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## Supreme Court Ruling Promises To Reshape Major, Multiparty Litigation in Federal Court

In *Bristol-Myers Squibb v. Superior Court of California*, No. 16-466, slip op. (U.S., June 19, 2017), the United States Supreme Court provided further clarification regarding the exercise of personal jurisdiction over corporations. In particular, it held that state courts do not have *specific* personal jurisdiction unless there is “an ‘affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State.’” *Id.* at 7 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Coupled with the Court’s recent decisions regarding the exercise of *general* jurisdiction over a corporation—in which the Court has ruled that, absent exceptional circumstances, general jurisdiction over a corporation can only be exercised in the place where it is incorporated or its principal place of business is found (See, e.g., *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017)), *Bristol-Myers* provides bright line rules for determining whether a state court may exercise personal jurisdiction over a corporation. In light of *Bristol-Myers*, three options now exist: in the defendant’s place of incorporation, in the defendant’s principal place of business or in the place where the conduct occurred.

### Background

*Bristol-Myers* arose out of the nationwide marketing and sale of a pharmaceutical, the blood thinner Plavix. Plaintiffs claimed that the use of Plavix led to personal injuries. Numerous suits were filed, many in California state court by plaintiffs who, though they bought and used the drug in states other than California, claimed that California state courts could exercise specific personal jurisdiction over Bristol-Myers for their claims because Bristol-Myers had operations in California (including research labs, as well as sales and marketing personnel) and had widely sold the drug in California (approximately 187 million Plavix pills had been sold in California accounting for sales of \$800 million). Plavix itself, however, had been developed, manufactured and packaged in New York or New Jersey, while Bristol-Myers was incorporated in Delaware with headquarters in New York. In all, 592 non-California residents from 33 other states filed personal injury claims against Bristol-Myers in California state courts.

Bristol-Myers moved to quash service of those claims brought by non-California residents in California state court. The matter went to the California Supreme Court, which ruled that California courts could exercise specific personal jurisdiction over Bristol-Myers in these cases. Applying what it called a “sliding scale” to determine whether specific personal jurisdiction may be exercised, the California Supreme Court ruled that California courts could exercise personal jurisdiction over these non-California claims. According to the California Supreme Court, “the strength of the requisite connection between the forum and specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims.” *Id.* at 7. Thus, because Bristol-Myers had extensive

For more information, please contact the following members of Katten’s **Litigation** practice.

Andrew G. Klevorn  
+1.312.902.5454  
andrew.klevorn@kattenlaw.com

Eric A. Kuwana  
+1.202.625.3705  
eric.kuwana@kattenlaw.com

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contacts with California (at least in the view of the California Supreme Court), it did not violate due process for Bristol-Myers to be haled into court there, even though the specific claims at issue arose in states other than California.

## The Supreme Court's Decision

In an 8-1 decision, the Supreme Court flatly rejected the California Supreme Court's "sliding scale" approach to the exercise of specific personal jurisdiction. Writing for the Court, Justice Alito characterized the "sliding scale" test as "loose and spurious" with "no support" in the jurisprudence of the Supreme Court. Slip op. at 7. Instead, the Court made plain that, "in order for a state court to exercise specific jurisdiction, 'the *suit* must arise out of or relate to the defendant's contacts with the *forum*.'" *Id.* at 5 (internal quotations and citations omitted). Put another way, 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." *Id.* at 7. Thus, to establish specific jurisdiction, "a defendant's general connections with the forum are not enough." *Id.* That is, "a corporation's continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Id.* at 8.

The Court rested its decision on two considerations. First, is the burden upon the defendant from having to defend a suit away from its home state on a claim that did not arise in the proposed forum. This burden consists not only of the practical problems that arise from having to litigate in a distant forum, but "also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* at 6. The second consideration the Court noted is one of federalism. The sovereignty of each state to try those cases in which it has an interest must be respected; this necessarily implies limitations on the power of other states to try cases in their courts. As the Court put it, "even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 7 (internal quotations and citations omitted).

## Practical Implications

*Bristol-Myers* completes the roadmap for determining whether a court may exercise personal jurisdiction over a corporate defendant. Personal jurisdiction has two components, general and specific jurisdiction. General jurisdiction allows a court to exercise personal jurisdiction over a corporation for all matters (even if they did not arise in that jurisdiction) because the corporation is "at home" there. As the Supreme Court recently underscored in *BNSF Railway*, general jurisdiction is narrowly confined, for a corporation is considered "at home" in the state in which it is incorporated or has its principal place of business, absent exceptional circumstances.

Specific jurisdiction, on the other hand, allows a court to exercise personal jurisdiction over a corporation for claims that arose in or have a particular nexus to the forum. The California Supreme Court's "sliding scale" approach would have blown a hole in specific jurisdiction. Where a corporation conducted extensive business in a state, it would have allowed a state court to exercise personal jurisdiction over a corporation for a claim that otherwise had no relation to the state: for instance, the plaintiff need not have been a resident of the state and the acts complained of need not have occurred in the state (such as the sale of a defective product or making a misleading statement). *Bristol-Myers* entirely rejects this approach. Practically speaking, it means that specific jurisdiction only arises where the conduct at issue occurred.

This will have a real effect in litigation, especially mass and class actions. No longer will plaintiffs be able to aggregate claims that arose in a variety of states and then file them in a single, favorable jurisdiction. Rather, plaintiffs will either have to file separate actions in each state in which the conduct occurred or, in the alternative, they can aggregate their claims in the jurisdiction in which the defendant is at home (that is, where it is incorporated or has its principal place of business).

And, defendants in existing consolidated or class action product liability or mass tort litigation may want to bring new and aggressive challenges to a single court's jurisdiction over out-of-state plaintiffs and claims. Indeed, in light of *Bristol-Myers*, a federal trial court recently declared a mistrial in a consolidated proceeding for claims of out-of-state plaintiffs that had been joined with the claims of in-state plaintiffs on the grounds that the court did not have personal jurisdiction over the out-of-state claims. *Swann v. Johnson & Johnson*, Case No. 1422-CC09326-01, (Cir. Ct. Mo., June 20, 2017).

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*Bristol-Myers* also makes it more likely that third-party witnesses will be available at trial. Because specific jurisdiction may only be exercised in a jurisdiction where the conduct occurred, it will no longer be the case that the action may be tried in a distant jurisdiction where third-party witnesses are beyond the subpoena power of the court. This is especially the case in California where state courts generally cannot compel even corporate representatives and parties to attend trial, if they reside out of the state.

Class actions may also be an area where *Bristol-Myers* may be applied. For instance, before *Bristol-Myers*, it was the case that a single class representative, besides asserting his or her own claims that arose in the state in which he or she resides, would also assert claims that supposedly arose in other states. This often happens in false advertising or unfair competition claims, where the class representative asserts a false advertising claim or unfair competition claim for a product purchased in the representative's home state, but also asserts claims under the unfair competition/false advertising laws of numerous states on behalf of unnamed class members from these other states. And, many product liability or mass tort class actions are filed in one state or federal court even though most of the class members are from out of state—often requiring the creation of subclasses along state lines, different representatives for each subclass and the application of different state laws for each subclass.

Though *Bristol-Myers* does not directly address this situation, its logic would suggest that the aggregation of such claims in a single court does not comport with the proper exercise of specific personal jurisdiction. As with *Bristol-Myers*, the class representative is trying to use its own in-state claims, for which specific jurisdiction exists, as a “hook” to bring in out-of-state claims for which specific jurisdiction does not exist. *Bristol-Myers* forbids such an aggregation (unless the case has been filed in a state in which general jurisdiction over the defendant exists). *Bristol-Myers*, in short, offers a powerful tool to limit the scope of class actions that are not brought in the home of a corporate defendant, and may even be used against out-of-state subclasses, for example, when the purchase and use of the product by all of its purported members did not occur in the jurisdiction at all.

## Conclusion

*Bristol-Myers* is a significant decision. It has the promise to reshape major, multiparty litigation in federal court. It will either cause such litigation to be centralized in the defendant's home court (where it is incorporated or has its principal place of business) or spread out across the multiple jurisdictions in which the conduct occurred. Katten lawyers are available to assist in addressing any questions you may have regarding these developments.

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