
By Georgia D. Koutouzos, J.D.

California courts lack specific jurisdiction to entertain product liability claims against the manufacturer of the blood-thinning drug Plavix® by plaintiffs allegedly harmed by the drug who are not residents of that state, the United States Supreme Court ruled today, reversing a decision of that state’s highest court that would have allowed claims against the drug maker by hundreds of non-Californians to proceed in a single lawsuit. In an 8-1 opinion written by Justice Alito, the High Court took issue with California’s "sliding scale" approach to specific jurisdiction, finding that the bare fact that the drug maker had contracted with a California distributor was not enough to establish personal jurisdiction in the state. Justice Sotomayor, the lone dissenter, expressed her fear that the majority’s decision will make it impossible to bring a nationwide mass action in state court against defendants who are "at home" in different states, resulting in unnecessary piecemeal litigation and the bifurcation of claims (Bristol-Myers Squibb Co. v. Superior Court of California, June 19, 2017, Alito, S.).

More than 600 plaintiffs—the majority of whom were not California residents—filed suit in California state court against Bristol-Myers Squibb Company (BMS), asserting various state-law claims based on injuries allegedly caused by the prescription anti-clotting drug Plavix. The drug maker did not develop Plavix in California, did not create a marketing strategy for the drug in that state, and did not manufacture, label, package, or work on the regulatory approval of the product there (the company had engaged in all of those activities in either New York or New Jersey). However, BMS sells Plavix in California, and took in more than $900 million from sales of the drug between 2006 and 2012.

The non-resident plaintiffs did not allege that they had obtained Plavix through California physicians or from any other California source, nor did they claim that they had been injured by Plavix or had been treated for their injuries in California. Asserting lack of personal jurisdiction, BMS moved to quash service of summons on the nonresidents’ claims but the California Superior Court denied the motion, holding that the California courts possessed general jurisdiction over the drug maker because the company had engaged in extensive activities in the state.

The California Court of Appeal ruled that general jurisdiction clearly was lacking, but found that California courts had specific jurisdiction over the nonresidents’ claims. The California Supreme Court affirmed the appellate panel's decision, after which the U.S. Supreme Court granted certiorari to decide whether the California courts' exercise of jurisdiction in the case violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution (see Products Liability Law Daily's January 20, 2017 analysis).

Precedential limits of specific jurisdiction. Under long-standing precedent, in order for a state court to exercise specific jurisdiction over a claim, 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. When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the state, and even regularly occurring sales of a product in a state do not justify the exercise of jurisdiction over a claim unrelated to those sales, the High Court instructed.

The California Supreme Court’s "sliding scale approach"—which resembles a loose and spurious form of general jurisdiction and under which the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims—could not
be easily squared with those precedents, the majority of justices advised, adding that a defendant’s general connections with the forum are not enough to confer specific jurisdiction.

In the instant case, the California Supreme Court had found that specific jurisdiction was present without identifying any adequate link between the state and the nonresidents’ claims. As noted above, the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California. The mere fact that other plaintiffs were prescribed, obtained, and ingested that prescription medication in California, and allegedly sustained the same injuries as did the nonresidents, did not allow the state to assert specific jurisdiction over the nonresidents’ claims. Standing alone, a defendant’s relationship with a third party is an insufficient basis for jurisdiction, the High Court advised.

This rationale remains true even when third parties (i.e., plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents. Nor was it sufficient—or even relevant—that BMS conducted research in California on matters unrelated to Plavix. What is necessary (and missing in the case at bar) was a connection between the forum and the specific claims at issue.

**Third-party contacts insufficient.** In a last ditch contention, the plaintiffs contended that the drug maker’s decision to contract with a California company to distribute Plavix nationally provided a sufficient basis for personal jurisdiction. However, the requirements of the seminal precedent on personal jurisdiction had to be met as to each defendant over whom a state court exercises jurisdiction, and a defendant’s relationship with a third party, standing alone, is an insufficient basis for jurisdiction, the Court held.

It was not alleged that BMS had engaged in relevant acts together with the third-party distributor in California, nor was it alleged that the drug maker was derivatively liable for the distributor’s conduct in the state. Furthermore, the non-resident plaintiffs adduced no evidence to show how or by whom the Plavix they took had been distributed to the pharmacies that dispensed it to them. Thus, the bare fact that BMS contracted with a California distributor was not enough to establish personal jurisdiction in the state, the High Court ruled, reversing and remanding the judgment of the California Supreme Court.

**Dissent.** Although the majority cast its decision as compelled by precedent, those cases point in the other direction, Justice Sotomayor stated in her dissent. In the end, the majority’s animating concern appeared to be federalism, she said, adding that the majority appeared to concede that the case at bar was not about fairness but, rather, was about power, i.e., one in which "the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another state." But there was little reason to apply such a principle in a case brought against a large corporate defendant arising out of its nationwide conduct, she asserted.

The consequences of the majority’s decision could be substantial, as even absent a rigid requirement that a defendant’s in-state conduct actually must cause a plaintiff’s claim, the upshot of the majority’s opinion is that plaintiffs cannot join their claims together and sue a defendant in a state in which only some of them have been injured. Noting that this ruling is likely to have consequences far beyond this case, Justice Sotomayor said that the majority’s opinion will make it profoundly difficult for plaintiffs who are injured in different states by a defendant’s nationwide course of conduct to sue that defendant in a single, consolidated action.

Moreover, the decision may make it impossible to bring certain mass actions at all, she charged, noting that after today’s ruling it will be difficult to imagine where it might be possible to bring a nationwide mass action against two or more defendants headquartered and incorporated in different states. There will be no state where both defendants are "at home," and so no state in which the suit can proceed, she said.

The case is No. 16-466.

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Companies: Bristol-Myers Squibb Co.

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