

Blog Entry: Supreme Court Tightens Personal Jurisdiction Requirements

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Determining whether a nonresident defendant is subject to a forum state's jurisdiction became clearer on June 19, 2017, when the United States Supreme Court announced its decision in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. ____ (2017), case no. 16-466.

The lawsuit began as a California state court products liability, negligent misrepresentation and false advertising action against a drug manufacturer, Bristol-Myers Squibb Company, a Delaware corporation headquartered in New York. The drug at issue was Plavix, a blood thinner. Six hundred seventy-eight plaintiffs brought the case, of whom 86 were California residents and 592 were from 33 other states.

The case went up to the California Supreme Court on the issue of whether the trial court could exercise specific personal jurisdiction over Bristol-Myers to adjudicate the nonresidents' claims. That court ruled that it could.

The United States Supreme Court then held to the contrary.

Bristol-Myers is a big company. In California alone, it employed about 250 sales representatives, maintained five R&D facilities employing some 160 persons, and operated a government relations office.

It did not, however, develop Plavix in California, nor did it "create a marketing strategy for Plavix" in that state or "manufacture, label, package, or work on [its] regulatory approval" there. That took place in New York or New Jersey.

On the other hand, it sold lots of Plavix in California: almost 187 million pills worth between 2006 and 2012, generating more than \$900 million in revenue. That's big business. But not enough to subject Bristol-Myers to specific jurisdiction in California over the nonresidents' claims.

Why not?

Because "[t]he nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other Californiasource; nor did they claim that they were injured by Plavix or were treated for their injuries in California." Their claims, in other words, did not "aris[e] out of or relat[e] to" Bristol-Myers' "contacts with the forum" state.

The California Supreme Court did not apply these standards. Instead, it utilized what it called a “sliding scale approach” to determine whether personal jurisdiction existed. Under that approach, “the more wide ranging the defendant’s forum contacts, the more readily is shown a connection between the forum contacts and the claim.” In other words, because Bristol-Myers had such extensive contacts with California in general, the trial court’s exercise of jurisdiction over the company to adjudicate the nonresidents’ claims would not offend due process, especially given the similarities between the nonresidents’ claims and those of the California plaintiffs.

That approach, the U.S. Supreme Court declared, was wrong; dangerous, even. It was error for that court to find “that specific jurisdiction was present without identifying any adequate link between the State and the nonresidents’ claims. ... 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. ... A defendant’s relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction. This remains true even when third parties (here, the plaintiffs reside in California) can bring claims similar to those brought by the nonresidents.”

As for the nonresidents’ argument that jurisdiction was proper because Bristol-Myers contracted with a California company to distribute Plavix nationwide, that, too, failed to sway the Court. “The bare fact that [Bristol-Myers] contracted with a California distributor is not enough to establish personal jurisdiction in the State.”

And so the United States Supreme Court reversed the California Supreme Court by an 8 to 1 vote, with Justice Sotomayor dissenting. The California state court could not hear the nonresidents’ claims.

The takeaway? As Justice Sotomayor expressed in her dissent, “[t]he majority’s rule will make it difficult to aggregate the claims of plaintiffs across the country whose claims may be worth little alone. It will make it impossible to bring a nationwide mass action in state court against defendants who are ‘at home’ in different States. And it will result in piecemeal litigation and the bifurcation of claims.” But the Court’s decision does not specifically affect class actions. Quoting again from Justice Sotomayor’s dissent, “[t]he Court today does not confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there.”

The decision can be found at <https://goo.gl/uj9rZZ>.