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SCOTUS Rules Out-of-State Plaintiffs' Access to State Courts Limited by 14th Amendment

In the recent decision, *Bristol-Myers Squibb Company (BMS) v. Superior Court* (2017) ___ US ____, the Supreme Court followed a string of recent decisions by further limiting out of state plaintiffs' access to courts in California. The decision is based on the history of cases from *Penoyer v. Neff*, International Shoe and their progeny, and the 14th Amendment Due Process rights for defendants to avoid suit in states where the claims did not originate.

Procedural History and Facts of Case

BMS is a Fortune 500 pharmaceutical company with over \$15 billion in annual revenue. BMS is incorporated in Delaware and headquartered in New York, with many successful product lines. Overall, BMS has over 25,000 employees nationwide, in many states, though over 50% are employed in New Jersey or New York. Among its products, BMS designed, manufactured, distributed, sold, marketed and created national advertising campaigns for the drug Plavix, a blood thinner. The ad campaign was nationwide, not regional, such that the same ads were seen in all 50 states. Over time, challenges arose as to the claims BMS made with regard to the efficacy of Plavix. Eventually, these challenges led to claims of physical injury and damage that resulted from ingesting this drug. Lawsuits were filed across the country, in many jurisdictions, including California.

At issue in this case, plaintiffs from various states filed 14 different suits in California. Of the total, 86 of these plaintiffs hail from California, while over 590 plaintiffs were from out-of-state. The states were coordinated in California for litigation purposes. The out-of-state plaintiffs admittedly did not purchase Plavix, nor did they suffer any injury in California. BMS filed a motion to quash service of the summon based on a lack of personal jurisdiction as to the out-of-state plaintiffs only. The trial court in San Francisco County denied the motion. BMS appealed the ruling and the court of appeal found that California courts lacked general jurisdiction, but that there were sufficient contacts to allow personal jurisdiction, in part based on the then recent SCOTUS decision of *Daimler AG vs. Bauman*, (2014) 571 US _____. The California Supreme Court agreed with the lower appellate court's ruling, finding that BMS had wide ranging contacts within California, that the claims were entirely similar such that adjudicating all of them together in California would be fair to BMS. Applying a "sliding scale" approach, the California bench determined that personal jurisdiction should attach to BMS in this instance for these plaintiffs.

Essential Ruling

The primary issue is whether or not the nearly 600 out-of-state plaintiffs can assert personal jurisdiction over BMS in California, where BMS also is not domiciled. Justice Alito penned the near unanimous decision to the effect that pursuant to the 14th Amendment, a state's right to enforce personal jurisdiction against an out-of-state defendant is limited. Pursuant to prior cases, such as *Goodyear Dunlop Tires Operations, SA v. Brown*, 574 US 915, 918, the issue of personal jurisdiction is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause." Citing to *World-Wide Volkswagen v. Woodson*, 444 US 286, 292, the "primary concern" in assessing personal jurisdiction is the "burden on the defendant." Among other issues, the imposition of personal jurisdiction over an out-of-state defendant, the court should be required to consider the potentially harsh reality of subjecting a defendant to the "coercive power of the State that may have little legitimate interest in the claims in question." In short, the court in question should consider if the out-of-state defendant should reasonably be subjected to the claims of out-of-state plaintiffs in a potentially distant venue. The court views the 14th Amendment as a natural check against overreaching of state courts in such matters.

The Court decided that the out-of-state plaintiffs whose entire connection to the subject drug Plavix was outside of California, i.e., the viewing of ads, the purchasing and ingesting of the drugs, as well as the alleged injuries and damages, could not be fairly litigated against BMS in California. The court added that these plaintiffs are not without recourse as the same suit could be filed in their home state, as well as in New York or New Jersey, the recognized domiciles of BMS. Again, citing to *Goodyear*, the Court added, "[f]or this reason, 'specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" Ibid, at 919. Ultimately, the Court asserted that California's "sliding scale" approach was "difficult to square with our precedents." Essentially, as the out-of-state plaintiffs suffered no injury in California and had no nexus to BMS within California, any attempt to establish personal jurisdiction was necessarily overstepping the reasonable bounds of the 14th Amendment. The plaintiffs needed to show "a connection between the forum and the specific claims at issue."

Dissent by Sotomayor

Judge Sotomayor was the lone dissenter in this case, as she was in the *Daimler AG* matter. She believes the California Supreme Court followed existing precedent by adhering to the three primary inquiries: Did the defendant purposefully avail itself of the jurisdiction; 2) the claims arise out of the defendant's contacts with the state; and, 3) was the exercise of jurisdiction reasonable under the circumstances. Justice Sotomayor wrote affirmatively to all three, believing that BMS would not be harshly treated by allowing personal jurisdiction in this case. In short, if the advertising, marketing, distributing were all performed at a national level, then the corporation in question should expect consolidated actions such as these.

Implications Going Forward

This ruling continues a trend of decisions in which national manufacturers are shielded more and more from consolidated actions, such as in this case. The *Tyrell* case from earlier in 2017 along with the *Daimler* case have staked a course of decisions by SCOTUS to limit state court's application of personal jurisdiction against corporations not domiciled in the subject venue. The clear implications of these rulings is that this court is going to have more to say as to states such as California with liberal pleading laws as it pertains to the application of personal jurisdiction over entities that are not domiciled in said venue. Having said that, the ruling did not address whether or not this suit could have been filed in U.S. District Court. Further, it did not address the concept of a Class Action suit that included out-of-state plaintiffs. As such, though this is a victory for large corporations, avenues remain for plaintiffs to congregate claims in one venue.

Many thanks to the courts and litigants involved in this action for reminding us that *Penoyer v. Neff*, *International Shoe*, *World-Wide Volkswagen* all have relevance after law school.

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