

[Products Liability Law Daily Wrap Up, TOP STORY—SUPREME COURT—U.S.: High Court takes up drug maker’s personal jurisdiction question concerning California Plavix® claims by non-residents, \(Jan. 20, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Susan Lasser, J.D.

A request by the manufacturer of a prescription blood thinner that the U.S. Supreme Court review a decision by the California Supreme Court holding that the drug maker could be haled into the California courts on product defect claims asserted by non-residents who alleged they were injured by the drug has been granted by the High Court. According to the manufacturer’s petition, the drug, Plavix®, was not manufactured or designed in California; was not prepared in California; and was not prescribed to, dispensed to, or ingested by patients in California. Nor were the drug’s marketing, packaging, and regulatory materials prepared in the state. The manufacturer objected to the state high court having applied a "sliding scale approach" to personal jurisdiction ([Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County](#), filed October 7, 2016; cert. granted January 19, 2017).

According to the petition, 575 non-California residents joined 86 California residents in suing Bristol-Myers Squibb Company, the manufacturer of Plavix, and McKesson Corporation, a California-based Plavix distributor, in the San Francisco Superior Court on individual product-defect claims. Bristol-Myers is a global biopharmaceutical company incorporated in Delaware and headquartered in New York; and Plavix is a drug that inhibits blood clots in the prevention of strokes, heart attacks, and other cardiovascular problems. Each plaintiff/patient alleged that Bristol-Myers negligently and wrongfully designed, manufactured, tested, marketed, distributed, labeled, and sold Plavix by misrepresenting the drug’s safety and efficacy. Each also alleged severe side-effects from the drug and asserted various California products liability causes of action.

The manufacturer moved to quash service of the summons, claiming that the trial court lacked personal jurisdiction over it to adjudicate the non-residents’ claims. The trial court denied the motion, holding that its California sales and activities rendered it subject to the court’s general jurisdiction. The California Court of Appeal, however, held that the manufacturer’s state contacts were insufficient for general jurisdiction, but sufficient for specific jurisdiction.

California Supreme Court on personal jurisdiction. The California Supreme Court affirmed the appellate court, concluding that personal jurisdiction was authorized under California law [see *Products Liability Law Daily’s* August 30, 2016 [analysis](#)]. The court found that because the drug maker marketed and sold the same drug to other people in California, and conducted research on other products in California, its contacts with the state were sufficiently "wide ranging" to justify the assertion of specific jurisdiction over claims that bore a less direct "connection" to the state. While the manufacturer’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, its California activities were sufficiently related to the nonresident plaintiffs’ lawsuits to support specific jurisdiction.

Drug manufacturer’s objections. In its petition, the drug maker argued that the "wide-ranging" state contacts justification was "not how specific jurisdiction works"; and noted that the U.S. High Court has "emphasized ... that specific jurisdiction lies only when ‘the defendant’s suit-related conduct ... create[s] a substantial connection with the forum State.’" According to the manufacturer, while general jurisdiction exists based on "contacts [with] no apparent relationship to the [injury] that gave rise to the suit" and that are sufficiently "continuous and systematic" to render the defendant "at home," the California Supreme Court, joining a minority of courts, maintained that plaintiffs could obtain specific jurisdiction over the defendant even where no causal relationship existed between the defendant’s forum-state contacts and the plaintiff’s suit, "provided that some nebulous

'connection' exists between the contacts and the subject of the plaintiff's claims." The drug maker asserted that most courts have rejected this interpretation of the relatedness requirement, concluding that it unacceptably blurs the line between general and specific jurisdiction as set forth in *Daimler AG v. Bauman*, 134 S. Ct. 746, 757 (2014) and the U.S. High Court's other personal jurisdiction cases.

Reasons for granting petition. The manufacturer reasoned that the High Court should grant its petition because there is a "deep and acknowledged split" in the courts on the standard for relatedness; because the California Supreme Court opinion conflicts with the U.S. Supreme Court's specific jurisdiction case law, rendering *Daimler* "a dead letter" for national corporations doing business in California; and the case provides an "ideal vehicle" for addressing this jurisdictional issue and split in the courts. The manufacturer requested that the Court clarify that specific jurisdiction requires a causal connection between the defendant's forum contacts and the claim alleged, and that the California Supreme Court's decision be reversed.

Question presented. The drug maker asked, in light of the Due Process Clause permitting a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)), "[w]hether a plaintiff's claims arise out of or relate to defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims—that is, where the plaintiff's claims would be exactly the same even if the defendant had no forum contacts."

The case is Docket No. [16-466](#).

Attorneys: Neal Kumar Katyal (Hogan Lovells US LLP) for Bristol-Myers Squibb Co. Thomas C. Goldstein (Goldstein & Russell PC) for Superior Court of California, San Francisco County.

Companies: Bristol-Myers Squibb Co.

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