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NOVEMBER 2010

THE TEXAS COURT OF APPEALS HOLDS THAT LIMITED DRAYAGE TRIPS ARE INSUFFICIENT TO ESTABLISH GENERAL JURISDICTION OVER MEXICAN CORPORATIONS

On November 16, 2010, the Texas Fourteenth Court of Appeals in Houston reversed a trial court's denial of a special appearance and found that three Mexican corporations were not subject to personal jurisdiction in Texas courts for claims resulting from a car accident taking place in Mexico. In *Grupo TMM S.A.B. v. Perez*, No. 14-09-1072-CV (Tex. App.—Houston [14th Dist.] Nov. 16, 2010), the Court rejected the plaintiffs' argument that two of the corporations were subject to general jurisdiction based on limited drayage trips in which cargo was transferred on the Texas side of the United States/Mexico border.

The unanimous appellate opinion, which was authored by Justice Kem Thompson Frost, emphasized that the nature and quality, rather than the quantity, of a foreign corporation's contacts with the State of Texas are critical considerations in analyzing general jurisdiction.

Legge Farrow represented the three defendants: Grupo TMM, S.A.B., TMM Logistics, S.A. de C.V., and Lacto Comercial Organizada, S.A. de C.V.

Background

The plaintiffs brought suit in state court in Harris County, Texas, after two of their relatives died when their car collided with a Lacto truck pulling a TMM Logistics trailer on a highway in Mexico. The defendants filed a special appearance and moved to dismiss the case for lack of personal jurisdiction. After the trial court denied the special appearance on December 4, 2009, the defendants appealed.

The Opinion of the Texas Court of Appeals

The appellate court held that the defendants were not subject to personal jurisdiction in Texas. First, the Texas Court of Appeals held that there was no specific jurisdiction because the accident happened



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in Mexico, the victims died in Mexico, and any alleged negligence would have taken place in Mexico. Second, the Court held that the defendants did not have sufficient contacts with the State of Texas to establish general jurisdiction.

The plaintiffs argued that Lacto and TMM Logistics, corporations in the business of transporting cargo through the interior of Mexico and to the United States-Mexico border, were subject to general jurisdiction based on some contacts with the State of Texas. The Court, however, rejected the plaintiffs' argument and found that the quality of the defendants' contacts with Texas was insufficient to establish general jurisdiction.

As the Court noted, the record showed that Lacto trucks and trailers leased from TMM Logistics carried cargo throughout Mexico. Loads that were destined for the United States crossed the border at the Nuevo Laredo-Laredo Border Zone, which extends 20 miles on each side of the border. International border regulations prevent cargo trucks from simply crossing the border into the United States. Rather, the cargo goes through a process called "drayage." During drayage, the company intending to carry the items across the border must complete necessary paperwork and then deliver the items across the border, where they are transferred to another company in the border zone to send to their ultimate destination. In the great majority of cases, Lacto's loads are unloaded in the Nuevo Laredo border zone, where an independent transfer company completes the drayage process. In late 2005 or early 2006, however, Lacto made itself available to handle the drayage process in limited situations when another transfer company was not available. Only up to five of Lacto's trucks have had the special federal permit allowing the truck to travel into the United States side of the border zone. The number of times a Lacto truck crosses the border for drayage ranges from none to two per day.

The Court further pointed out that goods taken to the border zone are delivered by third parties to final destinations worldwide. Nevertheless, the record in this case contains no evidence that Lacto or TMM Logistics have customers in Texas or that they target Texas to solicit business. Additionally, employees of one of the two Mexican companies traveled across the border a few times per month to either check on the location of a truck or trailer or to coordinate the logistics of deliveries.



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The Court of Appeals found those contacts were insufficient to establish general jurisdiction. The defendants did not have offices, employees, property, or bank accounts in Texas and did not solicit business from Texas companies. As the Court emphasized, the mere flow of goods into or out of a state is insufficient to establish a general business presence necessary for general jurisdiction. Further, the defendants did not structure their business with the goal of crossing the border into Texas.

The Court also rejected the plaintiffs' argument that Grupo TMM (the parent company) was subject to Texas jurisdiction based on the actions of its subsidiaries, TMM Logistics and Lacto. Because these subsidiaries are not subject to jurisdiction, the Court of Appeals held that Grupo TMM cannot be subject to jurisdiction based on an *alter ego* theory.

Conclusion

The nature and quality—rather than the quantity—of a foreign corporation's alleged contacts with the State of Texas is the critical issue for determining general jurisdiction. Here, the Texas Court of Appeals found that general jurisdiction was not available over foreign corporations based on limited drayage trips. Further, specific jurisdiction did not exist for an accident that took place on a Mexican highway.

If you have any questions about this case, feel free to contact the below Legge Farrow attorneys:

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