

August 1, 2017

## Supreme Court Reverses Attempt to Broaden Scope of Personal Jurisdiction Over Nonresidents

In a ruling expected to favor defendants, the Supreme Court recently reversed California's attempt to broaden the scope of personal jurisdiction over nonresident defendants.

In *Bristol-Myers Squibb Co. v. Superior Court of California*, approximately 678 plaintiffs brought nearly identical claims against Bristol Meyers Squibb (BMS) and McKesson Corporation in connection with the use of Plavix, a prescription drug intended to prevent blood clotting. BMS is a Delaware corporation with a principal place of business in New York, and it did not research or manufacture Plavix at its facilities in California. McKesson is a California-based Plavix distributor. Only 86 plaintiffs were California residents; the remaining 87 percent were nonresidents who failed to allege they had (a) been injured by Plavix in California, (b) been prescribed Plavix in California or (c) received Plavix distributed by McKesson from California.

BMS moved to dismiss the claims for lack of personal jurisdiction in California. The trial court denied the motion, holding that BMS was subject to the California court's general jurisdiction because it had "wide-ranging, continuous, and systematic contacts" with California." *Bristol-Myers Squibb Co. v. Superior Court*, 228 Cal. App. 4th 605, 615 (2014). The appellate court rejected the trial court's general jurisdiction assessment but held that the nonresident plaintiffs' claims were sufficiently related to BMS's California activities to support specific jurisdiction. *Id.*

The California Supreme Court affirmed, agreeing unanimously with the appellate court on the issue of general jurisdiction. As to specific jurisdiction, the state's highest court looked at the various indicia of a "substantial nexus" between the nonresident plaintiffs' claims and BMS's activities in California, including that BMS (a) markets and sells the drug nationwide, including in California; (b) maintains five offices in California (four research facilities and one government affairs office); and (c) maintains approximately 250 sales representatives in California. Applying a "sliding scale approach to specific jurisdiction" under which "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim," the court concluded that "BMS's extensive contacts with California" permitted the exercise of specific jurisdiction "based on a less direct connection between BMS's forum activities and plaintiffs' claims than might otherwise be required." *Bristol-Myers Squibb Co. v. Superior Court*, 1 Cal. 5th 783, 806 (2016) (internal quotation marks and citation omitted).

The United States Supreme Court granted certiorari on January 19. After oral arguments in April, the Court found that the California "sliding scale" rule was inapposite to settled precedent on specific jurisdiction and instead created an "approach, which resembles a loose and spurious form of general jurisdiction" over nonresident defendants. *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, 2017 U.S. LEXIS 3873, at \*13-14 (June 19, 2017).

The Court cited well-established personal jurisdiction precedent, beginning with *Pennoyer v. Neff*, 95 U. S. 714 (1878), through the relatively recent decisions in *Daimler AG v. Bauman*, 134 S. Ct. 746 (U.S. 2014) and *Walden v. Fiore*, 134 S. Ct. 1115 (U.S. 2014). *Id.* at \*10. The Court reiterated that for a state to exercise specific jurisdiction, "the suit" must "arise out of

or relate to the defendant's contacts with the forum." *Id.* at \*11 (internal quotation marks and citation omitted). "[T]here must be an 'affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation' . . . 'specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Id.* (quoting *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U. S. 915, 919 [2011]).

As to BMS, the nonresidents (a) were not prescribed Plavix in California, (b) did not purchase Plavix in California, (c) did not ingest Plavix in California and (d) were not injured by Plavix in California. That the California resident-plaintiffs, able to demonstrate specific jurisdiction, could bring claims similar to those of the nonresident plaintiffs did not confer specific jurisdiction over the nonresidents' cases.

Accordingly, the Court reversed and remanded, 8-1, in an opinion by Justice Alito on June 19. Justice Sotomayor filed a dissenting opinion.

The Supreme Court's decision means the sliding scale can now be interred nationwide, but this should have little to no effect on existing law in the majority of jurisdictions. The decision curtails the ability of nonresident plaintiffs to ride the coattails of resident plaintiffs in an effort to forum shop for jurisdictions with more plaintiff-favorable laws. National and multinational defendants may face more lawsuits in more jurisdictions, but they will face fewer plaintiffs in a given litigation. This generally results in verdicts more favorable to defendants, as juries are not overwhelmed by the abundance of (often unfavorable) evidence in multiplaintiff lawsuits.

## Authors



**Benjamin E. Haglund**

**Partner**

Parsippany, NJ | (973) 966-8155

[bhaglund@daypitney.com](mailto:bhaglund@daypitney.com)