

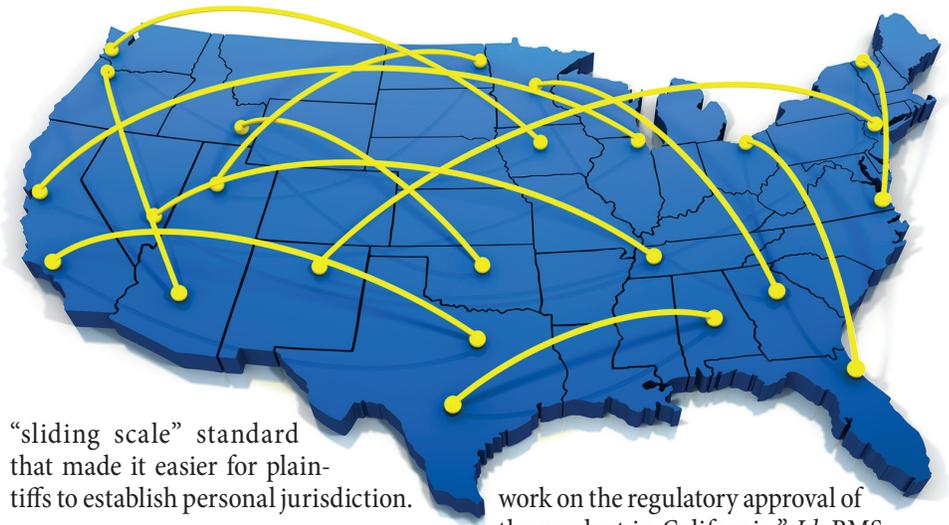
Civil Procedure

Recent Supreme Courts Personal Jurisdiction Ruling (*Bristol-Myers Squibb*) Limits Plaintiffs' Forum-Shopping Options

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In the last edition of this journal, we discussed attempts by the plaintiffs' bar to engage in forum-shopping by circumventing the Supreme Court's personal jurisdiction ruling in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), including the strategy of numerous plaintiffs joining together in a mass action against a corporation based on the argument (sometimes called pendent personal jurisdiction) that when a court has personal jurisdiction over certain plaintiffs' claims, the court also has personal jurisdiction over claims asserted by other plaintiffs in the lawsuit that arise out of the same common nucleus of operative facts. See "Strategies for Resisting Plaintiffs' Efforts to Avoid the Supreme Court's *Daimler* Ruling," *In-House Defense Quarterly*, Summer 2017, p. 10.

Shortly after that article was published, the Supreme Court issued an important ruling that further restricts forum-shopping options by making clear that personal jurisdiction must be established for each plaintiff's claims, even when multiple plaintiffs jointly bring what appear to be essentially the same claims against a defendant in one lawsuit. See *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017). The court also re-affirmed its prior specific-personal-jurisdiction rulings and rejected the California Supreme Court's



"sliding scale" standard that made it easier for plaintiffs to establish personal jurisdiction.

California State Court Proceedings

The litigation at issue in *Bristol-Myers Squibb* is typical of the kind of product liability mass actions that plaintiffs' attorneys like to file against corporate defendants in pro-plaintiff jurisdictions. More than six hundred plaintiffs—most of whom were not California residents—joined together to file eight lawsuits in California state court, asserting state law claims for personal injuries allegedly caused by a Bristol-Myers Squibb ("BMS") drug called Plavix. *Bristol-Myers Squibb*, 137 S. Ct. at 1777–78. The nonresident plaintiffs "did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California." *Id.* at 1778. Moreover, BMS "did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or

work on the regulatory approval of the product in California." *Id.* BMS did sell approximately 187 million Plavix pills in California between 2006 and 2012, which generated more than \$900 million—slightly over one percent of the company's nationwide sales revenue. *Id.*

BMS argued in a motion that the trial court lacked personal jurisdiction over the nonresident plaintiffs' claims, but the court held that it had general personal jurisdiction over BMS because the company engages in extensive activities in California. *Id.* After the United States Supreme Court issued its *Daimler* ruling regarding general personal jurisdiction, a California intermediate appellate court held that the trial court lacked general personal jurisdiction over BMS but also held that the court could exercise specific personal jurisdiction over the nonresident plaintiffs' claims. *Id.* The California Supreme Court unanimously affirmed that general-personal-jurisdiction holding and, in a divided ruling, affirmed the specific-



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personal-jurisdiction holding. *Id.* Using a “sliding scale approach for specific jurisdiction,” the majority held: (a) that “BMS’s extensive contacts with California” permitted the exercise of specific personal jurisdiction “based on a less direct connection between BMS’s forum activities and plaintiffs’ claims than might otherwise be required”; and (b) that “[t]his attenuated requirement was met... because the claims of the nonresidents were similar in several ways to the claims of the California residents (as to which specific jurisdiction was uncontested).” *Id.* at 1778–79 (quoting *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 889 (Cal. 2016)).

United States Supreme Court Ruling

In an 8-1 ruling, the United States Supreme Court held that the California courts’ exercise of personal jurisdiction over BMS violated the Due Process Clause. This ruling should put to rest any lingering doubt regarding whether the argument sometimes called pendent personal jurisdiction has merit. The Supreme Court decisively rejected the contention that a California court could exercise personal jurisdiction over the nonresident plaintiffs’ claims against BMS based on similar claims asserted in the same litigation by the California plaintiffs (as to which BMS did not contest personal jurisdiction). The Supreme Court criticized the California Supreme Court for holding that specific personal jurisdiction was present “without identifying any adequate link between the State and the nonresidents’ claims.” *Bristol-Myers Squibb*, 137 S. Ct. at 1781. As the Supreme Court explained, 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.* (emphasis in original). The court characterized the California plaintiffs as “third parties,” *id.*, for purposes of analyzing whether the California courts had personal jurisdiction over the nonresident plaintiffs’ claims, and it reiterated a prior Supreme Court ruling that “a defendant’s relationship with a... third party, standing alone, is an insufficient basis for [personal] jurisdiction,” *id.* (quoting *Walden v. Fiore*, 134 S. Ct. 1115,

1124 (2014)) (alteration in original). In sum, according to the court, “[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue.” *Id.*; see also *id.* at 1782 (“[A]ll the conduct giving rise to the nonresidents’ claims occurred elsewhere [not in California]. It follows that the California courts cannot claim specific jurisdiction.”).

The Court also rejected the California Supreme Court’s “sliding scale approach,” which resulted in “the strength of the requisite connection between the forum and the specific claims at issue [being] relaxed if the defendant has extensive forum contacts that are unrelated to those claims.” *Id.* at 1781. That approach “resembles a loose and spurious form of general jurisdiction” for which there is “no support” in United States Supreme Court case law. *Id.* Thus, the fact that BMS had sold Plavix pills in California to California plaintiffs did not matter to the court’s analysis. See *id.* (“[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.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011)). That BMS contracted with a California company to distribute Plavix nationally (McKesson, named as co-defendant) also was irrelevant to the court’s specific jurisdiction analysis, because there was no allegation that “BMS engaged in relevant acts together with McKesson in California” or that “BMS is derivatively liable for McKesson’s conduct in California.” *Id.* at 1783; see also *id.* (“The bare fact that BMS contracted with a California distributor is not enough to establish personal jurisdiction in the State.”); *id.* at 1781 (“Nor is it sufficient—or even relevant—that BMS conducted research in California on matters unrelated to Plavix.”).

Moreover, the court focused on the importance of protecting a defendant from being hauled into court in a state that has no connection to the defendant or the claims at issue. The “primary concern” when assessing personal jurisdiction is “the burden on the defendant,” *id.* at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)), which includes “the practical problems resulting from litigation in the forum” and “the more abstract matter of submitting to the coercive power

of a State that may have little legitimate interest in the claims in question,” *id.*

The court also stated that a “federalism interest may be decisive” at times. *Id.* According to the court, the “States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts,” and the “sovereignty of each State... implie[s] a limitation on the sovereignty of all its sister States.” *Id.* at 1780 (quoting *World-Wide Volkswagen*, 444 U.S. at 293) (alterations in original).

Impact of *Bristol-Myers Squibb* Ruling on Other Cases

The Supreme Court’s *Bristol-Myers Squibb* ruling has had an immediate impact on other litigation. For example, in the midst of a closely watched ovarian cancer talc trial in Missouri state court (St. Louis City), the judge declared a mistrial on the same day the *Bristol-Myers Squibb* ruling was handed down, in response to defense counsel’s arguments that two of the three trial plaintiffs did not reside in Missouri and that the state court did not have personal jurisdiction over their claims based on *Bristol-Myers Squibb*.

The *Bristol-Myers Squibb* ruling also has been invoked successfully by defendants in federal court cases. See, e.g., *Jordan v. Bayer Corp.*, Case No. 4:17-CV-865 (CEJ), 2017 WL 3006993 (E.D. Mo. July 14, 2017) (granting motion to dismiss for lack of personal jurisdiction as to certain plaintiffs; denying motion to remand remaining plaintiffs’ claims to state court); *Siegfried v. Boehringer Ingelheim Pharm., Inc.*, Case No. 4:16 CV 1942 CDP, 2017 WL 2778107 (E.D. Mo. June 27, 2017) (same); *Andrew v. Radiancy, Inc.*, Case No. 6:16-cv-1061-Orl-37GJK, 2017 WL 2692840 (M.D. Fla. June 22, 2017) (granting motion to dismiss for lack of personal jurisdiction).

Together with the Supreme Court’s 2014 *Daimler* ruling regarding general personal jurisdiction, *Bristol-Myers Squibb* makes it more difficult for the plaintiffs’ bar to aggregate claims and engage in forum-shopping. Defendants and their attorneys should be prepared to use these important rulings whenever possible to prevent plaintiffs from pursuing litigation in courts that lack personal jurisdiction to adjudicate the claims. 