appeals in that
15 light.

16 THE COURT: Okay. Anything else, Mr. Dymond?

17 MR. DYMOND: No, your Honor.

18 THE COURT: I think the disclosure is your
19 strongest point, but again, I just can't see any conceivable
20 transaction of business in New York from which exposure to
21 specific steam traps in New Hampshire where Donald Snowdale
22 worked, that there's any disclosure vehicle that would
23 unearth that, and you have not identified any, which is
24 really your burden.

25 Mr. Sampar, anything else?

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1 MR. SAMPAR: No, your Honor. I think we hit all the
2 standpoints.

3 THE COURT: So, for the reasons that I have
4 articulated I believe that I am going to grant the motion
5 dismissing Barnes & Jones from the action.

6 MR. DYMOND: And, your Honor, that would be without
7 prejudice and subject to the --

8 THE COURT: Yes, without -- I'd like to know
9 whether there's any, whether you're within the Statute of
10 Limitations in Massachusetts and New Hampshire, you know,
11 either because your within the ordinary Statute of
12 Limitations, or because there is a grace period akin to what
13 we have in New York?

14 MR. DYMOND: Yeah. I don't specifically know the
15 laws of those particular jurisdictions well enough to be
16 able to determine whether or not there's a grace period.

17 THE COURT: What's your position on that issue,
18 Mr. Sampar?

19 MR. SAMPAR: I don't confess to be up to date on
20 Massachusetts or New Hampshire law.

21 THE COURT: Keep your voice up.

22 MR. SAMPAR: I don't confess to be up to date on New
23 Hampshire or Massachusetts law either. I'd have to go back.

24 THE COURT: Would you stipulate to a specific
25 period by which plaintiffs may institute an action in either

1 one of those jurisdictions?

2 MR. SAMPAR: I think it would come down to what the
3 details of those stipulations are. Broadly speaking, we'd
4 be open to it.

5 THE COURT: I think what I'm going to provide is
6 that if the Statute of Limitations currently bars Plaintiff
7 from instituting an action in New Hampshire, or
8 Massachusetts -- or I don't believe there's any other
9 conceivable forum, correct?

10 MR. DYMOND: That's correct, your Honor.

11 THE COURT: -- then you may come back and seek
12 relief in that regard --

13 MR. DYMOND: Okay, thank you.

14 THE COURT: -- if you can't stipulate to such
15 relief with Defendant.

16 MR. DYMOND: Thank you.

17 THE COURT: Okay.

18 MR. SAMPAR: Thank you, your Honor.

19 THE COURT: So, this will be the decision.

20 Someone will be ordering the transcript?

21 MR. SAMPAR: Yes, your Honor. We'll figure it out.

22 MR. DYMOND: Yes.

23 THE COURT: Okay.


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Certified to be a true and accurate transcription of the minutes
taken in the above-captioned matter.



Gloria Ann Brandon,
Senior Court Reporter

Gloria Ann Brandon, Sr. Court Reporter