

**NOT DESIGNATED FOR PUBLICATION**

**JEFFERY S. VINSON**

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**NO. 2002-CA-0795**

**VERSUS**

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**COURT OF APPEAL**

**NATIONAL RAILROAD  
PASSENGER CORPORATION,  
THE BURLINGTON  
NORTHERN AND SANTA FE  
RAILWAY COMPANY, LA  
DIRT HAULERS, INC., LOUIS  
E. ASHLEY AND AMERICAN  
EQUITY INSURANCE  
COMPANY**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**CONSOLIDATED WITH:**

**CONSOLIDATED WITH:**

**DAVID B. MOAK**

**NO. 2002-CA-0796**

**VERSUS**

**AMERICAN EQUITY  
INSURANCE COMPANY,  
LOUISIANA DIRT HAULERS,  
INC., LOUIS E. ASHLEY, THE  
BURLINGTON NORTHERN  
AND SANTA FE RAILWAY  
COMPANY, NATIONAL  
RAILROAD PASSENGER  
CORPORATION AND  
RAYMOND TYLER**

**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NOS. 2001-13348 C/W 2001-16494, DIVISION "B"  
Honorable Rosemary Ledet, Judge**

**\* \* \* \* \***

**Judge David S. Gorbaty**

\* \* \* \* \*

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

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RAILWAY CO.

## **REVERSED AND REMANDED**

Defendants, National Railroad Passenger Corporation (Amtrak), The Burlington Northern and Santa Fe Railway Company, American Equity Insurance Company, Louisiana Dirt Haulers, Inc., Raymond Tyler, and Louis A. Ashley seek review of the trial court's denial of their exceptions of improper venue and insufficiency of service of process.

The plaintiffs, Jeffery S. Vinson and David B. Moak, filed suit for damages sustained in a train car/truck collision that occurred in St. Mary Parish. Vinson and Moak, employees of Amtrak, sued Amtrak (National Railroad Passenger Corporation), The Burlington Northern and Santa Fe Railway Corporation (owner of the railway), Louis E. Ashley (driver of the truck), Louisiana Dirt Haulers, Inc. (Ashley's employer), Raymond Tyler (owner of Louisiana Dirt Haulers, Inc.) and American Equity Insurance Company (insurer of Louisiana Dirt Haulers, Inc.).

The plaintiffs sued Amtrak under the Federal Employers Liability Act, 45 U.S.C. §51, *et seq.* Defendant Amtrak filed exceptions of insufficiency of service of process and improper venue. The Burlington Northern and

Santa Fe Railway Corporation, Louis E. Ashley, Louisiana Dirt Haulers, Inc., Raymond Tyler and American Equity Insurance Company filed exceptions of improper venue. After a hearing on the exceptions on January 4, 2002, the trial court rendered a written judgment on January 8, 2002, denying the defendants' exceptions of insufficiency of service of process and improper venue.

On appeal, Amtrak contends that the trial court erred in denying its exception of insufficiency of service of process. The plaintiffs served the citations and petitions on an employee of Amtrak at Amtrak's office in New Orleans. Amtrak argues that such service is insufficient. 49 U.S.C. 24301 provides that Amtrak is a federally chartered corporation that is domiciled in the District of Columbia. The statute states that "the principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business." Amtrak argues that the service of process must be sent, via certified mail, to its corporate secretary in the District of Columbia. Thus, the service of the petitions and citations on its employee in New Orleans was insufficient.

Amtrak also relies upon the service provisions of the Louisiana long-arm statute, which provides for personal jurisdiction over non-residents. A non-resident is defined as “a corporation . . . which is not organized under the laws of, and is not then licensed to do business in, this state.” La. Rev. Stat. 13:3206. La. Rev. Stat. 13:3204(A) provides:

A certified copy of the citation and of the petition in a suit under R.S. 13:3201 shall be sent by counsel for the plaintiff, or by the plaintiff if not represented by counsel, to the defendant by registered or certified mail, or actually delivered to the defendant by commercial courier, when the person to be served is located outside of this state or by an individual designated by the court in which the suit is filed, or by one authorized by the law of the place where the service is made to serve the process of any its courts of general, limited, or small claims jurisdiction.

The plaintiffs suggest that service of the citations and petitions was proper under La. Code Civ. Proc. article 1261 which provides for service on domestic and foreign corporations:

B. If the corporation has failed to designate an agent for service of process, if there is no registered agent by reason of death, resignation, or removal, or if the person attempting to make service certifies that he is unable, after due diligence, to serve the designated agent, service of the citation or other process may be made by any of the following methods:

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(2) By personal service on any employee of suitable age and discretion at any place where the business of the corporation is regularly conducted.

Louisiana Code Civil Procedure art. 5251(6) defines a foreign corporation as “a corporation organized and existing under the laws of another state or a possession of the United States, or of a foreign country.”

Amtrak does not fit within the definition of a foreign corporation. It is not organized under the laws of another state or a possession of the United States. It is a federally chartered corporation that, by its own incorporating legislation, is authorized to do business in the State of Louisiana. There is no documentation in the appeal documents to suggest that Amtrak has filed documents with the State of Louisiana to comply with the state’s licensing laws for a corporation. Thus, Amtrak is a nonresident corporation and should have been served pursuant to the long arm statute. Both the long-arm statute and the federal provisions for service on Amtrak require that service be made through certified mail. The service which plaintiff attempted on Amtrak’s employee at the New Orleans office was improper. The trial court erred when it denied Amtrak’s exception of insufficiency of service of process.

The defendants also assign as error the denial of their exceptions of improper venue. La. Code Civ. Proc. article 42 sets forth the proper venues for individuals and corporations:

The general rules of venue are that an action against:

(1) An individual who is domiciled in the state shall be brought in the parish of his domicile; or if he resides but is not domiciled in the state, in the parish of his residence.

(2) A domestic corporation, a domestic insurer, or a domestic limited liability company shall be brought in the parish where its registered office is located.

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(4) A foreign corporation or foreign limited liability company licensed to do business in this state shall be brought in the parish where its primary business office is located as designated in its application to do business in the state, or, if no such designation is made, then in the parish where its primary place of business in the state is located.

(5) A foreign corporation or a foreign limited liability company not licensed to do business in the state, or a nonresident who has not appointed an agent for the service of process in the manner provided by law, other than a foreign or alien insurer, shall be brought in a parish where the process may be, and subsequently is, served on the defendant.

(6) A nonresident, other than a foreign corporation or a foreign or alien insurer, who has appointed an agent for the service of process in the manner provided by law, shall be brought in the parish of the designated post office address of an agent for the service of process.

(7) A foreign or alien insurer shall be brought in the parish of East Baton Rouge.

Louisiana Code Civil Procedure art. 74 provides for alternative venues for offenses and quasi-offenses:

An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.

Defendant Burlington Northern and Santa Fe Railway Company is a foreign corporation with its principal place of business in East Baton Rouge Parish; Louis E. Ashley is a resident of St. Mary Parish; Louisiana Dirt Haulers, Inc., is a domestic corporation with its principal place of business in St. Mary Parish; Raymond Tyler is a resident of St. Mary Parish, and American Equity Insurance Company is a foreign insurer. The accident occurred, and the plaintiffs sustained their injuries, in St. Mary Parish. Thus, under the venue provisions of the Louisiana Code of Civil Procedure, the appropriate venue for the plaintiffs' actions is either St. Mary Parish or East Baton Rouge Parish.

Accordingly, we find that the trial court erred in denying the defendants' exceptions of insufficiency of service of process and improper venue. The trial court's judgment is reversed and the matter remanded.

**REVERSED AND REMANDED**