

Supreme Court and Appellate Alert

June 22, 2017

Key Points

- In *Bristol-Myers Squibb Co. v. Superior Court of California*, the U.S. Supreme Court rejected the California Supreme Court's "sliding scale" approach to specific personal jurisdiction, instead requiring plaintiffs to show that there is some connection between the forum and the underlying controversy for each plaintiff in a mass action.
- Litigants should not conflate the tests of general and specific personal jurisdiction and should independently address each basis for personal jurisdiction.
- Attorneys seeking a forum for mass actions will often be limited to filing claims in defendants' home jurisdictions, where courts can hear cases under general personal jurisdiction.



U.S. Supreme Court Reverses California's Sliding Scale Approach to Specific Personal Jurisdiction

Facts:

On June 19, 2017, in *Bristol-Myers Squibb Co. v. Superior Court of California*, the Supreme Court held, by a vote of 8 to 1, that California courts lack specific jurisdiction to entertain a nonresident's claims that are unrelated to any contacts the defendant has with California. The case involved a group of plaintiffs who sued Bristol-Myers Squibb Company (BMS) in California state court, alleging that the pharmaceutical company's drug Plavix harmed them. Of the 678 plaintiffs, only 86 were residents of California. BMS is incorporated in Delaware and headquartered in New York and maintains substantial operations in both New York and New Jersey. Although BMS engages in business activities in California and sells Plavix in the state, BMS did not develop, create a marketing strategy for, manufacturer, label, package or work on the regulatory approval for Plavix in California. The nonresident plaintiffs did not allege that they were injured or treated for their injuries in California, nor did they allege that they obtained Plavix from a California source.

The California trial court concluded that BMS's extensive activities in California gave the California courts general jurisdiction. Following the Supreme Court's decision in *Daimler AG v. Bauman*, the California Court of Appeal disagreed, finding that California courts lacked general jurisdiction over the case. The Court of Appeal found, however, that the trial court could exercise specific jurisdiction over the plaintiffs' claims. The California Supreme Court affirmed, applying a "sliding scale approach" to *specific* jurisdiction and concluding that, because BMS had "wide ranging" contacts with California, there was sufficient

support for a finding of specific jurisdiction over the claims brought by nonresident plaintiffs. In particular, the California Supreme Court reasoned that, because the California plaintiffs purchased Plavix in California and the claims of the nonresident plaintiffs were identical to those of the California plaintiffs, California courts had specific jurisdiction over the nonresident claims as well. The California Supreme Court also found it significant that five of BMS's research and laboratory facilities are in California, that BMS employs hundreds of sales representatives in California, and that BMS maintains a small state-government advocacy office in Sacramento.

Ruling

The U.S. Supreme Court granted certiorari and reversed. The Supreme Court held that the California Supreme Court's broad conception of specific personal jurisdiction violated the Due Process Clause of the 14th Amendment. The Court first outlined the two types of personal jurisdiction: general and specific. For general jurisdiction, the forum for a corporation is "an equivalent place [of domicile], one in which the corporation is fairly regarded as at home." Specific jurisdiction, on the other hand, requires that the suit arise out of, or relate to, the defendant's contacts with the forum state.

Observing that the doctrine of personal jurisdiction serves multiple interests, including fairness to defendants and the extent of an individual state's sovereign power to try cases in their courts, the Supreme Court rejected the California Supreme Court's "sliding scale" approach to specific personal jurisdiction. In addition to due process/fairness and federalism principles, the Court relied on past precedent. Its prior cases, the Court reasoned, do not support the California Supreme Court's approach, "which resembles a loose and spurious form of general jurisdiction." The Court reiterated that a defendant's general connections with a forum are insufficient for purposes of specific personal jurisdiction, opining that "[t]he mere fact that other [California] plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the non-residents—does not allow the State to assert specific jurisdiction over nonresidents' claims." Rather, the Court found, "[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue." Responding to Justice Sotomayor's principal concern in her lone dissent, the Court reasoned that the decision does not prevent the California and out-of-state plaintiffs from joining together in a consolidated action in the states that have general jurisdiction over BMS.

The Court's decision left open two questions: first, whether federal courts would likewise lack personal jurisdiction given similar facts under the Fifth Amendment; and second (at least according to the dissent), whether the same conclusion would apply to a class action in which a named plaintiff resident of the forum state seeks to represent a nationwide class of plaintiffs, not all of whom were injured there.

Bottom Line:

The Supreme Court's decision in *Bristol-Myers Squibb Co.* marks yet another victory for defendants seeking to curb the consolidation of lawsuits in plaintiff-friendly forums. The Court made clear that the exercise of specific jurisdiction requires that the underlying controversy have some connection to the defendant's contacts with the forum state, and that courts may not utilize a "sliding scale approach" to determining whether a defendant's contacts are sufficient. In light of that holding, plaintiffs may be

compelled to rely on general jurisdiction in order to sue large corporate defendants. Since general jurisdiction is available only where the defendant is incorporated or headquartered, the Court's decision significantly limits plaintiff attorneys' ability to forum shop, to the advantage of defendants.

Another consequence of the Court's decision may be that plaintiffs choose to forgo large mass actions outside of the defendant's home state in favor of multiple smaller actions in states where specific jurisdiction can be established. This too benefits defendants: when mass tort actions are smaller, defendants can focus their strategies on fewer plaintiffs and require each individual plaintiff to prove their individual claims. Given that the case was heard after the confirmation of Justice Neil Gorsuch and decided nearly unanimously, it seems unlikely that the trend toward greater due process protections for defendants will change any time in the foreseeable future.

Contact Information

If you have any questions concerning this alert, please contact:

Rex S. Heinke

rheinke@akingump.com

+1 310.229.1030

Los Angeles

Pratik A. Shah

pshah@akingump.com

+1 202.887.4210

Washington, D.C.

James E. Tysse

jtysse@akingump.com

+1 202.887.4571

Washington, D.C.

Sina S. Safvati

ssafvati@akingump.com

+1 310.229.1074

Los Angeles