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## Personal Jurisdiction in the Wake of ‘Bristol-Myers Squibb’

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Issues of personal jurisdiction frequently arise in product liability and mass tort litigations. Personal jurisdiction jurisprudence is premised on two overarching goals: (1) to protect defendants from having to defend lawsuits in inconvenient and distant forums, i.e., courts that have no connection to the claims at issue; and (2) to place limits on the coercive powers of state and federal trial courts.

To this end, the U.S. Supreme Court has developed two forms of personal jurisdiction: general and specific jurisdiction. Under general jurisdiction principles, a defendant may be forced to defend against any claim in its “home state” regardless of whether the plaintiff’s claims are connected to the defendant’s forum-related activities. Specific jurisdiction, on the other hand, exists only where the plaintiff’s claims are connected to the defendant’s activities in that forum. Just this past June, in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) (“BMS”), the U.S. Supreme Court addressed the extent to which a defendant’s forum-related contacts must relate to the plaintiff’s claims in order to establish specific jurisdiction.

*BMS* involved product liability claims alleging that the company’s Plavix medication caused plaintiffs to experience certain personal injuries. In eight separate complaints, 678 individual plaintiffs filed various personal injury claims against BMS in California state court. Of the 678 individual plaintiffs, 592 resided in states other than California and did not allege that they were prescribed, purchased or ingested Plavix in California, or were in any way injured in California. BMS is incorporated in Delaware and has its principal place of business in New York, where the company’s decisions regarding Plavix occurred. BMS, however, had some contacts with California, including: (1) five research and laboratory facilities, which did not do any Plavix-related research; (2) 250 sales representatives located in the state; and (3) a small state-government advocacy office.



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BMS moved to dismiss the claims of the 592 non-resident plaintiffs on personal jurisdiction grounds. The trial court denied BMS's motion finding that BMS was subject to the court's general jurisdiction. While BMS's appeal was pending before the California Supreme Court, the U.S. Supreme Court decided *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), in which the court held that a defendant may only be subjected to general jurisdiction in its "home state," i.e., where it is incorporated and has its principal place of business. In light of *Bauman*, the California Supreme Court directed the California Court of Appeal to vacate its decision. On remand, the California appellate court found that BMS was subject to the trial court's specific jurisdiction. On appeal, the California Supreme Court affirmed, adopting a "sliding scale approach to specific jurisdiction." Under this approach, the court held that where a defendant had more extensive forum-related contacts, the connection between those contacts and plaintiff's claims did not have to be so close for specific jurisdiction to exist. Although the court acknowledged that BMS did not design or develop Plavix in California, because BMS had other extensive contacts with California, the court held that specific jurisdiction existed over BMS even though there was a "less direct connection" between BMS's California-contacts and the non-resident plaintiffs' claims. BMS appealed this decision to the U.S. Supreme Court.

In an 8-1 decision the U.S. Supreme Court reversed, holding that the California court lacked specific jurisdiction over BMS with respect to the claims of the 592 non-resident plaintiffs. The court relied on a "straightforward application" of specific jurisdiction principles. The court explained that in order for specific jurisdiction to exist, "the suit must arise out of or relate to the defendant's contacts with the forum." *BMS*, 137 S. Ct. at 1780. "In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." *Id.* The court explained that requiring a connection between the plaintiff's claims and the defendant's forum-related activities was necessary to further the dual goals of personal jurisdiction jurisprudence.

Applying these long-standing jurisdictional principles, the court held that the California Supreme Court's "sliding scale" approach was "difficult to square" with the court's established precedents. The court elaborated that unless there is some connection between the plaintiff's claims and the defendant's forum-related activities, specific jurisdiction is lacking irrespective of how broad or extensive the defendant's forum-related activities are. Describing California's "sliding scale" approach as a "loose and spurious form of general jurisdiction," the court held that specific jurisdiction did not exist because the non-resident plaintiffs did not establish a link between their claims and BMS's forum-related contacts. Specifically, the court noted that there was no allegation that the non-California plaintiffs were prescribed, purchased or ingested Plavix in California, or that they received any medical treatment or suffered an injuries in the state. Because BMS's forum-related contacts—the conducting of non-Plavix research in California and a contractual relationship with a California-based distributor—had no direct connection to plaintiff's claims that they were harmed by their use of Plavix, the court held that specific jurisdiction was lacking.

The court's decision in *BMS* will have far-reaching effects on forum-related choices in product liability and mass tort litigations. It is common for plaintiffs' counsel in product liability and mass tort litigations to file multiple suits in one particular jurisdiction, regardless of whether the plaintiffs involved reside in the jurisdiction, because the forum is deemed favorable or because it is convenient for plaintiffs' counsel. This practice is also commonly used in federal multi-district litigations (MDLs) where all related suits filed in federal court are transferred to a designated federal district court for pre-trial discovery purposes. In many mass tort and product liability MDLs, the MDL court will enter a direct filing order that allows plaintiffs, including non-residents, to file their suits directly in the MDL court rather than filing them in their home jurisdiction for eventual transfer to the MDL. In the wake of *BMS*, plaintiffs will have to apply a more rigorous approach to forum selection. Plaintiffs always have the option of filing their suits in the defendant's "home" jurisdiction where general jurisdiction exists. To establish

specific jurisdiction, however, plaintiffs will need to either file suit in their home jurisdiction, or in a jurisdiction where plaintiffs can establish that the defendant had litigation-related contacts.

In the few months since *BMS* was decided, courts have already begun to dismiss product liability suits that were filed in jurisdictions where the defendant did not have litigation-related contacts. For example, in a series of multi-plaintiff cases involving the medication Xarelto, the district court in the Southern District of Illinois dismissed non-resident plaintiffs from the suit who did not obtain or use the product in Illinois and did not suffer injuries in Illinois. See, e.g., *Berousee v. Janssen Research & Dev.*, No. 3:17-716, 2017 U.S. Dist. LEXIS 157619 (S.D. Ill. Sep. 26, 2017). Although plaintiffs argued that the New Jersey-based defendants had contacts with Illinois because they targeted Illinois for Xarelto clinical trials, the court held that these forum-related contacts were not sufficiently connected to the litigation to establish specific jurisdiction.

A similar result was reached by the district court in the Eastern District of Missouri in a multi-plaintiff case alleging personal injuries from the use of talc products developed and manufactured by New Jersey-based Johnson & Johnson. Because the non-resident plaintiffs did not allege that they obtained or used the product in Missouri, or that they suffered any personal injuries in the state, the court held that specific jurisdiction was lacking over the defendant. See, e.g., *Jinright v. Johnson & Johnson*, No. 4:17-1849, 2017 U.S. Dist. LEXIS 139270 (E.D. Mo. Aug. 30, 2017). Although plaintiffs alleged that Johnson & Johnson had the talc shipped to Missouri where it was processed and bottled by a third party, the court held that these contacts were not sufficiently linked to Johnson & Johnson and plaintiffs' claims to create specific jurisdiction. *But see Slemp v. Johnson & Johnson*, No. 1422-CC09326-02 (Mo. Cir. Ct. Nov. 29, 2017) (finding that specific jurisdiction existed over defendants in a talc product liability case because the product was manufactured, packaged and labeled in Missouri which sufficiently linked plaintiff's claims to the forum).

In light of *BMS*, defendants can expect plaintiffs to make every effort to identify the defendant's forum-related activities and connect them to the litigation. In a recent New Jersey legal malpractice case, for example, a Florida developer sued its Pennsylvania law firm in New Jersey regarding the purchase of property in West Virginia. While the law firm had contacts with New Jersey, including being registered to do business, having two New Jersey satellite offices, having lawyers who resided in New Jersey, and filing lawsuits in New Jersey courts, the court held that specific jurisdiction was lacking because plaintiff was unable to establish that any of these contacts were related to its claims that the law firm negligently handled the transaction. See *Dutch Run-Mays Draft v. Wolf Block*, 450 N.J. Super. 590 (App. Div. 2017).

Defendants can also expect plaintiffs to attempt novel legal arguments, like consent or waiver, to establish personal jurisdiction. In *Dutch Run-Mays Draft*, for example, the court rejected plaintiff's argument that the law firm consented to personal jurisdiction by registering to do business in New Jersey. *Id.* at 606. On the waiver issue, in *In re DePuy Orthopaedics*, 870 F.3d 345 (5th Cir. 2017), the Fifth Circuit Court of Appeals rejected plaintiff's argument that the defendant globally and permanently waived its personal jurisdiction defenses by agreeing to a direct filing order. *Id.* at 351.

Although there have not been any significant New Jersey decisions addressing specific jurisdiction in product liability and mass tort litigations since *BMS* was decided, we can expect such decisions in the future since New Jersey state and federal courts are a popular venue for product liability and mass tort litigations.

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*The views and opinions expressed in this article are those of the authors and do not necessarily reflect those of the Firm.*