

The U.S. Supreme Court Further Narrows Specific Jurisdiction over Nonresident Defendants

Many thanks to Dr. Cristina M. Mariottini for sharing the news of this very recent decision by the U.S. Supreme Court on specific jurisdiction.

On June 19th, 2017 the U.S. Supreme Court rendered a new opinion on the issue of specific jurisdiction over nonresident defendants in *Bristol-Myers Squibb v. Superior Court of California*. In an 8-to-1 opinion penned by Justice Alito (Sotomayor, J., dissenting), the majority ruled that, as a result of the limitations imposed on jurisdiction by the due process clause, California courts lack specific jurisdiction to entertain the product liability claims brought (along with resident plaintiffs) by plaintiffs who are not California residents, regardless of the fact that all the claims are the same, because of an insufficient connection between the forum and the specific claims at issue.

A group of plaintiffs – consisting of 86 California residents and 592 residents from 33 other States – sought compensation before Californian State courts for injuries associated with the consumption of the Bristol-Myers Squibb drug Plavix. Bristol-Myers Squibb, incorporated in Delaware and headquartered in New York, contracted with a State distributor in California, but it also engaged in business activities nationwide, extensively promoting and marketing the drug.

On the grounds that it “resembles a loose and spurious form of general jurisdiction”, the U.S. Supreme Court refuted the “sliding scale approach to specific jurisdiction” on which the California Supreme Court relied when it asserted (by majority) specific jurisdiction over the nonresidents claims. Applying this test, the California Supreme Court concluded that Bristol-Myers Squibb’s “extensive contacts with California” permitted the exercise of specific jurisdiction “based on a less direct connection between [Bristol-Myers Squibb’s] forum activities and plaintiffs’ claims than might otherwise be required”. This attenuated requirement was satisfied, the California Supreme Court found, 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).

Reversing the decision of the California Supreme Court and assertively relying on its precedents, the majority of the U.S. Supreme Court ruled that “for specific jurisdiction, a defendant’s general connections with the forum are not enough”. Among the variety of interests that a court must take into consideration in determining whether the assertion of personal jurisdiction is constitutionally proper are “the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff’s forum of choice”. 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”. Relying, in particular, on *Walden v. Fiore et al.* (“a defendant’s relationship with a... third party, standing alone, is an insufficient basis for jurisdiction”), the majority of the Court held that, to assert jurisdiction, “a connection between the forum and the specific claims at issue” is needed and that “this remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents”. The mere fact, as in the case at hand, that other (resident) plaintiffs were prescribed, obtained, and ingested a medication in a State – and allegedly sustained the same injuries as did the nonresidents – does not allow that State to assert specific jurisdiction over the nonresidents’ claims.

In her dissent, however, Justice Sotomayor challenged the majority’s core conclusion that the exercise of specific jurisdiction in the case at hand would conflict with the Court’s decision in *Walden v. Fiore*, stating that “*Walden* concerned the requirement that a defendant ‘purposefully avail’ himself of a forum State or ‘purposefully direc[t]’ his conduct toward that State [...], not the separate requirement that a plaintiff’s claim ‘arise out of or relate to’ a defendant’s forum contacts”. Looking at the overall picture of personal jurisdiction in the U.S. and advocating for a balanced approach to general and specific jurisdiction, respectively, Justice Sotomayor underscored the “substantial curbs on the exercise of general jurisdiction” that the Court imposed with its decision in *Daimler AG v. Bauman* (in which Justice Sotomayor filed a concurring opinion and whose principles were reaffirmed as recently as last month in *BNSF Railway Co. v. Tyrrell*). In her dissent Justice Sotomayor further observed that, with its decision in *Bristol-Myers Squibb* (and – one may add – even more so with its plurality opinion in *J. McIntyre Machinery, Ltd. v. Nicastro*), the Court has introduced a similar contraction of specific jurisdiction. This contraction “will result in piecemeal litigation and the bifurcation of claims” curtailing, to a certain

extent, plaintiffs' ability to "hold corporations fully accountable for their nationwide conduct". The majority's response to this objection that "The Court's decision... does not prevent the California and out-of-State plaintiffs from joining together in a consolidated action in the States that have general jurisdiction over [Bristol-Myers Squibb]. Alternatively, the nonresident plaintiffs could probably sue together in their respective home States" is of limited avail to those national plaintiffs who wish to bring a consolidated action in case the corporation's "home" is abroad and, overall, it seems to confirm the Court's trend towards progressively relinquishing jurisdiction in favor of foreign courts.