

Update: US Supreme Court Grants Certiorari on California Personal Jurisdiction Case

Nation's highest court agrees to hear appeal of a California Supreme Court case with far-reaching implications for personal jurisdiction.

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. A divided 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

As we predicted in our previous [Client Alert](#) published in September,³ the United States Supreme Court has granted a petition for writ of certiorari to determine what level of connection between a defendant’s forum-state contacts and a plaintiff’s injury is necessary to provide specific personal jurisdiction over a defendant.

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.

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*,⁴ the court held that “[a]lthough 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 then 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.⁶ The court used a “sliding scale” test, wherein “the more wide ranging the defendant’s forum contacts, the more readily is shown a connection between the forum contacts and the claim.” 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.”⁷

The court concluded 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, even those non-California plaintiffs whose injuries were not caused by conduct within the state.⁸

The United States Supreme Court Will Review California's Decision

Following the decision of the California Supreme Court, BMS petitioned for writ of certiorari to the United States Supreme Court.⁹ BMS argued that Supreme Court review was needed because "there is a deep and acknowledged split" on the standard for whether a suit "relates to or arises out of" a defendant's forum-state contacts.¹⁰ In the writ, BMS noted that three versions of the "relate to or arise out of" test have arisen among the federal appellate circuits and state high courts: (1) the defendant's forum-state contact must be the "but for" cause of the plaintiff's injury; (2) the defendant's forum-state contact must be the proximate cause of the plaintiff's injury; or (3) as in California, no causal connection is necessary as long as there is a general relationship between the forum-state contact and the injury.¹¹ BMS further argued that the California Supreme Court's decision was in direct conflict with *Daimler* because the decision created a new version of general jurisdiction labelled as specific jurisdiction.¹²

In response, Respondents argued that the facts presented in this case would not lead to disparate outcomes in different jurisdictions because BMS had "fairly extensive" ties to California and, importantly, because none of the cases BMS cited as evidence of a split of authority addressed a situation where non-residents' claims were related to residents' claims.¹³

Pro-business groups urged the Court to take the case, filing amicus briefs arguing that *Bristol-Meyers Squibb* ignored established Supreme Court precedent,¹⁴ defied the principles of federalism¹⁵ and created confusion and uncertainty in the private sector.¹⁶ The amicus briefs commonly noted the breadth of impact the decision would have were the Court to leave the jurisdictional requirements unclarified.¹⁷ Briefing from consumer advocates was absent.¹⁸

On January 19, 2017, the United States Supreme Court granted BMS's petition.¹⁹ The case has not yet been set for oral argument. Merits briefing will likely extend through the spring, and the highest court might hear the case as early as October 2017.

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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 Michael G. Romey, Jamie L. Sprague & Harrison J. White, "California Supreme Court Decision Could Allow for Greatly Expanded Personal Jurisdiction," Latham & Watkins *Client Alert Commentary* No. 2014 (Sept. 21, 2016), available at <https://www.lw.com/thoughtLeadership/california-supreme-court-decision-expanded-personal-jurisdiction>.

⁴ 134 S.Ct. 746 (2014).

⁵ *Id.*, slip op. at 14.

⁶ 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.

⁷ *Id.*, slip op. at 22 (citing *Vons*, 14 Cal. 4th at 452).

⁸ *Id.*, slip op. at 29.

⁹ *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Petition for Writ of Certiorari to the California Supreme Court, 2016 WL 5904964 (Oct. 7, 2016).

¹⁰ *Id.* at *9-*10.

¹¹ *Id.* at *11-*15.

¹² *Id.* at *20.

¹³ *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief in Opposition to Petition for Writ of Certiorari, 2016 WL 7156384, *8-*9, *13-*14.

¹⁴ *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief of the Product Liability Advisory Council, Inc. as Amicus Curiae in Support of Petitioner (PLAC Brief), 2016 WL 6679339, *19-*21; *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief of Pharmaceutical Research and Manufacturers of America as Amicus Curiae in Support of Petitioner (PRMA Brief), 2016 WL 6768736, *10-*17; *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief of the Chamber of Commerce of the United States of America, *et al*, as Amicus Curiae in Support of Petitioner (Commerce Brief), 2016 WL 6768737, *9-*11; 2016 WL 6768736, *10-*17; *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief of Washington Legal Foundation and Allied Educational Foundation as Amici Curiae in Support of Petitioner, 2016 WL 6679338, *10-*22.

¹⁵ PLAC Brief at *9, *24; PRMA Brief at *10-*14; Commerce Brief at *16-*18; *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, Brief of Amicus Curiae GlaxoSmithKline, LLC in Support of Petitioner (GSK Brief), 2016 WL 6803672, *10-*15.

¹⁶ PLAC Brief at *9-*18; PRMA Brief at *2, *16; Commerce Brief at *19-*20.

¹⁷ PLAC Brief at *21-*22; PRMA Brief at *4-*17; Commerce Brief at *16-*20; GSK Brief at *6-*9.

¹⁸ Consumer advocacy groups previously submitted briefs to the California Supreme Court, and may choose to participate in the merits briefing before the Supreme Court.

¹⁹ Supreme Court of the United States, <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/16-466.htm>.