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# Recent Developments: Baker v. General Motors, Corp.: Injunction Granted in One State Barring Employee from Testifying against Former Employer Does Not Bar Testimony in Another State When Given Pursuant to Court Order

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## ***Baker v. General Motors, Corp.:***

Reversing the United States Court of Appeals for the Eighth Circuit, the Supreme Court in *Baker v. General Motors Corp.*, 118 S. Ct. 657 (1998), held that an injunction barring an employee from testifying against his former employer did not prevent him from testifying in a proceeding in another state pursuant to a subpoena issued in that state. The decision illustrates the Court's intent to prevent a state from interfering in matters which it lacks authority to resolve under the ambit of the Full Faith and Credit Clause of the Constitution. The Court maintained that it was not creating an exception to the requirement of full faith and credit, it was simply recognizing that a judgment granted in one state cannot determine evidentiary issues in a suit brought in another state.

For the fifteen years preceding this litigation, Ronald Elwell ("Elwell") was employed by General Motors Corporation ("GM") as an engineer analyst. His primary responsibility was to evaluate the performance of GM vehicles and make recommendations for improvement. He also served as an expert witness for GM in products liability actions, defending the safety and crash worthiness of GM vehicles. After the employment relationship soured, and Elwell agreed to retire within two years, Elwell was subpoenaed to testify in a Georgia products liability action against GM. He testified that the

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fuel system of the GM vehicle in which plaintiff's decedent was riding was inferior in comparison with other vehicles in its class. The following year, Elwell sued GM in Michigan for wrongful discharge and other tort and contract claims. In its counterclaim, GM alleged that Elwell had breached his fiduciary duty to GM by disclosing privileged information by testifying in the Georgia action.

In August, 1992, Elwell and GM entered into an agreement under which Elwell agreed to a permanent injunction barring him from testifying as a witness in any litigation involving GM. Although the only specific exception to the injunction was in reference to the Georgia action in which Elwell had already been deposed, the agreement contained a general exception as well. GM and Elwell agreed that if Elwell's testimony was ordered by another court, compliance with that order would not be actionable as a violation of the injunction. Since the

injunction was entered, Elwell testified against GM in several jurisdictions pursuant to subpoenas ordering his appearance.

The current action involved one of the cases in which Elwell had been ordered to testify. Kenneth and Steven Baker sued GM in Missouri claiming their mother died in a collision in which the GM vehicle she was driving caught fire because of a faulty fuel pump. The Bakers sought to depose Elwell as a witness and GM objected based on the injunction obtained in Michigan. The Bakers maintained that the Michigan injunction did not override a Missouri subpoena and pointed out the general exception in the injunction which provided that Elwell could testify in an action if a court so ordered.

After reviewing the Michigan injunction, the Federal District Court in Missouri allowed Elwell to testify at trial. The court held that enforcing the injunction would violate Missouri's public policy which only shielded from disclosure privileged or confidential information.

The United States Court of Appeals for the Eighth Circuit reversed the district court's decision by holding that the district court erroneously relied on Missouri's public policy favoring the disclosure of information that is not privileged. The court of appeals held that Missouri has an equally strong public policy favoring that full faith and credit be given to judgments obtained in other states. The Supreme Court

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granted certiorari to decide whether the full faith and credit requirement estopped the Bakers from procuring Elwell's testimony in their Missouri lawsuit against GM. *Baker*, 118 S. Ct. at 663.

The Court noted that the Full Faith and Credit Clause of Article IV of the United States Constitution provides that a judgment granted in one state, "qualifies for recognition throughout the land," provided that it was granted by a court with authority over the persons and subject matter of the suit. *Id.* at 663-664. Therefore, for purposes of claim and issue preclusion, a judgment granted in one state warrants recognition nationwide. *Id.* at 664.

Observance of the Full Faith and Credit Clause does not compel a state to follow another state's procedures for enforcing judgments. *Id.* at 665. Further, judgments granted in one state that have interfered with litigation over which the granting state had no authority have been denied enforcement and held ineffective. *Id.* at 665 (citing *Fall v. Eastin*, 215 U.S. 1 (1909)).

While maintaining the effects of the Michigan judgment between Elwell and GM could not be extended beyond controversies under the specific control of the Michigan court, the Court noted that the injunction could operate "to preclude [Elwell] from volunteering his testimony" in pending or future litigation in

Michigan. *Id.* at 667. However, the Court stated, this judgment does not operate to dictate to a court in another state that relevant evidence should be deemed inadmissible based on the injunction. *Id.* The Court held that "Michigan's power does not reach into a Missouri courtroom to displace the forum's own determination whether to admit or exclude evidence relevant" in the case before it. *Id.*

According to the Court, this ruling did not suggest that a state may refuse to honor another state's judgments based on public policy preferences or that this is an exception to the Full Faith and Credit Clause. *Id.* It merely preserves the concept that an injunction awarded in Michigan cannot operate to determine evidentiary issues in a suit pending in Missouri when the parties were not subject to the jurisdiction of the Michigan court. *Id.* This does not, as Justice Kennedy wrote in his concurring opinion, compel a sweeping exception to the full faith and credit requirement. *Id.* at 670 (Kennedy, J., concurring). This judgment, according to the majority, is denied full faith and credit protection because it attempted to interfere with claims that were not under the control of the Michigan court. *Id.* at 667. As Justice Scalia pointed out in his concurring opinion, "[t]he Missouri court was no more obliged to enforce the Michigan

injunction by preventing Elwell from presenting his testimony than it was obliged to enforce it by holding Elwell in contempt." *Id.* at 668 (Scalia, J., concurring). In other words, full faith and credit does not require Missouri to execute the injunction which was granted in Michigan and if GM wishes the Michigan injunction to be given force in Missouri, it must be made a judgment in Missouri. *Id.*

Holding that a state has no authority to control proceedings outside its jurisdiction by shielding a witness from the state's subpoena power, the Supreme Court clarified the fact that recognition under the Full Faith and Credit Clause is only owed to matters that the state which issued the judgment has authority to resolve. This decision narrows the options for businesses attempting to keep information acquired during the employment relationship confidential. Knowing that a court-ordered injunction may not be given full effect in proceedings outside the state in which it was granted, employers may be less willing to offer consideration for an employee's silence regarding potentially damaging information. It may also make products liability actions easier to litigate because it opens the door to the use of vicarious admission testimony, thereby giving plaintiffs a vehicle through which to gain important evidence.