

High Court Limits Litigation Forum Shopping

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Product liability legal practitioners have been anticipating the U.S. Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. – (June 19, 2017). Announced on Monday, the 8-1 decision did not disappoint, firmly curtailing the ability of out-of-state residents to forum shop for a favorable jurisdiction in mass tort litigation. In the decision, the Court held that continuous activity in a state, alone, does not create jurisdiction; instead, there must be a link between the forum and an individual lawsuit for a court to assert jurisdiction over a nonresident defendant.

The problems associated with litigation magnet jurisdictions have long been decried. Law review publications have catalogued the problems with such “judicial hellholes” (as described by the American Tort Reform Foundation) for years, outlining how unfair it is to force defendants into plaintiff-friendly jurisdictions when there is simply no connection to the injured party or tort in that state.

In the Bristol-Myers Squibb (BMS) litigation, plaintiffs' attorneys brought hundreds of claims in California relating to Plavix, mostly involving plaintiffs who did not reside in California, did not take Plavix in California, and who otherwise had no connection to the state. The only connection BMS had to California relating to Plavix was that it sold the product there generally. Under the Supreme Court's rejection of a sprawling view of general, all-purpose jurisdiction in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), simply being a “big corporation” would not allow California courts to exercise general jurisdiction over these claims. Moving on from that theory, the plaintiffs in BMS decided to claim that the California courts had specific or “case-linked” jurisdiction over these non-resident plaintiffs. California courts agreed, creating a “sliding scale approach” to jurisdiction where the similarities between the California plaintiffs' claims and the non-California plaintiffs' claims somehow affected the court's jurisdiction. In a “straightforward application . . . of settled principles,” the Court rejected that approach, slamming the door to mass tort forum shopping for out-of-state residents. See *BMS* slip. op., at 12.

As the Supreme Court has now re-affirmed, specific jurisdiction requires “the *suit*” to “arise out of or relate to the defendant's contacts with the *forum*.” *Id.* at 5 (cleaned up, emphasis original). Continuous activity unrelated to the suit does not create jurisdiction. *Id.* at 8. “The mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims.” *Id.* There must be a connection between the lawsuit and the forum; an Indiana plaintiff, for example, cannot sue in California simply because that's a more plaintiff-friendly

place.

Justice Samuel Alito's decision concluded by noting that the Court's decision applying "settled principles of personal jurisdiction will not result in the parade of horrors that respondents conjure up." *Id.* at 12. Rather, the out-of-state plaintiffs could sue in their home courts or could consolidate their matters in a state where there is general jurisdiction over BMS. *Id.* Mass torts can still be heard in a consolidated fashion, but *only* in one of two ways: either consolidated only with plaintiffs who have a genuine connection to the forum (such as resident plaintiffs or those injured there) or, for a broader consolidation, in a defendant's home jurisdiction. The decision applies to all cases, not simply mass torts, and defendants may want to consider bringing a motion based on this case anytime they are sued outside of their home base by a nonresident plaintiff. The *BMS* decision also provides additional incentives for corporations to locate in business-friendly states with fairer judicial systems.

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