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California Supreme Court Decision Could Allow for Greatly Expanded Personal Jurisdiction

The California Supreme Court's recent opinion on specific jurisdiction may have far-reaching consequences for future actions brought in the state.

In the recently published opinion in *Bristol-Myers Squibb Co. v. Superior Court (Anderson)*,¹ the California Supreme Court extended the reach of California jurisdiction over out-of-state defendants to unprecedented lengths. The Court found that non-California plaintiffs may be entitled to bring claims in California courts against non-California defendants, even when those claims arise wholly in other states. In particular, specific jurisdiction may be found when a defendant undertakes a “single, coordinated, nationwide course of conduct” that gives rise to claims by both California and out-of-state plaintiffs, regardless of whether any specific plaintiff’s claim arises from the defendant’s actions in California.²

Bristol-Myers Squibb’s far reaching holding implies that any action based on national marketing and distribution of pharmaceuticals may now be brought in California. For plaintiffs seeking California’s perceived plaintiff-friendly forums, the decision also implicates a variety of other multi-plaintiff cases. However, the US Supreme Court may review the new specific jurisdiction rule, so its implications may be short-lived.

California Supreme Court Expands Personal Jurisdiction

The defendant, Bristol-Myers Squibb Co. (BMS), a pharmaceutical manufacturer incorporated in Delaware and headquartered in New York, conducts the bulk of its business, manufacturing, and research outside of California. In eight separate complaints filed in the San Francisco Superior Court, the 678 plaintiffs, most of whom resided outside of California, claimed that they had been injured by BMS’s pharmaceutical product, Plavix, which was researched, tested, manufactured and predominately purchased outside of California. BMS moved to quash the summons on the ground that the California court did not have personal jurisdiction. The trial court denied the motion. BMS petitioned for a writ of mandate, and the Court of Appeal denied the writ, also finding that California courts may exercise specific jurisdiction over BMS because of its activities in California. BMS then appealed to the California Supreme Court.

In its decision, the California Supreme Court first considered whether BMS’s contacts with California were sufficient for general jurisdiction. Relying on the US Supreme Court’s recent decision in *Daimler AG v. Bauman*,³ the Court rejected the theory that BMS was subject to general jurisdiction in California solely based on the volume of its sales and marketing activities there, because its operations were much more extensive elsewhere in the United States.⁴ “Although the company’s ongoing activities in California are substantial, they fall far short of establishing that [it is] at home in this state for purposes of general jurisdiction.”⁵ The Court went on to state that “to conclude that BMS may be sued in California on any cause of action, whether or not related to its activities here, under a theory of general jurisdiction, would

be to extend globally the adjudicatory reach of every state in which the company has significant business operations.”⁶

The Court next considered the question of whether California courts had specific jurisdiction over BMS to hear the claims of the out-of-state plaintiffs, given that those claims arose outside of California.⁷ Relying on one of its prior decisions, *Vons Companies, Inc. v. Seabest Foods, Inc.*,⁸ the Court considered whether BMS had sufficient minimum contacts with California and whether specific personal jurisdiction would violate traditional notions of fair play and substantial justice.⁹ In *Vons*, the Court used a “sliding scale” test to determine whether specific jurisdiction is fair so that “the more wide ranging the defendant’s forum contacts, the more readily is shown a connection between the forum contacts and the claim.”¹⁰ As the *Bristol-Myers Squibb* majority noted on several occasions, under this test “[a] claim need not arise directly from the defendant’s forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.”¹¹

Although California was not the locus of the injuries, the Court found that BMS’s business conducted in California, and specifically its national advertising and distribution scheme, gave the alleged harms a sufficient connection with the state for California state courts to adjudicate the claim of every plaintiff nationwide.¹² The Court concluded that:

Both the resident and non-resident plaintiffs’ claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product, which allegedly caused injuries in and outside the state. Thus, the non-resident plaintiffs’ claims bear a substantial connection to BMS’s contacts in California. ***BMS’s nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between the non-resident plaintiff’s claims and the company’s contacts in California concerning Plavix.***¹³

Implications of New Specific Jurisdiction Rule

Following *Bristol-Myers Squibb*, pharmaceutical companies and other manufacturers of consumer products can expect that plaintiffs nationwide will try to bring against them claims in California, regardless of whether the company is subject to general jurisdiction in California, as long as the company engages in a “single nationwide marketing and distribution effort.”

But the holding of *Bristol-Myers Squibb* is not limited to pharmaceutical and product liability suits. The expanded specific jurisdiction rule could mean that other types of lawsuits arising out of a nationwide, coordinated course of conduct can now be brought in California. The question of what constitutes a nationwide coordinated effort is left unanswered by the *Bristol-Myers Squibb* majority, but the Court’s description of a nationwide “marketing, promotion, and distribution”¹⁴ effort and its rationale arguably extends to any lawsuit based on an activity conducted in multiple states. This would appear to implicate most large national and international companies.

By way of example, privacy actions arising from nation-wide data breaches, lawsuits arising out of multi-state banking practices — including fraud and consumer protection claims — and false advertising and unfair business practices actions alleging regional or national impacts can theoretically now be brought in California, instead of the defendant’s home state. And under *Bristol-Myers Squibb*, this is the case even if the vast majority of the plaintiffs have never set foot in California.

On its face, *Bristol-Myers Squibb* appears to limit its holding to actions in which at least one California resident is a plaintiff.¹⁵ However, most of the reasoning of the case extends beyond this limitation and

would apply to actions in which no California resident is a plaintiff. For example, the Court reasoned that BMS “embraced” the risk of suit in California by engaging in a single nationwide marketing and distribution effort.¹⁶ This logic applies whether or not a California resident actually joins in the suit against a defendant.

The Court did discuss the effects of the in-state plaintiffs when considering whether the exercise of specific jurisdiction was reasonable — a requirement for specific jurisdiction.¹⁷ The Court noted that the presence of California plaintiffs decreased the additional burden on BMS, which would have to defend claims in California regardless of whether the court had specific jurisdiction over the out-of-state plaintiffs’ claims.¹⁸ The Court also noted that specific jurisdiction was reasonable because California had an interest in promoting efficient adjudication of the California residents’ claims, whose interest was advanced by consolidating the out-of-state plaintiffs’ claims.¹⁹ Whether the inclusion of a California resident plaintiff is an absolute requirement for the exercise of specific jurisdiction, or whether the reasonableness factor will be considered on a case-by-case basis remains to be seen.

Choice of Law Issues

Bristol-Myers Squibb also leaves open the question of whether California courts will apply California state law to claims brought by out-of-state plaintiffs against out-of-state defendants. In deciding whether to apply California law, the court must evaluate and compare the nature and strength of each potential jurisdiction’s interest in applying its own law, and determine which state’s interests would be most impaired if the its policy were subordinated to the policy of the other state.²⁰ While California courts consider the governmental interests of the various jurisdictions involved in order to determine which law ought to be applied, this is a fact-dependent inquiry, and there may still be an increase in forum shopping among plaintiffs seeking to apply California law. As a result, we may see California courts applying California law in an increasing number of cases involving out-of-state plaintiffs.

US Supreme Court Review

Although the potential reach of *Bristol-Myers Squibb* is broad, it may be short-lived. As the dissent noted in *Daimler AG v. Bauman*, the US Supreme Court recently,

made clear that general jurisdiction — jurisdiction to adjudicate controversies unrelated to the defendant’s form contacts — is not created merely by commercial contacts that are “continuous and systematic, but only by contacts so extensive as to render the defendant ‘at home’ in the forum state.”²¹

Eight of the nine Justices joined in the majority opinion in *Daimler*, with Justice Sotomayor filing a concurring opinion.

In light of the *Bristol-Myers Squibb* Court’s use of the *Vons* “sliding-scale” and the failure of the claim to “arise out of” BMS’s activities in California, there is a potential that the US Supreme Court may see the case as subverting its clear directive in *Daimler*. If a petition for review is sought, the high court may decide to have the last word.

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Endnotes

¹ *Bristol-Myers Squibb Co. v. Superior Court*, No. S221038, 2016 WL 4506107 (Cal. Aug. 29, 2016).

² *Id.*, slip op. at 24.

³ 134 S.Ct. 746 (2014).

⁴ *Id.*, slip op. at 14-15.

⁵ *Id.*, slip op. at 14.

⁶ *Id.*

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- ⁷ In general, California Code of Civil Procedure section 410.10 allows the state to exercise jurisdiction to the maximum extent permitted by the United States Constitution. Two types of personal jurisdiction exist: general, in which one can be sued within the state for any reason, and specific, in which one can be sued only for actions arising out of one's contacts with the state.
- ⁸ 14 Cal. 4th 434 (1996).
- ⁹ *Bristol-Myers Squibb*, slip op. at 5-6.
- ¹⁰ *Id.*, slip op. at 26 (citing *Vons Companies, Inc. v. Seabest Foods, Inc.* 14 Cal. 4th 434, 455 (1996)).
- ¹¹ *Id.*, slip op. at 22 (citing *Vons*, 14 Cal. 4th at 452).
- ¹² *Id.*, slip op. at 29.
- ¹³ *Id.*, slip op. at 23 (emphasis added).
- ¹⁴ *Bristol-Myers Squibb*, slip op. at 23.
- ¹⁵ *Bristol-Myers Squibb*, slip op. at 23.
- ¹⁶ *Id.*, slip op. at 27.
- ¹⁷ *Id.*, slip op. at 30-31.
- ¹⁸ *Id.*
- ¹⁹ *Id.*, slip op. at 32.
- ²⁰ *McCann v. Foster Wheeler, LLC*, 48 Cal. 4th 68, 87-88 (2010).
- ²¹ *Bristol-Myers Squibb*, dissenting slip op. at. 4-5 (internal citations omitted).