

## [Products Liability Law Daily Wrap Up, JURISDICTION—BUILDING AND CONSTRUCTION—E.D. La.: Jurisdictional challenge to Chinese drywall products liability class action rejected, \(Dec. 4, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

Personal jurisdiction over the Chinese companies whose drywall products had caused homeowners in several states to experience personal and property damage was not altered by recent U.S. Supreme Court precedent governing jurisdiction over out-of-state plaintiffs in mass tort actions, a Louisiana federal court determined. The High Court's decision did not effectuate a change in controlling due process law related to class action lawsuits and does not apply to federal class actions, the court concluded, denying the drywall manufacturers' motion for reconsideration of previous personal-jurisdiction and class-certification rulings (*In re Chinese-Manufactured Drywall Products Liability Litigation*, November 28, 2017, Fallon, E.).

Homeowners whose houses had been constructed using drywall manufactured in China and who experienced emissions of smelly gasses, the corrosion and blackening of metal wiring, surfaces, and objects, the breaking down of appliances and electrical devices in their homes, and various physical ailments allegedly caused by the Chinese drywall filed suit in various state and federal courts against homebuilders, developers, installers, realtors, brokers, suppliers, importers, exporters, distributors, and manufacturers involved with the drywall. The cases were consolidated into a multidistrict lawsuit that named as defendants two groups of entities that had manufactured the at-issue materials.

The litigation proceeded along different paths with respect to the two groups, with one of the two eventually reaching a settlement agreement designed to resolve all claims. The second group, which was comprised of several Chinese-based companies, proceeded down a path in which the defendants challenged the U.S. court's personal jurisdiction over them. Despite rulings by both the Louisiana federal trial court and a panel of the U.S. Court of Appeals for the Fifth Circuit that personal jurisdiction over the Chinese manufacturers was proper, the defendants failed to appear in U.S. court and eventually were deemed liable, designated as judgment debtors, and held in contempt of court for failing to appear at the hearing to be examined as a judgment debtor.

Further disputes ensued concerning the court's personal jurisdiction, and certain of the Chinese entities were dismissed from the action under the Foreign Sovereign Immunities Act. The remaining defendants continued their jurisdictional challenge and, in April 2017, the court found that it had jurisdiction over those companies in relation to the homeowners' claims based on Louisiana law.

**High Court precedent.** Meanwhile, while an interlocutory appeal of that jurisdictional ruling was pending, the U.S. Supreme Court ruled in *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. \_\_\_ (2017), that for a state court to exercise specific jurisdiction over a claim in a mass tort action, there must be an affiliation between the forum and the underlying controversy—principally, an activity or an occurrence that took place in the forum state [see *Products Liability Law Daily's* June 19, 2017 [analysis](#)]. When there has been no such connection, specific jurisdiction would be lacking regardless of the extent of a defendant's unconnected activities in the state, the High Court held.

The remaining Chinese defendants filed a motion to dismiss for lack of personal jurisdiction in light of the *Bristol-Myers* decision, contesting the trial court's earlier findings of personal jurisdiction, class certification, and agency relationship. Because the personal jurisdictional questions already had been extensively addressed, the defendants' request was addressed as a motion for reconsideration rather than as a motion to dismiss.

**Personal jurisdiction.** Contrary to the defendants' contention that the Bristol-Myers decision warranted a different conclusion, the trial court found that it had specific personal jurisdiction over the Chinese manufacturers under settled jurisprudence, notwithstanding Bristol-Myers. In that decision, the Supreme Court applied established law in utilizing a Fourteenth Amendment due process analysis for specific jurisdiction, noting that a court must consider whether "the defendant has 'purposefully directed' his activities at the residents of the forum" and the litigation results from alleged injuries that "arise out of or relate to those activities." So, too, did both the trial court and the federal appellate panel presiding over the case at bar, with both finding that the Chinese manufacturers made substantial contacts with each forum state whose law applied to the plaintiffs' claims.

In view of that rationale, both courts concluded that it was fair, reasonable, and in the interest of justice to exercise personal jurisdiction over the Chinese manufacturers. The appellate panel issued its opinions in 2014 affirming each class action, and the manufacturers did not take a writ of certiorari to the Supreme Court. Thus, the issue of personal jurisdiction over the companies became firmly and finally established. The defendants' latest motion attempted to resurrect those opinions and relitigate settled matters simply because the High Court recently handed down a decision about specific personal jurisdiction, but the Bristol-Myers decision did not change existing law. Rather, it applied settled Fourteenth Amendment jurisprudence—as did the courts in the instant case.

**Bristol-Myers inapplicable.** Moreover, even if the jurisdictional analysis was different from that used in Bristol-Myers, the High Court's decision would not affect the jurisdictional holding in the present case because Bristol-Myers was a mass tort action in state court and not a class action in federal court. That factor materially distinguished the present lawsuit from Bristol-Myers because in class actions, the citizenship of the unnamed plaintiffs is not taken into account for personal jurisdiction purposes. Class actions are different from mass torts in that in order for a case to qualify for class action treatment, it needs to meet the additional due process standards for class certification, i.e., numerosity, commonality, typicality, adequacy of representation, predominance and superiority. Often, mass torts cannot qualify for class action treatment because they are unable to satisfy those standards.

As an MDL transferee court, the trial court had personal jurisdiction over nonresident class members and had the power to approve a nationwide class and proceed with the action. The defendants' concern about fairness—the fundamental purpose of due process—in applying a different state's law could be addressed with choice-of-law principles if conflict of laws issues were to arise. Besides, the drywall manufacturers' liability for their defective product already had been firmly established, and default judgments had been entered against each of the Chinese entities. Variation in state laws, if any, did not yet exist inasmuch as any variation in damages arising from different geographical locations already had been captured, and adjusted for, in the class-wide damages formula. And any variation in state laws—if such conflict were to occur—could be addressed with choice-of-law principles applied by the transferee court.

Because the Bristol-Myers decision was not a change in controlling due process law, does not apply to federal class actions, and Congress and the courts generally have approved of using class actions, reconsideration of personal jurisdiction and class certification in the case at bar was unnecessary, as was revisiting those issues. Therefore, the defendants' motion for reconsideration was denied.

The case is MDL No. [09-2047](#).

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Companies: Beijing New Building Materials; Taishan Gypsum Co., Ltd.; Tai'an Taishan Plasterboard Co., Ltd.; Homebuilders and Installers Steering Committee; Insurer Steering Committee

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