



## Litigation / Class Action / Products Liability ADVISORY ■

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### U.S. Supreme Court Decisions Curb Forum Shopping in State Courts

by ***Bo Phillips, Colin Kelly, and Sarah O'Donohue***

In its two recent 8–1 decisions, *BNSF Railway Co. v. Tyrrell* and *Bristol-Myers Squibb Co. v. Superior Court of California*, the U.S. Supreme Court doubled down on its 2014 landmark personal jurisdiction ruling in *Daimler AG v. Bauman*. Plaintiffs will not be able to file state court suits against corporate defendants outside of their state of incorporation or principal place of business (general jurisdiction) or in states that have no connection to the claims at issue (specific jurisdiction). Both *Tyrrell* and *BMS*—issued only three weeks apart—have implications well beyond mass tort cases and could reduce forum shopping in class actions and a wide variety of other cases.

#### ***BNSF Railway Co. v. Tyrrell* – General Jurisdiction**

Robert Nelson, a North Dakota resident and BNSF fuel truck driver, sued his employer in Montana state court for knee injuries that he allegedly sustained on the job in Washington. Kelli Tyrrell, a South Dakota resident, likewise filed a lawsuit in Montana state court against BNSF claiming that her husband Brent's kidney cancer and death were caused by exposure to chemical carcinogens while working for the company in South Dakota, Minnesota, and Iowa. Even though BNSF is incorporated in Delaware and has its principal place of business in Texas, the Montana Supreme Court held that the Montana courts could exercise personal jurisdiction over BNSF in part due to a state law that provides for general jurisdiction over "[a]ll persons found within" the state.

The U.S. Supreme Court reversed, explaining that "the Fourteenth Amendment due process constraint described in *Daimler* ... applies to all state-court assertions of general jurisdiction over nonresident defendants; that constraint does not vary with the type of claim asserted or business enterprise sued." Thus, general jurisdiction is only proper when a defendant is "at home" in the forum state. "The 'paradigm' forums in which a corporate defendant is at home ... are the corporation's place of incorporation and its principal place of business.... [I]n an 'exceptional case,' a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.'"

There has only been one "exceptional case" discussed to date. In the 1952 decision *Perkins v. Benguet Consolidated Mining Co.*, the Supreme Court held that there was general jurisdiction over the corporate defendant in Ohio because its business operations had to be temporarily relocated from the Philippines during World War II and Ohio became

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“the center of the corporation’s wartime activities.” Under *Tyrrell*, extensive operations, sales, or business activities in the forum will not be enough for state courts to exercise general jurisdiction over a corporate defendant outside its state of incorporation and principal place of business.

### ***Bristol-Myers Squibb Co. v. Superior Court of California – Specific Jurisdiction***

Eighty-six California residents and 592 residents of 33 other states sued Bristol-Myers Squibb Co. (BMS) in California state court alleging causes of action for negligence, false or misleading advertising, and strict products liability related to the manufacturer’s blood-thinning drug Plavix. The plaintiffs suffered various injuries from taking Plavix, including heart attack, stroke, and death. BMS moved to dismiss the nonresidents’ claims for lack of personal jurisdiction because Plavix was not designed or manufactured in California, and those plaintiffs were not exposed to marketing in California and did not take the drug in California. The court denied the motions, citing a California law that confers general jurisdiction over all defendants with extensive business contacts in the state. The [court revisited the rulings](#) after *Daimler* and found that there was no general jurisdiction because BMS is incorporated in Delaware and headquartered in New York. Instead, the court took a “sliding scale approach to specific jurisdiction” by which “BMS’s extensive contacts with California establish[ed] minimum contacts based on a less direct connection between BMS’s forum activities and plaintiffs’ claims than might otherwise be required.” The court concluded that specific jurisdiction does not require that the plaintiffs’ claims arise out of or be causally linked to the defendant’s contact with the state; it is sufficient that the claims are “based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product” as part of a “common nationwide course of distribution.”

On appeal, the U.S. Supreme Court cautioned that although a court must weigh a variety of interests in determining whether personal jurisdiction is present, “the primary concern is the *burden on the defendant*,” and state courts are constitutionally limited in their authority to hear out-of-state claims against out-of-state companies. Justice Samuel Alito wrote the opinion of the nearly unanimous Court that made clear that “[i]n order for a state court to exercise specific jurisdiction, ‘the *suit*’ must ‘aris[e] out of or relat[e] to the defendant’s contacts with the *forum*.’” Thus, “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.’” While BMS sold almost 187 million Plavix pills in California during the relevant time period and received more than \$900 million from those sales, the Court found specific jurisdiction was lacking because there was no “connection” between the forum and the specific claims at issue. Only the plaintiffs who were injured by Plavix in California could litigate their claims against BMS in California state court.

### **Mass Tort Litigation**

Defendants in existing mass tort litigation can quickly use the *Tyrrell* and *BMS* decisions to renew (or push forward) constitutional challenges to personal jurisdiction in unrelated forums.

Although the Supreme Court did not address the question of whether BNSF consented to general jurisdiction in Montana by registering to do business there, the majority’s opinion implies that requiring consent to general jurisdiction as a condition of doing business in a state does not comport with due process.

For one case, the effects of the *BMS* ruling were immediate. The day the decision was published, a judge in Missouri declared a mistrial in a case after seven days of trial because two of the three plaintiffs were not residents of Missouri and their alleged injuries had no connection to the state. However, other cases might have different results because the Supreme Court did not define what type of “connection” between a nonresident plaintiff’s claims and a forum state is required in order to establish specific personal jurisdiction.

Going forward, plaintiffs will no longer be able to aggregate claims that arose in several states and then file them in a single, favorable jurisdiction. Instead, they will have to join together in a consolidated action in the states that have general jurisdiction over the defendant or file separate cases in each state where the offending conduct occurred. The latter could result in the same plaintiffs filing parallel claims in multiple states against different defendants.

## Class Actions

In her dissent in *BMS*, Justice Sonia Sotomayor pointed out that the majority chose not to “confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there.” She suggests that the majority’s opinion might not apply to a class action if absent class members are not treated as parties for purposes of personal jurisdiction.

Nevertheless, court precedent is clear that the class action device cannot alter the substantive legal standards applicable to a claim and cannot deprive a defendant of defenses that would be available against absent class members. The *BMS* opinion gives defendants a powerful argument to challenge class actions filed in states that cannot exercise personal jurisdiction over absent class members’ claims: “The mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents’ claims.”

## Federal Court Cases

Since the *BMS* case “concern[ed] the due process limits on the exercise of specific jurisdiction by a State,” the Court left “open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.” However, the frequent citations to the federal case *Walden v. Fiore* (the Court’s most recent decision on the scope of specific jurisdiction) in the majority opinion in *BMS* indicate that the due process requirements would have the same effect on issues of personal jurisdiction in federal courts.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Kristy Brown  
404.881.7584  
kristy.brown@alston.com

Jim Grant  
404.881.7859  
jim.grant@alston.com

Craig Carpenito  
212.210.9582  
craig.carpenito@alston.com

Bill Jordan  
404.881.7850  
bill.jordan@alston.com

Cari Dawson  
404.881.7766  
cari.dawson@alston.com

Colin Kelly  
404.881.7670  
colin.kelly@alston.com

Scott Elder  
404.881.7592  
scott.elder@alston.com

Sarah O’Donohue  
404.881.4734  
sarah.odonohue@alston.com

Karl Geercken  
212.210.9471  
karl.geercken@alston.com

Robert “Bo” Phillips  
415.243.1080  
bo.phillips@alston.com

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500  
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
 RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-8580 ■ 919.862.2200 ■ Fax: 919.862.2260  
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
 SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001  
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333