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Supreme Court Continues Its Restrictive Approach to Personal Jurisdiction, Barring "Mass Actions" by Plaintiffs from Multiple States against an Out-of-State Corporate Defendant

On June 19, 2017, continuing a trend, the U.S. Supreme Court issued an opinion that once again clarified—and narrowed—the sorts of contacts that can subject a defendant to personal jurisdiction in a specific state, a constitutional requirement in all U.S. litigation. In *Bristol-Myers Squibb Company v. Superior Court of California* ("*Bristol-Myers*"), the Court held that plaintiffs who did not reside in California and were not injured there could not establish specific personal jurisdiction over Bristol-Myers Squibb ("BMS"), a pharmaceutical company incorporated in Delaware and headquartered in New York, in connection with products liability claims concerning BMS' nationwide sale of pharmaceutical products.

The decision could have far-reaching implications for plaintiffs' efforts to shop for friendly forums in which to litigate their claims. The decision provides some guidance regarding the sorts of contacts with a forum that are sufficient to provide specific jurisdiction. Equally significantly, the decision has potentially broad implications for aggregation of claims in a single case. It will certainly limit "mass actions" of the kind at issue in *Bristol-Myers* itself, where hundreds of individual plaintiffs from across the country join in a single action to sue a defendant for similar claims. And it may limit nationwide "class actions," in which a few plaintiffs seek to represent the interests of all nationwide plaintiffs with similar claims in a single case.

Personal Jurisdiction Overview

The Due Process Clause of the U.S. Constitution permits U.S. state and federal courts to assert personal jurisdiction over only those defendants that have "minimum contacts" with the forum state, such that "the suit does not offend traditional notions of fair play and substantial justice."[1] This requirement protects defendants from being sued in a specific state without "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," and "some minimum assurance as to where [their] conduct will and will not render them liable to suit."[2]

The Supreme Court has recognized two types of personal jurisdiction: general (all-purpose) and specific (conduct-linked). A court with general jurisdiction may adjudicate "any and all claims" against a defendant, even claims wholly unrelated to the defendant's contacts with that forum. Specific jurisdiction "depends on an affiliatio[n] between the forum and the underlying controversy," which typically requires "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Thus, specific jurisdiction is appropriate only in cases that "aris[e] out of or relat[e] to the defendant's contacts with the forum." If the defendant lacks "minimum contacts" with the forum under either theory, the court cannot exercise jurisdiction over it.

In the last seven years, the Supreme Court has issued a series of decisions limiting the exercise of personal jurisdiction over out-of-state defendants. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), the Court held that the

[1] *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945).
[2] *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 472 (1985).

assertion of general jurisdiction is only appropriate when a defendant's "affiliations with [the forum] are so 'continuous and systematic' as to render [it] essentially at home in the forum." Shortly thereafter, in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Court clarified that in all but the most "exceptional cases" the "at home" test for general jurisdiction is satisfied only in a corporation's "formal place of incorporation or principal place of business."

In *Walden v. Fiore*, 134 S. Ct. 1115 (2014) the Supreme Court held that a Nevada court did not have specific jurisdiction over an Atlanta law enforcement agent whose only contact with the forum was that he knew his allegedly tortious conduct in Georgia would injure plaintiffs, who resided in Nevada. The *Walden* Court first reiterated its past precedent stating that the appropriate inquiry for conduct-linked jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation." The Court then clarified that key aspects of this standard are that a plaintiff's claims must "arise out of contacts that the defendant *himself* creates with the forum" rather than simply contacts that the defendant has with "other persons affiliated with the [forum]." In other words, "[t]he proper [jurisdictional] question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."

The Bristol-Myers Opinion

In *Bristol-Myers*, 86 California residents and nearly 600 residents of more than 30 other states sued BMS in California state court in connection with BMS' production and sale of an allegedly harmful prescription drug. BMS developed and manufactured the drug in New York and New Jersey, and had coordinated its marketing strategy and regulatory approvals for the drug in those states as well. But BMS marketed and sold the drug nationwide, including in California, where sales of the drug exceeded $900 million. The plaintiffs asserted a variety of claims under California law, including products liability, negligent misrepresentation, and misleading advertising. BMS moved to quash service of summons, arguing in part that the California court lacked personal jurisdiction over the *non*-residents' claims.

In a divided opinion, the California Supreme Court rejected this argument and concluded the California courts could assert specific jurisdiction over BMS with regard to the non-residents' claims. The California Supreme Court applied a "sliding scale" approach to the Due Process "minimum contacts" inquiry, 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" justifying a finding of specific jurisdiction over BMS. The court noted that BMS had "extensive contacts" in California, including five research and laboratory facilities, hundreds of laboratory employees and sales representatives, and a small state lobbying office. On those bases, the California Supreme Court held that the jurisdictional test demanded a "less direct connection between [BMS'] forum activities and plaintiffs' claims." In particular, the court found sufficient the fact that "the claims of the nonresidents were similar in several ways to the claims of the California residents"—namely, that the non-residents' claims involved the same allegedly defective product and misleading marketing and promotion of that product as the claims by California residents.

The U.S. Supreme Court reversed the California Supreme Court's decision and dismissed the non-Californians' claims for lack of specific personal jurisdiction. In a near-unanimous, 8-1 opinion, the Court stated that the lower court's "sliding scale" approach was "difficult to square" with U.S. Supreme Court precedent because the lower boundary of that sliding scale essentially amounted to a "loose and spurious form of general jurisdiction," in which the claims bear little relation to the defendant's in-forum conduct.

Instead, the Court applied what it described as "settled principles" of specific jurisdiction to hold that the out-of-state plaintiffs' claims did not "*aris[e] out of or relat[e] to*" BMS's contacts with California. The Court explained that even the defendant's "extensive" California contacts failed to establish "any adequate link" to the non-Californians' claims. Rather, the Court focused on the fact that the out-of-state plaintiffs had not, for example, purchased, ingested, or been prescribed the drug in California, which led the Court to conclude that "all the conduct giving rise to the nonresidents' claims occurred elsewhere."

Further, the out-of-state plaintiffs could not satisfy their minimum contacts requirements based on the allegation that they "sustained the same injuries" as the California plaintiffs, because "a defendant's relationship with a . . . third party, standing alone is an insufficient basis for jurisdiction." Finally, the Court concluded that allegations that BMS contracted with a California company to distribute the drug nationally did not provide a basis for jurisdiction because "it is not alleged that BMS engaged in relevant acts together with [the distributor] in California."

Dissenting, Justice Sotomayor warned against the practical ramifications of the decision, including that it "will make it difficult to aggregate the claims of plaintiffs across the country" and "will make it impossible to bring a nationwide mass action in state court against defendants who are 'at home' in different States." In contrast to the majority's opinion, which focused on a court's power to exercise jurisdiction over an out-of-state defendant, Justice Sotomayor focused on the fairness and efficiency of doing so, asserting that "there is no serious doubt that the exercise of jurisdiction over the nonresidents' claims is reasonable."

Implications

While the *Bristol-Myers* opinion does not articulate a new standard for specific jurisdiction, it does underscore that the scope of specific jurisdiction cannot be expanded based on judicial efficiency or convenience. This is consistent with other recent U.S. Supreme Court decisions enabling national or multinational defendants—including non-US companies—to challenge jurisdiction in states in which they or their subsidiaries do business, but may lack specific connections with a particular claim.

To begin with, the *Bristol-Myers* Court strictly construed the type of in-forum contacts that are sufficiently "suit-related" to give rise to specific jurisdiction. The sorts of California contacts that the Court identified as missing from plaintiffs' claims—the location where they were prescribed, purchased, or ingested the drug—each bear some causal relationship to the plaintiffs' claimed injuries. That holding suggests that any plaintiff seeking to assert specific jurisdiction over an out-of-state defendant will need to plead a similarly precise nexus between the defendant's in-forum contact and the claims at issue. For foreign corporations not subject to general jurisdiction *anywhere* in the U.S. (because headquartered and incorporated elsewhere), the opinion may do more than serve to discourage forum shopping, but also could limit suits against them altogether, absent conduct in the forum that "giv[es] rise to" the plaintiffs' claims under the *Bristol-Myers* Court's narrow construction of that standard.

More broadly, the Court's opinion should present practical limitations on future plaintiffs' ability to aggregate multiple parties with similar claims in a forum of their choosing. For mass actions involving hundreds of individual plaintiffs from multiple states such as in *Bristol-Myers*, it will now be much more difficult for plaintiffs to aggregate into a single action except, as the Court noted, in the state where a U.S. defendant is subject to general jurisdiction (usually its headquarters or place of incorporation). Further, although the opinion does not directly address this question, the Court's holding also would appear to pose problems for class action plaintiffs seeking to assert claims in a single state on behalf of a purported class of similarly-situated parties that includes members from outside of that state.

Finally, while the Court's decision expressly "leave[s] open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court," intermediate U.S. federal courts such as the Court of Appeals for the Second Circuit have routinely found that "[t]he due process analysis … is basically the same under both the Fifth and Fourteenth Amendments."[3] Thus, federal courts can reasonably be expected to apply the Supreme Court's holding to federal cases as well.

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[3] *Waldman v. Palestine Liberation Org.,* 835 F.3d 317, 330 (2d Cir. 2016).