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**Civil Procedure**

**Jurisdiction**

A Perkins Coie partner discusses two recent U.S. Supreme Court cases that significantly restrict plaintiffs' ability to select the forum. The author explains that going forward, plaintiffs will have difficulty aggregating the claims of multiple plaintiffs from several states in the same case.

**Home Court Advantage:  
Supreme Court Forces Non-Residents' Hands**



By CRAIG M.J. ALLELY

In two recent decisions, the U.S. Supreme Court significantly restricted the ability of plaintiffs to select state court forums to sue corporations. The two decisions, *BNSF Railway Co. v. Tyrrell* and *Bristol-Meyers Squibb Company v. Superior Court*, both reversed state court decisions upholding the exercise of general and specific jurisdiction, respectively, in cases brought by nonresident plaintiffs against defendants who were nei-

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ther incorporated in the forum state nor had the forum state as their "home."

In *BNSF Railway Co. v. Tyrrell*, decided May 30, 2017, the Supreme Court held that a corporation is subject to "general jurisdiction" only in the states of its incorporation or its principal place of business. The court explained that corporate defendants may only be subject to general personal jurisdiction where the corporation is "at home," which, the court clearly held, is "paradigmatically" only the corporation's:

- (i) state of incorporation, or
- (ii) its "principal place of business."

Turning to specific jurisdiction in *Bristol-Meyers Squibb*, decided June 19, 2017, the Supreme Court held that the Due Process Clause requires a specific and adequate link between the forum state and nonresident plaintiff's claims. In the absence of an adequate link, a state court may not exercise specific jurisdiction over claims of nonresidents, even though the state court may have long-arm jurisdiction over similar claims brought by its residents, and even though the claims of residents and nonresidents have been brought in the same lawsuit.

The court did not address whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.

**Types of Jurisdiction**

Traditionally, general jurisdiction has referred to a court's ability to exercise jurisdiction over all matters

and claims generally, without regard to where the plaintiff lives or where the case arose. As an example, under general jurisdiction, a Delaware corporation with its principal place of business in New York could (absent a forum selection clause) be sued in either Delaware or in New York (but nowhere else) for any claim.

Specific jurisdiction traditionally requires that the case in some way arise out of or relate to the defendant's contacts with the forum.

Thus, under general jurisdiction a corporation will be amendable to a lawsuit on most any subject if the lawsuit is brought where it is at "home," which the Supreme Court has held can be either the state of incorporation or principal place of business. Under specific jurisdiction, the corporation can be sued in any state where the corporation's conduct or contacts are sufficiently connected with the facts that give rise to the lawsuit.

The Supreme Court's two new decisions, both reviewing state court decisions, make clear that:

(1) In the absence of specific jurisdiction or consent, a corporation may be sued only in the state of its incorporation or of its principal place of business; and

(2) In the absence of an adequate and specific link, state courts may not adjudicate claims brought by non-residents against a nonresident corporation, even though the state's residents can and in fact have sued in state court over the same product or conduct.

## Jurisdictional Decisions

It is important that the new decisions are jurisdictional decisions, not venue decisions.

The Supreme Court, citing the 1980 case of *World-Wide Volkswagen Corp. v. Woodson* (444 U.S. 286, 294), noted that "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."

In *Bristol-Meyers Squibb*, there were eight separate complaints with 86 plaintiffs from California and 593 residents from 33 other states, with 678 plaintiffs in all. All the plaintiffs had been prescribed the same drug, but the nonresident plaintiffs did not allege that they obtained the drug in California or that they suffered any injuries in California.

## No Aggregation

The Supreme Court's decision that California may not adjudicate the claims of nonresidents, even when joined with similar claims of residents over which juris-

diction is admitted, means that cases aggregating plaintiffs from multiple jurisdiction may be subject to dismissal based on the forum state's lack of jurisdiction over the nonresident plaintiffs' claims.

The decision has already led to the decision by a Missouri court to mistry a case where nonresidents together with Missouri residents sued a corporate defendant in Missouri state court. See <http://www.bizjournals.com/stlouis/news/2017/06/20/mistrial-declared-in-talc-suit-following-supreme.html>.

The talcum powder cases, many of which have been tried in a Missouri state court, had previously resulted in large jury verdicts in favor of non-Missouri residents (including one of in excess of \$100 million) against the corporate defendant, there Johnson & Johnson. The Supreme Court's decision in *Bristol-Meyers Squibb* calls those cases, and the judgments based on the jury's verdicts, into serious question.

## Future Impact

The future impact of these cases on plaintiffs' ability to file large or mass action cases may be significant. Going forward, plaintiffs will have difficulty aggregating the claims of multiple plaintiffs from several states in the same case. Plaintiffs will have to decide between filing cases with one state's residents only in multiple states or aggregating their claims but suing in federal court or in the corporate defendant's "home" state, which may not be as plaintiff friendly as another state.

Taken together, the decisions may also make it difficult if not impossible for plaintiffs to bring a nationwide mass action against multiple defendants in state court, who may each be "at home" in a different state and thus not all amenable to general jurisdiction in any one state.

Numerous pending state court claims with plaintiffs from more than one state are now all subject to possible dismissal for lack of jurisdiction. Plaintiffs' lawyers will face great difficulty in bringing together in a single state court the claims of plaintiffs from different states who claim to have been injured by a corporate defendant's product or conduct.

Finally, while the two new decisions both involved state court cases, the court expressly left open the question "whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." See *Bristol-Meyers Squibb*, slip op. at 12, citing *Omni Capital Int'l Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102, n.5 (1987) (leaving open the question of whether a federal court may constitutionally exercise personal jurisdiction based on a defendant's aggregated contacts with the nation as a whole).