

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 24 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KOREY AARSTAD; et al.,

No. 19-35305

Plaintiffs-Appellees,

D.C. No.

v.

4:17-cv-00072-BMM-JTJ

BNSF RAILWAY COMPANY, a Delaware  
corporation; JOHN SWING,

MEMORANDUM\*

Defendants-Appellants.

Appeal from the United States District Court  
for the District of Montana  
Brian M. Morris, District Judge, Presiding

Argued and Submitted May 16, 2019  
Portland, Oregon

Before: N.R. SMITH, WATFORD, and R. NELSON, Circuit Judges.

Neither the magistrate judge nor the district court has addressed whether the “principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred” in Montana. 28 U.S.C. § 1332(d)(4)(A)(i)(III). Because we do not typically make such determinations in the first instance, we vacate the district court’s order remanding the case to Montana state court, and

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

remand to the district court to consider this issue in the first instance. We express no opinion regarding the merits of any other issues raised by the parties on appeal before this court.

**VACATED and REMANDED.**

The Appellees' motion for judicial notice is **DENIED**. Each party shall bear their own costs.