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US Supreme Court limits state courts' jurisdiction over out-of-state plaintiffs in pharmaceutical case

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The U.S. Supreme Court dealt a further blow to plaintiffs' attorneys Monday, ruling California courts lack specific jurisdiction to hear out-of-state claims in a mass action brought against pharmaceutical giant Bristol-Myers Squibb Co.

The high court's 8-1 decision follows a line of rulings handed down over the last few years that limit where plaintiffs may bring mass tort actions, forcing plaintiffs to file these suits in venues where the defendant companies are incorporated or headquartered.

Specifically, the court held that non-California residents who used the blood-thinner Plavix and suffered adverse reactions to the medicine could not join a state lawsuit with similarly aggrieved California plaintiffs because of a lack of a connection to the forum. *Bristol-Myers Squibb Co. v. Superior Court (Anderson)*, 2017 DJDAR 5867.

"[T]he 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," wrote Justice Samuel Alito, who authored the court's majority opinion. "The mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California . . . does not allow the state to assert specific jurisdiction over the nonresidents' claims."

Bristol-Myers is headquartered in New York.

In a 4-3 decision issued last year, the California Supreme Court established a "sliding scale" standard to determine whether its courts had specific jurisdiction, based on how wide-ranging the defendant's contacts with the state were. The state high court concluded Bristol-Myers' contacts with California allowed for the exercise of specific jurisdiction over 592 residents from 33 other states in the original lawsuit. *Bristol-Myers Squibb Co. v. Superior Court (Anderson)* S221038 2016 DJDAR 8952.

The U.S. Supreme Court held Monday that California's rule did not comport with the 14th Amendment's limits on personal jurisdiction.

Corporate defense attorneys hailed the decision as an appropriate bar on forum shopping.

"The *Bristol-Myers* decision makes clear that the key question for specific jurisdiction is the connection between the defendant's contacts with the forum and the particular claims in the case. Other contacts between the defendant and the state unrelated to the plaintiff's claims do not suffice," said Blaine H. Evanson, partner at Gibson Dunn & Crutcher LLP, who was not involved in the case.

"Today's decision sharply limits plaintiffs' ability to forum shop, and provides defendants with much more predictability over where they may be hauled into court," he continued.

This is the most recent of several U.S. Supreme Court decisions to limit jurisdiction rules in favor of corporate defendants.

The court's decisions in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), and *BNSF Railway Co. v. Kelli Tyrell, et al.*, 581 U.S. ___ (2017) have placed strict limitations on the venues in which actions may be filed. The high court has held that general jurisdiction exists over corporate defendants in their places of incorporation, where they have significant business or where they are headquartered.

The plaintiffs' bar was decidedly less enthusiastic about the high court's decision.

"The decision is really bad for people who don't live in states like California," said Matthew S. McNicholas, a plaintiffs' attorney at McNicholas & McNicholas LLP who was not involved in the case. "We have strong pro-consumer laws, particularly consumer liability laws. Many states don't. You now create a situation where these plaintiffs are left in the cold."

McNicholas further commented that the court's opinion was "parsing the fine hair,"

by determining that the courts lacked personal jurisdiction because the out-of-state plaintiffs did not watch commercials for Plavix or consume the drug in California.

"That's a hyper technical analysis," he said. "[Bristol-Myers] has a national strategy that applies to the whole country. But the decision says now you're stuck in your own state even though the company's conduct is the same."

Brian S. Kabateck, a plaintiffs' attorney at Kabateck Brown Kellner LLP who was also uninvolved in the case, said that the court's finding on Bristol-Myers' connection to pharmaceutical distribution company McKesson Corp. — which is based in San Francisco and distributes drugs such as Plavix nationally — is particularly troublesome for future mass action pharmaceutical tort cases.

The court held that Bristol-Myers' contract with the California distributor was not enough to establish personal jurisdiction.

According to Kabateck, plaintiffs in mass, pharmaceutical, tort actions often use the connection to McKesson to establish a nexus to the venue. Without this tool in the arsenal, establishing personal jurisdiction will be nearly impossible, he said.

The impact that the decision will have on future mass tort and class action cases remains to be seen, but could lead to an exodus of cases to federal court or such as New York, New Jersey, and Delaware, where many national companies are headquartered or incorporated.

Andrew Bradt, professor at UC Berkeley School of Law who filed an amicus brief on behalf of the respondents in the case, said Justice Sonia Sotomayor's dissent highlighted this issue.

"I think Justice Sotomayor is exactly right when she says this casts enormous doubt on mass tort and class action cases," he commented. "It throws into doubt the concept of a nationwide class action against a defendant anywhere except its home state."