

UNITED STATES SUPREME COURT REINS IN LITIGATION TOURISM AND THE REACH OF PERSONAL JURISDICTION

Yesterday, the U.S. Supreme Court issued its much-anticipated decision in *Bristol-Myers Squibb Co. v. Superior Court of California*. The decision limits the power of state courts to adjudicate claims by non-resident plaintiffs when the actions on which the claims are based occurred outside the forum state. The Court held that non-resident plaintiffs who were not alleging any injuries stemming from conduct occurring in California could not maintain a suit in the state against a company neither headquartered nor incorporated there. This is one of the most important decisions ever in the context of product liability and mass tort litigation, as it essentially puts an end to litigation tourism and forum shopping against corporate defendants by limiting the forum state's reach of personal jurisdiction.

Justice Alito authored the Supreme Court's 8-1 decision¹ and was explicit: A court cannot exercise specific personal jurisdiction over a case unless there is "an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" The more than 600 plaintiffs in *Bristol-Myers Squibb* ("BMS") were mostly non-residents of California who had been prescribed Plavix and alleged various injuries resulting from their use of the blood thinning medication. They tried to establish specific jurisdiction over BMS by pointing to the fact that other individuals had been prescribed and taken Plavix in California and that BMS had conducted research in the state, although that research was unrelated to Plavix.² Although the California Supreme Court held that BMS had "minimum contacts" with California and could be subject to suit by non-residents, the U.S. Supreme Court rejected these arguments as a basis for specific jurisdiction, holding that "[w]hat is needed is a connection between the forum and the specific claims at issue."³ The Court also held that BMS's Plavix distribution contract with a California company did not provide a sufficient basis to allow California courts to exercise personal jurisdiction over BMS.⁴ The impact of the Court's decision is likely to require dismissal of cases filed by non-resident plaintiffs who sue in states with no connection to their claims.

The Court's decision marks another significant limit on the exercise of personal jurisdiction over corporate defendants. In 2014, the Supreme Court held in *Daimler AG v. Bauman et al.*⁵ that being a large corporation with sizable sales in the forum state is not alone sufficient to support the exercise of personal jurisdiction.⁶ And just last month, the Supreme Court applied the *Daimler* decision to a Federal Employers' Liability Act ("FELA") claim brought against a railroad defendant.⁷ BNSF Railway ("BNSF") was sued by a

¹ Justice Sonia Sotomayor was the lone dissenting justice.

² *Bristol-Myers Squibb Co. v. Superior Court*, No. 16-466, 582 U.S. ____ (2017) slip op. at p. 2, 8, available at https://www.supremecourt.gov/opinions/16pdf/16-466_1qml.pdf.

³ *Id.* at 2, 11-12.

⁴ *Id.* at 3.

⁵ 571 U.S. ____, 134 S. Ct. 746 (2014).

⁶ 571 U.S. ____, 134 S. Ct. 746, 761-62 (2014).

⁷ *BNSF Railway Co. v. Tyrrell*, 581 U.S. ____, 137 S. Ct. 1549 (2017).

North Dakota resident in a Montana state court.⁸ BNSF challenged the exercise of personal jurisdiction over it in Montana, but the state courts held that the “limits articulated in *Daimler*, [] did not control because *Daimler* did not involve a FELA claim or a railroad defendant.”⁹ Again, the Supreme Court’s decision was an 8-1 opinion, and again, Justice Sotomayor was the lone dissenting justice. Similar to its ruling in *BMS*, the majority opinion – this time authored by Justice Ginsburg – held that because BNSF was “not incorporated or headquartered in Montana and its activity there [was] not ‘so substantial and of such a nature as to render the corporation at home in that State,’” it could not be subject to jurisdiction there involving a non-resident’s claim based on conduct that did not occur in the state.¹⁰

The Court’s personal jurisdiction decisions of late make clear that in the absence of a basis for specific jurisdiction, national companies can only be sued where they are incorporated, have their principal place of business, or have “affiliations with the State that are so ‘continuous and systematic’ as to render them essentially at home in the forum State.”¹¹ Although the Court’s decisions leave the door open for “jurisdiction by consent” arguments,¹² there is no doubt that litigation tourism has taken a significant hit. These decisions by the Supreme Court have reinvigorated personal jurisdiction arguments and given defendants additional ammunition for dismissal motions when they find themselves subject to suit in a foreign state for alleged conduct that has no connection to the state.

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⁸ *Id.* at 1554.

⁹ *Id.*

¹⁰ *Id.* at 1553.

¹¹ *Daimler*, 571 U.S., at —, 134 S.Ct., at 754.

¹² “Jurisdiction by consent” refers to the theory that simply registering to do business in a state and/or the appointment of an agent for service of process amounts to consent to be sued in any state where a corporate defendant registers.