

[Products Liability Law Daily Wrap Up, JURISDICTION—DRUGS—Cal. Sup. Ct.: California sales and marketing campaign was sufficient basis for jurisdiction over maker of Plavix®, \(Aug. 30, 2016\)](#)

By Harold S. Berman, J.D.

A New York-based pharmaceutical company was subject to specific personal jurisdiction of a California court for claims arising from injuries to non-residents who ingested Plavix®, a prescription blood thinner, but was not subject to general jurisdiction, the Supreme Court of California held in a 4-3 ruling that affirmed the decision of the Court of Appeal. The state supreme court found that while the company did not have the level of contact with California to permit general jurisdiction, its sales and marketing activities in California were significant enough to warrant specific jurisdiction ([Bristol-Myers Squibb v. Superior Court of San Francisco County](#), August 29, 2016, Cantil-Sakauye, C.J.).

Six hundred seventy-eight individuals brought suit in San Francisco Superior Court against Bristol-Meyers Squibb Company, alleging damages sustained from their use of the prescription blood thinner Plavix, a drug created and marketed by the company. Nearly 600 of the claimants were not California residents. The company maintained operations in California but was incorporated in Delaware and headquartered and primarily operated in New York and New Jersey.

The company moved to quash service of the summons, claiming that the San Francisco Superior Court lacked personal jurisdiction over the company to adjudicate the non-residents' claims. The company noted that none of the non-residents had asserted any factual claims that their injuries occurred or were treated in California and that the company's research and development of Plavix did not take place in California. The Superior Court denied the company's motion, holding that its California sales and activities rendered it subject to the court's general jurisdiction. The Court of Appeal held the company's state contacts insufficient for general jurisdiction, but sufficient for specific jurisdiction.

General Jurisdiction. The court, following the holdings of the U.S. Supreme Court, found that the company's presence and activities in California did not rise to the level of being "at home" in the state such that a California court could exercise general jurisdiction. The company could be considered at home in its state of incorporation and in the two states where it maintained principal business centers. The company's minor presence in California, in contrast, did not render it at home in the state.

Purposefully directed. To exercise specific jurisdiction, the non-residents were required to show first that the company "purposefully directed" its activities to California residents and the injuries to the non-residents arose out of or related to those activities. The company marketed and advertised Plavix in California, contracted with a California pharmaceutical distributor, resulting in California sales of nearly \$1 billion in six years, operated research and laboratory facilities in California, and maintained an office to lobby the state government. Through these activities, the company purposefully availed itself of the benefits of California for purposes of specific jurisdiction.

State contacts. The company marketed Plavix through a nationwide campaign directed to consumers both within and outside California. The residents' allegations against the company arose out of the company's purposeful contacts with the state. Since both the residents' and non-residents' claims were based on the same product defect and misleading marketing allegations, the non-residents' claims bore a substantial connection to the company's California contacts concerning Plavix. Although Plavix was not developed in California, that the company engaged in research and product development in California was related to the non-residents' claims of negligent research and design leading to their injuries. The court dismissed the dissent's characterization of the residents' claims as "parallel" and "failing to intersect" with the non-residents' claims, noting that all claims arose out of the company's coordinated nationwide marketing and distribution of Plavix. The company's substantial contacts with California, including its significant revenue from California sales of Plavix, established the minimum contacts necessary to exercise specific jurisdiction.

Reasonableness of specific jurisdiction. The burden, therefore, shifted to the company to prove that the exercise of specific jurisdiction was unreasonable. The court dismissed the company's contention that it would be unduly burdened by defending itself against all nationwide claims in a forum in which a minority of its sales occurred, noting that the company was already burdened with the requirement to defend against the claims of the California residents, regardless of whether the court exercised jurisdiction over the non-residents' claims. Requiring the company to litigate the non-residents' claims in their various resident states would in fact be more burdensome. Additionally, California had an interest in adjudicating the large number of non-resident claims because evidence of their injuries might be relevant to proving that Plavix similarly injured California residents. California also has an interest in regulating the conduct of the company's co-defendant, California-based McKesson Corporation. If the court dismissed the company from the non-residents' cases, California courts would still be required to hear the non-residents' claims against McKesson while their identical claims against the company were litigated in another forum. The company did not show that a California court would be inconvenient to the non-residents. While adjudicating all of the claims together would be burdensome to a California court, the alternative of adjudicating the claims in multiple forums would be more burdensome to the overall judicial system. Accordingly, the court held that adjudicating all of the claims in California was not unreasonable.

The case is No. [S221038](#).

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Companies: Bristol-Myers Squibb Co.; Superior Court of the City and County of San Francisco

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