

## The Supreme Court Gets "Specific" on Jurisdiction

For the second time in the last three years, the U.S. Supreme Court has addressed the constitutional limits of a court's ability to exercise jurisdiction over a defendant. The 14th Amendment limits the personal jurisdiction of state and lower federal courts over nonresident defendants, i.e., any defendant not incorporated or having its principal place of business in the state. In 2016, we addressed in an Alert the impact of the Court's decision in *Daimler AG v. Bauman*, 571 U.S. 20 (2014) on subrogation cases. In *Daimler*, the Court addressed general jurisdiction.

Last April, in *Bristol-Myers Squibb Co. v. Superior Court of California*, \_\_\_ U.S. \_\_\_ 2017, the Court addressed specific jurisdiction. The Supreme Court recognizes two types of personal jurisdiction: general or all-purpose jurisdiction and specific or case-linked jurisdiction. Essentially, a court with general jurisdiction may hear any claim against that defendant, even if all of the incidents underlying the claim occurred in a different state. Nevertheless, the Supreme Court has made plain recently that only a limited set of contacts or affiliations with a forum will subject a defendant to general jurisdiction outside its place of incorporation or principal place of business.

Specific jurisdiction is different. 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. In essence, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

The Supreme Court itself provided a fairly simplistic explanation of the difference in a footnote in *Daimler*:

Colloquy at oral argument illustrated the respective provinces of general and specific jurisdiction over persons. Two hypothetical scenarios were posed. *First*, if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler in California court alleging that the vehicle was defectively designed, that court's adjudicatory authority would be premised on specific jurisdiction. [Citation omitted] (Daimler's counsel acknowledged that specific jurisdiction "may well be ... available" in such a case, depending on whether Daimler purposely availed itself of the forum). *Second*, if a similar accident took place in Poland and injured Polish plaintiffs sued Daimler in California court, the question would be one of general jurisdiction. [Citation omitted] (On plaintiffs' view, Daimler would be amenable to such a suit in California).

The facts of *Bristol-Myers Squibb* involved a mass tort claim for a defective drug by a few residents of California and a majority of non-residents. Significantly, the parties agreed, and the Supreme Court acknowledged, that the California residents would have been able to establish specific jurisdiction for injuries from defendant's drug that were purchased by California residents and with the harm occurring in California.

The Court's opinion focused on the nonresident plaintiffs and concluded that they could not establish specific jurisdiction even though the defendant had some contacts with California and *Bristol-Myers Squibb* had contracted with a California distributor to distribute the drug in California. The Court rejected as too expansive the ruling by the California state court finding specific jurisdiction under those facts. As to the non-residents, there were no allegations that they purchased the drug in or through California physicians, were injured in California, or were treated for their injuries in California.

In a typical subrogation case involving a product defect, the recent Supreme Court decisions regarding general and specific jurisdiction will not likely preclude obtaining jurisdiction in most



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cases because the claim for personal jurisdiction is based on specific jurisdiction and often involves facts where the product was purchased in the same jurisdiction where the harm occurred and where jurisdiction is sought. The analysis will focus, as it has in the past, on whether the defendant purposely availed itself of the jurisdiction with respect to how the product that caused the harm ended up in that jurisdiction. The significant factor is whether the suit arises out or relates to the defendant's contacts with the forum such as the example provided by the Supreme Court above where a California resident was injured by a Daimler vehicle in California when Daimler purposely availed itself of the California market. There may be certain cases involving manufacturers with little or no connection to the jurisdiction where suit may only be maintained in the jurisdiction where the defendant is at home, i.e., where the defendant is incorporated or has its principal place of business.

In addition, potential mass tort subrogation cases would have to pass jurisdictional muster under the analysis of *Daimler* for general jurisdiction or *Bristol-Meyers Squibb* for specific jurisdiction and jurisdiction may be limited to all plaintiffs within a particular state or a state where the defendant is considered "at home."

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**For additional information on this area of the law, please feel free to contact Mark T. Mullen at (215) 665-2091 or [mmullen@cozen.com](mailto:mmullen@cozen.com).**