

Bristol-Myers Squibb: Clear Direction For State Courts

By **Jermaine Haughton**

Law360, New York (August 31, 2017, 11:48 AM EDT) -- The recent U.S. Supreme Court decision in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, has caused much discussion and commentary among litigants who are concerned that the decision will restrict the scope of specific jurisdiction. But while some believe the court's decision will reduce a plaintiff's ability to establish specific jurisdiction over a defendant, *Squibb* simply reinforces Supreme Court precedent.

In *Squibb*, the Supreme Court disavowed California's "sliding scale approach" to specific jurisdiction, forcing California and other state courts to align their specific jurisdiction standards with longstanding Supreme Court precedent. See *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017). Under the "sliding scale approach," the greater the range of the defendant's contacts with the forum, the greater the connection between the forum contacts and the claim. *Id.* at 1778.

This, the U.S. Supreme Court points out, borders on general jurisdiction, and loses sight of the requirement that claims brought on the basis of specific jurisdiction be borne out of a specific set of circumstances and involvement in the subject forum.

In *Squibb*, the class of plaintiffs consisted of residents and nonresidents of California. *Id.* The defendant, Bristol-Myers Squibb Company (BMS), a pharmaceutical company, sold a drug called Plavix throughout the United States, including through a single distributor located in California. *Id.* at 1777–78.

The plaintiffs filed suit in California state court, alleging that Plavix had damaged their health. *Id.* at 1778. BMS challenged the California court's jurisdiction over the non-resident plaintiffs' claims because the nonresidents' claims did not relate to the defendant's contacts with the forum state-California. *Id.*

The California Supreme Court sided with the plaintiffs after finding that the "sliding scale approach" allowed the court to establish specific jurisdiction based on a defendant's "extensive contacts" with California, regardless of whether or not a specific plaintiff's claims are directly related to those contacts. The California Supreme Court found that the nonresidents' claims were "similar in many ways" to the residents' claims, and that the claims were "based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product." *Id.*



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The California court also mentioned that although BMS did not design or develop Plavix in California, the company had more extensive contacts as it conducted “other research” in the State. *Id.* This explanation was unconvincing to the U.S. Supreme Court, which determined that the “sliding scale approach” strayed from its precedent.

Although the *Squibb* case drew an extensive dissent from Judge Sotomayor and has been intensely critiqued by a variety of legal scholars, the majority’s opinion serves to strengthen Supreme Court precedent, namely *Goodyear Tire and Rubber Co. v. Chiles Dairy Products Co.*, the seminal cases for personal jurisdiction, which are cited throughout the *Squibb* case.

In *Goodyear*, the Supreme Court emphasized that specific jurisdiction “depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear Dunlop Tires Operations SA v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 2851, 180 L. Ed. 2d 796 (U.S. 2011).

The *Burger King* case established three requirements that must be met to establish specific jurisdiction: (1) the defendant purposefully availed itself of the privilege of conducting activities in the state; (2) the plaintiffs’ claims arise out of those activities directed at the forum state; and (3) the exercise of personal jurisdiction would be constitutionally reasonable. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985).

The main issue in *Squibb* was whether the nonresident plaintiffs’ claims arose out of the defendant’s contacts with the forum state. See *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780. As the Supreme Court explained, the California court did not identify any sufficient connection between the state of California and the nonresidents’ claims, but still held that California had specific jurisdiction over the claims. *Id.*

The fact that the resident and nonresident plaintiffs had similar claims against BMS did not establish specific jurisdiction, given that the nonresidents did not purchase or ingest Plavix in California and were not injured by Plavix in California. *Id.*

Contrary to what some scholars have predicted, the *Squibb* decision has proven to be clear direction for state courts, as it has already been relied upon by state court judges. The Circuit Court for Baltimore City, Maryland, was one of the first courts to interpret the *Squibb* opinion. See *Smith v. Automotive Products Company Ltd.*, Case No. 24X13000333 (June 7, 2017).

In that case, plaintiffs claimed that Paul Rowland was exposed to asbestos from certain companies in England. *Id.* Rowland subsequently moved to the United States and claimed that he was further exposed to asbestos in Maryland. *Id.* He then filed suit against the England-based companies in Baltimore. *Id.*

This led the England-based companies to challenge the Maryland court’s jurisdiction over them. *Id.* The circuit court interpreted *Squibb* as reaffirming the notion that “for specific jurisdiction to be established, the defendant’s suit-related conduct must create a substantial connection with the forum state.” *Id.* (internal quotation marks omitted).

The circuit court found that the suit at issue was unrelated to any alleged contact the defendants had with the state of Maryland. The defendants conducted no business in Maryland, and did not purposely avail themselves of the privilege of conducting activities in Maryland in any way. Therefore, Maryland did not have specific jurisdiction over the defendants. *Id.*

Justice Sotomayor in her dissent suggests that Squibb will have negative implications for plaintiffs, making it more difficult for plaintiffs to aggregate their similar claims against a defendant company. But as the majority explained, nothing will prevent a group of plaintiffs from aggregating their claims against a defendant in states that have general jurisdiction over the defendant.

The Squibb case merely prevents the fabrication of specific jurisdiction in cases where the standard is satisfied for some plaintiffs, but not for others. The plaintiffs who are unable to establish personal jurisdiction are precluded from tagging along with the other plaintiffs who have established personal jurisdiction.

Consistent with Supreme Court precedent, a state must have personal jurisdiction over the defendant with respect to each plaintiff's claims. The Squibb decision is a cue to companies in class action suits to not take for granted that the plaintiffs' selected forum has the requisite jurisdiction over the companies sued, but to strictly analyze whether the necessary contacts with the forum state exist and to make timely jurisdictional challenges.

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