


 News article

## Jurisdiction in employment contract disputes: Petter v EMC Corporation

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Sep 22 2015 [Christopher Fisher and Kayne Jonsson](#)

The issue of jurisdiction in employment contract disputes is an important one for international employers. It determines where they (and their employees) can enforce the employment contracts, which is relevant for two main reasons. First, there will normally be a preference for certainty as to which country's courts will decide any proceedings due to differing procedural rules.

Secondly, and often more importantly, it can affect what law is applied to the contract. For example, in the case of restrictive covenants, local restraint of trade principles will often trump whatever law is expressed as the governing law of the contract.

For employees in Europe, special rules on jurisdiction apply under the Brussels Recast Regulation (the regulation). In broad terms, the regulation looks to provide preferential treatment to employees on the basis that they are deemed to be the weaker party when it comes to employment contracts. The regulation states that an employer can only bring proceedings against an employee in the member state where the employee is domiciled and, further, the employee can bring proceedings against the employer in the member state where he works, regardless of where the employer is domiciled.

These rules do not, however, apply to courts outside Europe. So, if the contract itself states that a court outside Europe (e.g., a U.S. court) has jurisdiction, then that court can accept the claim despite the fact that the employee is in Europe.

In the UK, this issue has come up in cases involving incentive schemes operated by U.S. parent companies, which are extended to employees wherever they are based in the world, including the UK. When those schemes include restrictive covenants (as they often do), disputes can arise as to the enforceability of the covenants and the question then becomes whether the case should be brought in the U.S. or UK courts. The U.S. courts generally take a broader approach to the enforceability of covenants and so the question of which court hears the case can be critical. A recent case decided by the Court of Appeal in July of this year (Petter v EMC Corporation) has clarified the approach of the UK courts to these issues.

### The Petter decision

Petter was employed by an English subsidiary of a U.S. holding company, EMC. He participated in a stock plan operated by EMC which was separate from his employment contract. The stock issued under the plan was subject to restrictive covenants and it contained an exclusive jurisdiction clause in favour of the courts of Massachusetts. When Petter resigned to join a competitor, EMC brought proceedings in Massachusetts to rescind his stock on the basis that he had breached the restrictive covenants. Petter applied to the UK courts for an "anti-suit" injunction to prevent EMC from continuing the proceedings in Massachusetts.

Petter's case was that, under the regulation, any proceedings had to be brought in the UK, where he was domiciled. The jurisdiction clause, he said, was of no help to EMC because the regulation only allowed such a clause to take precedence if it was entered into after the dispute had arisen, which was not the case here. EMC argued that the special employment contract rules under the regulation did not apply because EMC was not Petter's employer (that was the UK subsidiary) and the document on which it was suing was not his employment contract, it was a stock plan agreed between Petter and the U.S. holding company.

The Court of Appeal decided that the UK courts had jurisdiction under the regulation. Despite EMC not being Petter's employer and the stock plan sitting outside Petter's UK employment contract, the stock was inextricably linked to his employment. The court said that the stock units were "made available to him as an important employee and were intended to act as a reward for past efforts and an incentive to make efforts in the future".

As to what the court could do to enforce the protection given to Petter by the regulation, the Court of Appeal followed one of its earlier decisions (the 2007 case of Samengo-Turner v MMC) and decided that it had to grant an anti-suit injunction to restrain EMC from continuing its U.S. proceedings, notwithstanding the exclusive jurisdiction clause in favour of the U.S. courts.

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The result in *Petter* is something of a jurisdictional stand-off or, as the Court of Appeal described it, an "irreconcilable clash" between the UK and U.S. courts. In spite of the injunction granted in the UK, it remains to be seen whether *Petter* will be able to enforce it in the United States should he need to, and whether the U.S. courts will defer to the UK courts in terms of the U.S. proceedings.

What is clear is that the UK courts will take a broad view of what constitutes an employment contract for the purposes of the regulation, and they will take jurisdiction over such disputes accordingly. In a covenant dispute, therefore, they will apply English restraint of trade principles even where the clause is said to be governed by, for example, U.S. law. So a widely drafted U.S. covenant may well not be enforceable in the UK.

Parent companies based outside the European Union should take particular note where they are offering parent company incentives to employees based in Europe. An exclusive jurisdiction clause in favour of the parent company's home country will not be enough to oust the jurisdiction of the employee's home country courts.

Local law nuances applicable in the employee's home country should therefore be taken into account when drafting any employment-related agreements, even if they sit outside the employment contract itself, such as a stock or other incentive plan. This is particularly important where these documents include restrictive covenants, when the employee's local law will often be applied regarding the enforceability of such provisions.

As mentioned above, the U.S. and UK rules on restraint of trade can be markedly different, depending on which U.S. state law is applied. Those differences are often magnified when one considers the restraint of trade principles in continental Europe, where it is sometimes necessary to continue payment of salary during the covenant period.

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