akerman

Practice Update

New Ruling Limits "Forum Shopping" in Mass Action Cases and Has Potentially Significant Implications for Class Actions

June 20, 2017

By Brian Fraser

Related Work

Litigation

On June 19, 2017, the United States Supreme Court issued the latest in a line of decisions that began in 2011 which has restricted the exercise of personal jurisdiction over corporate defendants by state and federal courts. In *Bristol-Myers Squibb Co. v. Superior Court of California*, No. 16-466 (June 19, 2017) (BMS), the Court reversed the California Supreme Court and held that a group of plaintiffs, who are not residents of California and who did not allege that they were injured in the state, may not assert claims against the defendant pharmaceutical company alongside California plaintiffs asserting similar claims in California state court. The decision removes any possible remaining doubt that courts may not exercise personal jurisdiction over a corporate defendant without running afoul of the Due Process clauses of the Fifth and Fourteenth Amendments unless it can be shown that 1) the forum is the defendant's place of incorporation or principal place of business, or 2) the defendant's conduct that caused the alleged injury to the plaintiff occurred in the forum or was directed to the forum with the specific intent to cause an effect there. Even extensive but unrelated conduct by the defendant in the forum, which is what the California Supreme Court relied upon in holding that the state had jurisdiction over *BMS*, will not support a finding of

jurisdiction. The fact that the defendant is properly a party before the court for the purpose of other plaintiffs' claims also does not change the result.

Beginning in 2011, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76 (June 27, 2011), the Supreme Court began a fundamental change to longstanding jurisdictional doctrine. Although the Court in *Goodyear* paid lip service to the "minimum contacts" and "traditional notions of fair play and substantial justice" standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), it began moving toward the current more limited view of both general and specific personal jurisdiction. The Court has moved away from a focus on the convenience of the defendant and toward an emphasis on Due Process as a tool of Federalism to limit states' ability to impose their power over out of state corporations. In *Goodyear*, the Court held that North Carolina did not have general jurisdiction over the tire manufacturer arising from a bus accident in France because it was not "at home" in North Carolina, despite substantial sales of tires in the state. In 2014, the Court extrapolated from the *Goodyear* ruling and made explicit the general rule that a corporation is only "at home" in its place of incorporation or principal place of business. See *Daimler AG v. Bauman*, 134 S. Ct. 756 (2014). That same year, the Court articulated a more limited view of specific jurisdiction in *Walden v. Fiore*, 134 S.Ct. 1115 (2014), requiring a strong connection between the defendant's conduct in the state or directed toward the state with an intent to cause an effect there and the plaintiff's cause of action. The effect of these decisions is now being felt in the lower courts, as judges and lawyers adjust to the new standards. See *Gucci v. Bank of China*, 768 F.3d 122 (2nd Cir. 2014) (defendant did not waive jurisdictional objection by appearing, because the Supreme Court's decision in *Daimler* had unforeseeably changed the law).

Beyond cementing the new stricter jurisdictional tests laid out in the previous cases, *BMS* makes clear

that personal jurisdiction is no longer about the convenience of the defendant. After all, *BMS* would be a defendant in California regardless of the outcome of the appeal, given the claims of the California residents. But, it also raises a tantalizing possibility for class action cases. *BMS* was not a class action, rather it was a direct action brought by 86 California residents and 592 residents from 33 other states. But the Court's reasoning suggests that a state or federal court may not have the power constitutionally to certify a class that includes putative class members who could not have obtained jurisdiction over the defendant in the forum on their own. In other words, unless a corporate defendant is sued in the state of its incorporation or principal place of business, where the court has general jurisdiction over the defendant, only class members who are resident in the forum or who suffered injury in the forum could be certified as part of the class. Such a rule would in effect require all national class actions to be filed where the defendant is headquartered or incorporated. In her dissenting opinion, Justice Sotomayor cited the hurdles that the majority's decisions raises for consolidated and mass cases, and raised just the possibility that it could also affect class actions in a footnote: "The Court today does not 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." Id. fn 4. Given the current notion that due process in the context of personal jurisdiction imposes a check on states' power, there is every reason to think that *BMS* will be applied in the class action context.

In the wake of *BMS*, class action defendants and their counsel should re-evaluate their defenses to class certification, and consider the effect on damages calculations and the cost of settlement from a successful challenge to certification that limits the class to in-forum members.