

U.S. Supreme Court Again Curbs Personal Jurisdiction for Out-of-State Corporations

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For the fifth time in the past six years, the U.S. Supreme Court has limited where corporations must defend themselves. In a June 19, 2017 opinion by Justice Samuel Alito in *Bristol-Myers Squibb v. Superior Court*, an 8-1 high court majority overruled the California Supreme Court, holding that a state court had no "specific jurisdiction" over product claims by non-resident plaintiffs against a non-resident pharmaceutical manufacturer.

Background

"Personal jurisdiction" is the power of a court to render a valid judgment in a case involving a particular party. All states have "long-arm" statutes that purport to confer its courts with personal jurisdiction over an out-of-state defendant. All such statutes must fall within the boundaries of Constitutional Due Process as defined by the U.S. Supreme Court. For any court to adjudicate a matter involving a foreign citizen or resident, the defendant must be subject to either "general" (all-claims) jurisdiction or "specific" (suit-related) jurisdiction.

Plavix Litigation

Bristol-Myers Squibb involves claims by 592 non-Californians who sued the maker of Plavix, a blood thinner, in California's state court system. Along with 86 California residents, the non-California plaintiffs alleged 13 identical state-law claims sounding in product liability, negligent misrepresentation, and misleading advertising. Heavily citing prior U.S. Supreme Court jurisdictional decisions, the *Bristol-Myers* opinion emphasizes that for a court to exercise specific jurisdiction over an out-of-state defendant, the U.S. Constitution requires an "affiliation between the forum [host court] and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." Noting that a "state court's assertion of jurisdiction exposes defendants to the State's coercive power," the *Bristol-Myers* Court reminded that the 14th Amendment's Due Process Clause "limits the power of a state court to render a valid personal judgment against a nonresident defendant."

Explaining the concept of "general jurisdiction" and citing its 2011 decision in *Goodyear Dunlop Tires Operations, S. A. v. Brown*, the *Bristol-Myers* Court acknowledged that in a corporate defendant's home state, the company can be sued for any claim arising from any state. Citing its 2014 decision in *Daimler AG v. Bauman*, the Court then added, "But 'only a limited set of affiliations with a forum will render a defendant amenable to' general jurisdiction in that State." The *Daimler* Court suggests that a corporation is only amenable to general jurisdiction where it is incorporated and where it has its principal place of business.

The *Bristol-Myers* Court reiterated that "[s]pecific jurisdiction is very different" from general, or all-claims, jurisdiction. Under the Constitution, "[i]n order for a state court to exercise specific jurisdiction, 'the suit' must 'aris[e] out of or relat[e] to the defendant's contacts with the forum.'" "[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes" the host-court's right to issue a judgment for or against the out-of-state corporation.

The *Bristol-Myers* Court reminds state judiciaries that “restrictions on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.’” Thus, when ruling on a corporation’s challenge to “specific jurisdiction,” the “primary concern” is the “burden on the [out-of-state] defendant.” That burden is not merely the practical issues associated with a corporation defending itself away from its home, but also “the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question.” The Court noted that the Due Process Clause may divest a state of its power to adjudicate an out-of-state corporation even where the defendant would suffer no inconvenience by defending itself.

The Court upheld the Constitutional limits on specific jurisdiction even though Bristol-Myers Squibb is no stranger to doing business in California. It generated \$900 million (which is roughly 1% of the company’s nationwide sales revenue) by selling 187 million Plavix pills in California. Likewise, the pharmaceutical firm employs 160 people in its five California labs, as well as 250 California sales people. The company even has a California lobbying office. Still, the claims of nearly 600 non-Californians were dismissed because there was no connection between them and the out-of-state defendant and the forum state. “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” The Court reiterated, “[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.”

The eight Justice majority in *Bristol-Myers* easily distinguished arguments advanced in the underlying California opinions and in Justice Sonia Sotomayor’s dissent. The Justices eschewed the California high court’s invention of a “sliding scale” interpretation of the Supreme Court’s jurisdictional rulings. Quoting decisions as far back as 1945, Justice Alito wrote, “As we have said, “[a] corporation’s ‘continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’”

Likewise, the existence of 86 California plaintiffs who were prescribed, obtained, and ingested Plavix in California did not allow California’s courts to assert specific jurisdiction over Bristol-Myers Squibb with respect to the nonresidents’ claims. “[A] defendant’s relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction” even when third parties (here, the 86 California plaintiffs) can bring claims similar to those brought by the 592 nonresidents. The Court noted that the non-California residents were not alleging that they sustained in California any harm from using the product.

Strategic Analysis

Bristol-Myers reinforces the Constitutional limits on a state court’s ability to adjudicate a matter against an out-of-state corporation, but strategic considerations remain for any particular corporation. To prevail on the personal jurisdiction defense, a company will want to be prepared to respond to jurisdictional discovery regarding its sales and distribution of the products, goods, or services at-issue in the case. Corporations may want to revisit the foreign states in which they are registered, as some state courts equate registration to jurisdictional “consent.”

To assert the personal jurisdiction defense may decrease out-of-state suits against which a company has to defend, but it may increase the number of suits against it within either the state in which it is incorporated or the state in which it has its principal place of business. Corporations may even choose to defend themselves out-of-state if the host state has more favorable jurors, judges, and/or substantive laws under a choice-of-laws analysis. Constitutional limits on personal jurisdiction could deprive a corporate defendant of co-defendants against which to assert cross-claims for indemnity and/or contribution.

Conclusion

Each year, the U.S. Supreme Court accepts about 80 of the approximately 8,000 cases in which appeal is sought. It is extraordinary that the Court has accepted five jurisdictional cases in the past six terms. Each of those decisions has affirmed the Constitutional limitations that restrict the states in which a person – human or corporate – must defend himself, herself, or itself. Jurisdictional defenses may be very beneficial both to clients with extensive litigation portfolios, as well as to those who are being sued for the first time.

If you have questions or would like additional information, please contact Bill Kennedy (kennedyw@whiteandwilliams.com; 215.864.6816) or another member of our Insurance Coverage and Bad Faith Group.

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