

Update: US Supreme Court Reverses California's Expansion of Personal Jurisdiction

Nation's highest court reverses California Supreme Court decision that extended the jurisdictional reach of state courts.

In the 2016 case *Bristol-Myers Squibb Co. v. Superior Court (Anderson)*,¹ the California Supreme Court greatly expanded state court personal jurisdiction over out-of-state defendants.² The court held that a "single, coordinated, nationwide course of conduct" gave California courts specific personal jurisdiction to hear all claims by both California and out-of-state plaintiffs, regardless of whether plaintiffs' injuries occurred in California.³

As a September 2016 Latham & Watkins *Client Alert* had predicted,⁴ the United States Supreme Court granted a petition for writ of certiorari. On June 19, 2017, in an 8 to 1 opinion, the Court reversed California's decision.⁵ The Court held that the Fourteenth Amendment demanded more than a single nationwide course of conduct for states to exercise personal jurisdiction over out-of-state defendants.⁶ Instead, specific jurisdiction requires a "connection between the forum and the *specific* claims at issue."⁷

California Supreme Court Expands Personal Jurisdiction

The defendant in the underlying case, Bristol-Myers Squibb Co. (BMS), is a pharmaceutical manufacturer incorporated in Delaware and headquartered in New York. BMS conducts the bulk of its operations outside of California.⁸ Plaintiffs, nearly all of whom reside outside of California, filed suit in the San Francisco Superior Court claiming that they had been injured by BMS' pharmaceutical product, Plavix.⁹ BMS researched, tested, and manufactured Plavix outside of California and consumers predominately purchased Plavix outside of California.¹⁰

The California Supreme Court agreed with BMS that its contacts with California were insufficient for general personal jurisdiction under the U.S. Supreme Court decision *Daimler AG v. Bauman*.¹¹ However, the court found that specific personal jurisdiction could be established.¹² Adopting a "sliding scale" test, whereby "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim," the court held that "[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."¹³ The court found that BMS, through its national advertising and distribution scheme and business conducted in California, had sufficient contacts with the forum for California to exercise specific personal jurisdiction over all Plavix claims.¹⁴ Thus, California courts would hear the claim of every Plavix plaintiff nationwide, even those non-California plaintiffs whose injuries were not caused by conduct within California.¹⁵

The United States Supreme Court Reverses California's Decision

On appeal to the United States Supreme Court, the Justices reversed California's decision, 8 to 1.¹⁶ The Fourteenth Amendment, the Court held, precluded California's sliding-scale test.¹⁷ The Court affirmed its prior precedent that a specific claim must "arise out of" defendant's conduct within the state in order to give rise to specific personal jurisdiction.¹⁸

The Court noted that state court jurisdiction subjects a defendant to the coercive power of the state government, triggering the Due Process Clause of the Fourteenth Amendment.¹⁹ Determining personal jurisdiction, then, must focus on the defendant's relationship to the forum state.²⁰ Quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980), the Court stated that the "primary concern" is "the burden on the defendant."²¹ Therefore, a state court only has specific personal jurisdiction over claims that arise from the defendant's activities within the forum state and that jurisdiction does not extend to claims arising from the defendant's identical activities in other states.²² California's "sliding scale approach," the Court wrote, "resembles a loose and spurious form of general jurisdiction" that does not comport with the Due Process Clause of the Fourteenth Amendment.²³

In addition, the Court noted that interstate federalism plays a role in the analysis.²⁴ While the burden placed on the defendant remains the primary focus, a related concern is the "territorial limitations on the power of the respective States."²⁵ The "sovereignty of each state ... implies a limitation on the sovereignty of other states."²⁶ Thus, even if the defendant would suffer no additional burden by litigating in the forum, and even if the forum state has a strong interest in applying its law to the controversy or is the most convenient forum, the Due Process Clause can safeguard interstate federalism by divesting the state court's power to hear claims that do not "arise out of or relate to" the defendant's forum contacts.²⁷

The Court rejected plaintiffs' contention that specific personal jurisdiction could be established over BMS because BMS contracted with an in-state distributor, McKesson.²⁸ The Court noted that plaintiffs did not allege that BMS was derivatively liable for McKesson's conduct in California, and that jurisdiction over BMS is an entirely separate question from jurisdiction over its distributor.²⁹

The Court dismissed plaintiffs' concerns that a "parade of horrors" would ensue if the California Supreme Court's decision were overturned.³⁰ The Court explained that plaintiffs were free to sue BMS in BMS' home states (New York and Delaware) or "could probably sue together in their home states."³¹

In the end, the Court found that California did not have specific personal jurisdiction over BMS.³²

Justice Sotomayor Dissents

Justice Sotomayor was the sole dissenter to the majority's analysis.³³ Emphasizing BMS' national presence and large size, she wrote that due process under the Fourteenth Amendment requires the exercise of personal jurisdiction to comport with only traditional notions of fair play and substantial justice.³⁴ She disagreed with the majority's interpretation of the "arise out of or relate to" requirement for specific personal jurisdiction.³⁵ Out-of-state claims nearly identical to in-state claims are sufficiently "relate[d] to" those in-state claims for jurisdiction to cover both, especially when they arise out of a nationwide course of conduct.³⁶ The dissent felt that the majority ignored the realities of the modern corporation's widespread operations and that the majority's decision could very well deny plaintiffs the ability to aggregate their claims and access courts.³⁷

***Bristol-Myers Squibb* and the Future of Class Actions in State Court**

Questions remain open in the wake of *Bristol-Myers Squibb*. First, does the Due Process Clause of the Fifth Amendment, governing the jurisdiction of federal courts, impose the same restrictions on the federal judiciary?³⁸ Second, does the decision extend to class actions where out-of-state class members are represented by an in-state named plaintiff?³⁹ Class actions based on state law theories could possibly be limited to in-state plaintiffs, not a national class. The Court's near-unanimous decision and the recentness of *Daimler AG v. Bauman*⁴⁰ (limiting general personal jurisdiction), as well as other cases,⁴¹ suggest further limits on personal jurisdiction may be in the cards.

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Endnotes

- 1 Bristol-Myers Squibb Co. v. Superior Court, 377 P.3d 874 (Cal. 2016).
- 2 See First Client Alert.
- 3 Bristol-Myers Squibb, 377 P.3d at 888.
- 4 Client alert not linked.
- 5 Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty., No. 16-466, 2017 WL 2621322, at *3 (U.S. June 19, 2017).
- 6 *Id.* at 8.
- 7 *Id.* (emphasis added).
- 8 377 P.3d at 879.
- 9 *Id.* at 878.
- 10 *Id.* at 879.
- 11 *Id.* (citing *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014)).
- 12 *Id.* at 894.
- 13 *Id.* at 887.
- 14 *Id.* at 894.
- 15 *Id.*
- 16 *Bristol-Myers Squibb Co.*, 2017 WL 2621322, at *3.
- 17 *Id.* at *2.
- 18 *Id.* at *7.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Id.* at *8.
- 24 *Id.* at *2.
- 25 *Id.* at *7.
- 26 *Id.*
- 27 *Id.* at *7-*8.
- 28 *Id.* at *10.
- 29 *Id.*
- 30 *Id.* at *11.
- 31 *Id.*
- 32 *Id.*
- 33 *Id.* at *11.
- 34 *Id.* at *11-12.
- 35 *Id.* at *13.
- 36 *Id.* at *14.
- 37 *Id.* at *17.
- 38 *Id.* at *11.
- 39 See *Id.*
- 40 *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014).
- 41 *E.g., BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017) (reversing, in an 8-1 decision, Montana Supreme Court decision allowing exercise of general personal jurisdiction because railroad was insufficiently “at home” in Montana).