

CLIENT ALERT

U.S. Supreme Court Holds That Foreign Corporation's Sales to California Consumers Do Not Create Specific Jurisdiction in California Courts for Non-Resident Plaintiffs' Claims

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On Monday, June 19, 2017, the U.S. Supreme Court issued the latest in a series of decisions clarifying the constitutional limits on where corporations may be sued outside their "home" forums. In *Bristol-Myers Squibb Co. v. Superior Court of California for the County of San Francisco*, the Court held, 8-1, that California state courts had no jurisdiction to hear the claims of non-California residents against Bristol-Myers Squibb Co. (BMS), a foreign corporation incorporated in Delaware and headquartered in New York. Writing for the majority, Justice Samuel Alito held that BMS's sales of its drug Plavix to California consumers, however extensive, were not enough to create personal jurisdiction in that case, given that (1) the non-resident plaintiffs did not claim to have suffered harm in California, and (2) all the conduct giving rise to these non-residents' claims occurred outside California.

The Court's opinion reverses a controversial 2016 decision by the California Supreme Court, which had applied a flexible "sliding scale" in finding that BMS was subject to specific personal jurisdiction—that is, jurisdiction based specifically on its California contacts giving rise to the plaintiffs' claims. The decision thus confirms that state courts may not expansively construe the scope of *specific* jurisdiction so as to circumvent the constitutional limits on *general* jurisdiction that the Court announced in its seminal 2014 decision in *Daimler AG v. Bauman*.

Background to the Decision

Bristol-Meyers Squibb arose out of a series of eight complaints filed against BMS in California state court by more than 600 plaintiffs, only 86 of whom were California residents. The complaints levied a variety of California-law claims against BMS for injuries allegedly caused by its blood-thinning drug Plavix. But BMS did not develop Plavix in California, create its marketing strategy in California, or manufacture and label the drug in California; all those activities took place in either New York, where BMS is headquartered, or in New Jersey. And the 592 non-resident plaintiffs did not allege that they were injured or treated for their injuries in California.

BMS moved to quash service of summons on the non-resident plaintiffs' claims for lack of personal jurisdiction. The trial court denied the motion, finding that California state courts had general jurisdiction over BMS by virtue of its "extensive activities in California." After the U.S. Supreme Court issued its landmark decision in *Daimler AG v. Bauman* narrowing the scope of general jurisdiction, however, the trial court changed course. It held instead that these contacts subjected BMS only to *specific* jurisdiction.

In a controversial decision, the California Supreme Court agreed. The 4-3 majority ruled that BMS was subject to specific jurisdiction based on its "extensive contacts with California"—most saliently, its sales of 187 million Plavix pills to California consumers—even though none of the non-resident plaintiffs had bought Plavix or been injured in the state. The majority reached this conclusion by applying a so-called "sliding scale approach": "the more wide-ranging the defendant's forum contacts," it explained, "the more readily is shown a connection between the forum contacts and the claim."

Under this more flexible rubric, the fact that BMS had sold and marketed Plavix to consumers both within and outside California permitted the exercise of specific jurisdiction "based on a less direct connection between BMS's forum activities and [the non-resident] plaintiffs' claims than might otherwise be required." In so reasoning, the majority put great weight on the fact that "[b]oth the resident and nonresident plaintiffs' claims [were] based on the same allegedly defective product and the [same] assertedly misleading marketing and promotion of that product." In the majority's view, the parallel allegations of these two categories of plaintiffs were part and parcel of a "common nationwide course of distribution"—thus satisfying the requirement that the plaintiffs' claims have a "substantial nexus" with BMS's California contacts.

Three justices dissented. They argued that the claims of the non-resident plaintiffs "injured by their use of Plavix they purchased and used in other states in no sense *arise from* BMS's marketing and sales of Plavix in California," as required for specific jurisdiction. In disregarding this requirement, the dissent explained, the majority ignored the "important functions" that such limitations served—for example, by ensuring that foreign corporations only assume the burdens of suit in jurisdictions in which they have sought and reaped the benefits of doing business. The dissent also expressed concern that the majority's "sliding scale" approach risked "expand[ing] specific jurisdiction to the point that, for a large category of defendants, it becomes indistinguishable from general jurisdiction"—contravening the important limits announced by the U.S. Supreme Court in *Daimler*.

What the Court Held

By an 8-1 margin, the U.S. Supreme Court agreed with the dissent: The California Supreme Court had erred in finding specific jurisdiction over the *non-resident* plaintiffs' claims based on BMS's Plavix sales to the *resident* plaintiffs. Writing for the majority, Justice Alito began his analysis from the foundational principle that "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." "When there is no such connection," therefore, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State."

Under a "straightforward application [of] these settled principles," the Court reasoned, California courts lacked jurisdiction to hear the non-California residents' claims against BMS:

The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State. In addition, . . . all the conduct giving rise to the nonresidents' claims occurred elsewhere. It follows that the California courts cannot claim specific jurisdiction.

The Court thus rejected the California Supreme Court's "sliding scale approach." A defendant's "unconnected" activities in the state are relevant only to the analysis for *general* jurisdiction; "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." In muddying these distinctions, the "sliding scale" approach thus "resemble[d] a loose and spurious form of general jurisdiction."

The fact that BMS sold a considerable volume of Plavix to the 82 California plaintiffs therefore did nothing to create specific jurisdiction over the claims of the 592 non-resident plaintiffs. As the Court explained:

The mere fact that *other* 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

the nonresidents' claims. . . . What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.

Nor was it enough, the Court explained, that BMS had contracted with McKesson, a California company, to distribute Plavix nationally. BMS's distribution relationship with McKesson had nothing to do substantively with the plaintiffs' claims: They did not allege that BMS was "derivatively liable for McKesson's conduct in California," nor that BMS otherwise had "engaged in relevant acts together with McKesson in California." "The bare fact that BMS contracted with a California distributor [was] not enough to establish personal jurisdiction in the State."

In expounding these constitutional limitations, Justice Alito emphasized that the Due Process Clause does not concern itself only with the inconvenience or burden of requiring a defendant to appear in a distant forum. Rather, constitutional restrictions on personal jurisdiction also arise from principles of federalism. Even where the forum state has a strong interest in the litigation, said Justice Alito, and even where litigation in that forum is convenient for the defendant, due process may require divesting the state of its power to render a judgment.

What the Decision Means Going Forward

Although the outcome itself is not surprising, *Bristol Myers Squibb* resolves any lingering uncertainty left by the California Supreme Court's 2016 decision by repudiating its novel "sliding scale" approach to specific jurisdiction. In so holding, the decision also reaffirms the important distinction between the principles of specific jurisdiction, on the one hand, and those of general jurisdiction, as most recently expounded in *Daimler AG v. Bauman*.

In *Daimler*, the U.S. Supreme Court explained that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there"—that is, jurisdiction based not on the acts and events giving rise to the plaintiffs' claims, but on the fact that the defendant is "essentially at home in the forum State." Most corporations, it noted, have only two contacts sufficiently durable to warrant general jurisdiction: the place of incorporation, and the principal place of business. By contrast, the Court held, it is "unacceptably grasping" to subject a foreign corporation to general jurisdiction "in every State in which [it] 'engages in a substantial, continuous, and systematic course of business.'" Applying these principles, the *Daimler* Court rejected the plaintiffs' argument that Daimler and its operating subsidiary were subject to general jurisdiction in any state in which their sales were "sizable."

In *Bristol-Myers Squibb*, the decision below threatened to undermine these limitations by suggesting that a foreign corporation's sales of products into California could alone create *specific* jurisdiction there if they were part of a "common nationwide course of distribution" and marketing. Such a holding would potentially subject a vast number of manufacturers, retailers, and similar companies to jurisdiction in California "on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California"—exactly the outcome the *Daimler* Court warned against. The Court's analysis in *Bristol-Myers Squibb* thus restores needed clarity by instructing that such contacts do not give rise to specific jurisdiction where (1) the plaintiffs did not buy the products or otherwise suffer injury in California, and (2) the corporation's conduct giving rise to the non-resident plaintiffs' claims did not take place in California.

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