

APPELLATE**U.S. SUPREME COURT LIMITS THE EXERCISE OF SPECIFIC PERSONAL JURISDICTION BY STATE COURTS**

by Phillip J. DeRosier

The U.S. Supreme Court recently tightened the reins when it comes to state courts' exercise of case-based, specific personal jurisdiction over out-of-state companies. In *Bristol-Myers Squibb Co. v. Superior Court of California*, ___ U.S. ___ (2017), the Court held that even though a company may generally conduct business in a state, that is not enough to subject the company to a state court's specific jurisdiction if those activities are not related to the plaintiffs' claims.

The Facts

More than 600 plaintiffs sued Bristol-Myers Squibb Co. (BMS) in California state court claiming personal injuries from their ingestion of a drug known as Plavix. Of those plaintiffs, only 86 were from California. More than 500 of the plaintiffs were from 33 other states.

BMS is headquartered in New York with most of its operations in either New York or New Jersey. BMS does, however, engage in various business activities in California. It has five research and laboratory facilities there, employing 160 people, and also employs 250 sales representatives in the state. BMS also has a "state-government advocacy office" in Sacramento, and from 2006-2012 it sold \$900 million worth of Plavix pills in California.

On the other hand, more than 50 percent of BMS's work force in the United States is employed in New York and New Jersey, and it was in one of those two states where BMS developed and worked on regulatory approval for Plavix. New York and New Jersey were also where BMS created a marketing strategy for Plavix, and where the drug was manufactured, labeled, and packaged.

In their lawsuit, the California and nonresident plaintiffs asserted various claims under California law, alleging that Plavix damaged their health. BMS sought to quash service of summons on the nonresidents' claims, arguing that the California courts lacked personal jurisdiction over those claims because the nonresident plaintiffs "did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California."

The Superior Court of California denied the motion, and the California Court of Appeal and Supreme Court both affirmed. The California Supreme Court agreed that BMS's business activities in California were not sufficient to permit the exercise of California's general, all-purpose jurisdiction. But the court held that those activities *did* support the exercise of specific jurisdiction because the nonresidents' claims "were similar in several ways to the claims of the California residents (as to which specific jurisdiction was uncontested)." The court reasoned that "[b]oth the resident and nonresident plaintiffs' claims are based on the same allegedly defective product and the assertedly misleading

marketing and promotion of that product." The court also found it significant that while Plavix itself was not designed and developed in California, BMS had conducted other drug research in the state.

The Supreme Court's Decision

The U.S. Supreme Court granted BMS's petition for a writ of certiorari, and in an 8-1 opinion written by Justice Alito, reversed the California Supreme Court's decision. The Supreme Court began by explaining the difference between general and specific jurisdiction: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State." Specific jurisdiction, the Court explained, "is very different. In order for a state court to exercise specific jurisdiction, 'the suit' must 'aris[e] out of or relat[e] to the defendant's contacts with the forum.'"

The Court noted that while the "primary concern" in determining whether a court may properly exercise personal jurisdiction is "the burden on the defendant," restrictions on personal jurisdiction also reflect "territorial limitations on the power of the respective States," including "the sovereign power to try causes in their courts." Thus, "[t]he sovereignty of each State . . . imp[li]e[s] a limitation on the sovereignty of all its sister States." This "federalism interest," the Court said, "may be decisive" even if "the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State."

Applying these "settled principles" to the California courts' exercise of personal jurisdiction over BMS, the Supreme Court concluded that specific jurisdiction was lacking because BMS's general business activities in California had no connection with the nonresidents' claims. "For specific jurisdiction," the Court explained, "[a] corporation's 'continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.'"

The Court concluded that even though the nonresidents' claims were "similar" to those brought by the California plaintiffs, this "did not allow the State to assert specific jurisdiction over the nonresidents' claims." In contrast with the California plaintiffs, "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." Nor did it matter that BMS conducted research in California on other drugs. The Court observed that "[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue." Without that connection, specific personal jurisdiction was lacking.

Implications of the Supreme Court's Decision

In addition to providing a reminder of the limits on a state court's exercise of personal jurisdiction over an out-of-state corporation,

the Supreme Court's decision in **BMS** is particularly significant in two respects. *First*, the Court reiterated that general jurisdiction only exists when a corporation's contacts with a state are so significant that it may be considered to be "at home" there. That is not typically going to be the case with a corporation headquartered in another state (or country for that matter). *Second*, while fewer contacts are required for the exercise of case-based specific jurisdiction, it is not enough that the corporation generally conducts business in the state—even a lot of it—if the business it conducts has nothing to do with the claim at issue.

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