

PANEL COUNSEL

Litigation Update: Supreme Court Limits Where Companies Can Be Sued



The United States Supreme Court has long recognized that a lower court may not assert personal jurisdiction over a defendant that has no connection to the state in which the court sits. Although state courts have loosely interpreted personal jurisdiction rules, a recent US Supreme Court ruling again emphasizes the limits of personal jurisdiction.

In 2014, the US Supreme Court affirmed the principle of personal jurisdiction in *Daimler AG v. Bauman*. The ruling held that a court cannot exercise general jurisdiction over a corporate defendant unless the defendant is “at home” in that state — meaning that, for example, the company is incorporated or has its principal place of business in that state.¹ After *Daimler*, state courts in Montana and California released decisions that chipped away at the ruling by broadly interpreting the rules of specific personal jurisdiction such that *Daimler*’s limits on general personal jurisdiction meant little.

¹ *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014).

Over the last few weeks, in important rebukes of the state courts' attempts to expand the scope of personal jurisdiction even after *Daimler*, the US Supreme Court overturned the Montana and California state court decisions, reaffirmed the limits of personal jurisdiction, and held that state courts lacked jurisdiction over out-of-state corporations.

As a result of the US Supreme Court's rulings, state courts cannot hear a lawsuit against a company that is not "at home" in the state, unless the lawsuit arises out of the company's activities in the state. The rulings are significant because they restrict the ability of plaintiffs to "forum shop" for friendly judges and juries and limit plaintiffs' ability to force companies to litigate in distant and inconvenient forums. The rulings also enable companies to structure their businesses with more predictability as to where they might be sued.

PERSONAL JURISDICTION

The limitation on a court's personal jurisdiction allows companies to have some predictability over where they might be sued. A court can assert either of two types of personal jurisdiction; if neither exists, the court must dismiss the case. These include:

- **Specific jurisdiction:** Exists only when a lawsuit's claims arise out of the defendant's connections with the state.
- **General jurisdiction:** Exists when the defendant has continuous and systematic connections with the state, regardless of the claims in the lawsuit.

CALIFORNIA AND MONTANA TAKE ON DAIMLER

A group of more than 600 plaintiffs sued Bristol-Myers Squibb (BMS) in California for injuries allegedly sustained while taking BMS's drug, Plavix.² BMS is neither incorporated nor headquartered in California, and it never manufactured or researched Plavix in California. BMS, however, distributes its drugs, conducts other research activities, and maintains offices in California. The California Supreme Court recognized that it could not find general jurisdiction over BMS in light of *Daimler*, so it instead applied an expansive view of specific jurisdiction. In doing so, the court essentially eliminated the relatedness requirement, which requires that the defendant's contacts with the forum be the cause of the plaintiff's injuries. As the court reasoned, the relatedness requirement is met under California law so long as there is a "substantial connection" between the plaintiff's claim and the defendant's forum activities.³

Similarly, in Montana, residents of North Dakota sued BNSF Railway, a Delaware corporation with its headquarters in Texas, for injuries sustained outside of Montana.⁴ BNSF has approximately 10% of its railroad tracks in Montana and conducts significant shipping business in that state, but it otherwise has no ties to Montana. Plaintiffs sued under the Federal Employees Liability Act (FELA). The Montana Supreme Court found personal jurisdiction over BNSF based on section 56 of FELA, which the court read "to enable the plaintiff . . . to find the corporation at any point or place or State where it



² *Bristol-Myers Squibb Co. v. Superior Court*, 1 Cal. 5th 783 (2016).

³ *Id.* at 801.

⁴ *Tyrrell v. BNSF Railway Co.*, 383 Mont. 417 (2016).

is actually carrying on business, and there lodge his action.”⁵ In other words, the Montana Supreme Court read FELA to provide special, expanded jurisdictional rules that trumped *Daimler*.

US SUPREME COURT REVIEW

On May 30, 2017 and June 19, 2017, respectively, the US Supreme Court rendered its decisions in *BNSF Railway v. Tyrrell* and *Bristol-Myers Squibb Co. v. Superior Court*.⁶ Both decisions resoundingly disapproved of the state courts’ interpretation of *Daimler*. The rulings provided important clarification that, post-*Daimler*, general jurisdiction over an entity is proper *only* if the entity maintains its principal place of business in that state or is incorporated in that state.

In *Bristol-Myers Squibb*, the US Supreme Court characterized the California Supreme Court’s articulation of specific personal jurisdiction as “a loose and spurious form of general jurisdiction.”⁷ It then reaffirmed, as BMS argued in its cert petition, that “general connections with the forum are not enough” to create specific personal jurisdiction. Instead, the US Supreme Court ruled, there must be a clear causal link between the defendant’s forum activities and the plaintiff’s suit.⁸

The plaintiffs in *BNSF Railway* fared no better. After rejecting plaintiffs’ reading of section 56 of FELA, the US Supreme Court found that Montana could not maintain

personal jurisdiction over BNSF while also respecting the limits imposed by *Daimler*.⁹ In a moment of seeming frustration, the US Supreme Court wrote that “BNSF, we repeat, is not incorporated in Montana and does not maintain its principal place of business there,” thus rendering general personal jurisdiction improper.¹⁰

In both decisions, Justice Sotomayor penned a lone dissent, arguing that these decisions grant “a jurisdictional windfall to large multistate or multinational corporations”¹¹ and urging the court to give more weight to “traditional notions of fair play and substantial justice.”¹²

INSURANCE IMPLICATIONS

The US Supreme Court’s clarification of jurisdictional rules provides companies more certainty as to where they might be subject to liability and restricts plaintiffs’ ability to force companies to litigate in distant and unfriendly courts. Nevertheless, the rulings do not restrict state courts’ specific jurisdiction, meaning they can still assert jurisdiction over claims arising from a company’s in-state activities. As a result, rather than face a single lawsuit by a nationwide class of plaintiffs, a company might instead face multiple smaller lawsuits in several states by different plaintiffs in each state. Such litigation could rapidly erode insurance policy limits and leave companies uninsured for prolonged litigation and any damage awards. Work with your insurance advisor to ensure you have adequate policy limits in the event of a loss.



⁵ *Id.* at 420.

⁶ *BNSF Railway Co. v. Tyrrell*, 137 S.Ct. 1549 (2017); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1773 (2017).

⁷ *Bristol-Myers Squibb*, 137 S.Ct. at 1776.

⁸ *Id.*

⁹ *BNSF Railway*, 137 S.Ct. at 1558-59.

¹⁰ *Id.* at 1559.

¹¹ *Id.* at 1560.

¹² *Bristol-Myers Squibb*, 137 S.Ct. at 1785.

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