

Home Alone and the Death of Mass Torts: Recent Developments in General and Specific Jurisdiction

Justice Paige Petersen, Utah Supreme Court
 Judge Diana Hagen, Utah Court of Appeals
 Moderator: Erik A. Christiansen, Parsons Behle & Latimer

Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

Specific Jurisdiction Case:
Relevant Facts:
 BMS involved product liability claims concerning Plavix medication, which allegedly caused injuries;
 There were 8 separate complaints filed in California;
 Involving 678 plaintiffs;
 86 of the plaintiffs were in California;
 592 resided outside of California;
 BMS was a Delaware corporation; and
 BMS had its principal place of business in New York.

Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

Contacts with California:

- BMS had five research labs in California (none related to Plavix);
- BMS had 250 sales representatives in California; and
- BMS had lobbyists in California.

BMS moved to dismiss for lack of personal jurisdiction.
 Trial Court held that there was general jurisdiction because of the many contacts with California.

Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

The California Supreme Court reversed.

The California Supreme Court reversed because of Daimler AG v. Bauman (2014) (which we will discuss later, requiring cases to be filed at home).

On remand, the California Court of Appeal found that there was *specific jurisdiction*.

On appeal, the California Supreme Court affirmed that there was *specific jurisdiction*.

The California Supreme Court held that where a defendant had extensive forum-related contacts, the connection between those contacts and plaintiffs claims did not have to be so closely related to the harm for specific jurisdiction to exist.

Because BMS had extensive contacts with California, the Court found specific jurisdiction, despite the fact that there was little contact between BMS and the non-resident plaintiffs in California.

Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

In an 8-1 decision, the U.S. Supreme Court reversed:

- The Supreme Court held that the California court lacked specific jurisdiction with respect to the 592 non-resident plaintiffs;
- In order for specific jurisdiction to exist, "the suit must arise out of or relate to the defendant's contacts with the forum." BMS, 137 S.Ct. at 1780.
- "In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." Id.
- Unless there is some connection between the plaintiff's claims and the defendant's forum-related activities, specific jurisdiction is lacking, regardless of how extensive the defendant's contacts are with the forum state.
- Non-resident plaintiffs must establish a specific link between their claims and BMS's forum-related contacts.

Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

Key jurisdictional facts for non-resident plaintiffs:

There were no California prescriptions;

No California purchases;

No California medical treatments;

No medical care in California.

BMS's California activities did not have anything to do with the non-resident defendant's alleged injuries.

Questions about Bristol-Myers Squibb Co. v. Superior Court of California (June 19, 2017)

1. Is this a pro-plaintiff or pro-defendant case?
2. What impact will the decision have on mass tort cases?
3. Is BMS limited to cases filed in state courts, or does it apply in Federal court?
 - Will cases now be filed in multiple jurisdictions, depending on residency of plaintiffs?
 - Can MDLs in federal court solve the problem? Can you MDL all plaintiffs in one forum if no personal jurisdiction exists in the MDL forum over non-resident plaintiffs?
4. Will all mass tort cases now get filed in the home state of the defendant, i.e., state of incorporation or principal place of business?
 - What impact will this have on plaintiffs' forum shopping?
 - Will cases expand as discovery reveals activities in other forums?

BNSF Ry. Co. v. Tyrrell (May 30, 2017)

General Jurisdiction Case:

- The case involved the question of whether Montana state courts could exercise personal jurisdiction over railroads sued in the state by non-resident employees whose claims have no connection to Montana.
- A North Dakota resident injured on the job sued BNSF in Montana under the Federal Employer's Liability Act (FELA).
- A South Dakota resident whose husband was injured on the job sued BNSF in Montana under FELA.
- Neither worked in Montana.
- BNSF is not a Montana company.
- BNSF does not have its principal place of business in Montana.

BNSF Ry. Co. v. Tyrrell (May 30, 2017)

The Montana Supreme Court held that there was general jurisdiction under FELA and because BNSF does business in Montana.

BNSF has 2000 miles of tracks and 2000 employees in Montana.

In an 8-1 opinion, the U.S. Supreme Court reversed.

- FELA contains a venue, but not a jurisdiction, requirement;
- There was no general jurisdiction under Daimler AG v. Bauman (2014) (the home state decision discussed below).
- The Montana Supreme Court violated BNSF's Fourteenth Amendment right to due process because "BNSF is not incorporated or headquartered in Montana and its activity there is not substantial and of such a nature as to render the corporation at home in that state." 137 S.Ct. at 1553.

BNSF Ry. Co. v. Tyrrell (May 30, 2017)

Questions about BNSF Ry. Co. v. Tyrrell (May 30, 2017):

- Does it matter that it was a 14th Amendment case? i.e., would the result be different in Federal court under a 5th Amendment analysis?
- Do BMS and BNSF mean that cases decided under prior precedent can be reconsidered for potential dismissal for lack of personal jurisdiction?
- Can you reconsider a prior motion to dismiss based on the 2017 cases? See Neeley v. Wyeth LLC, 2015 WL 1456984 (E.D. Mo. Mar. 30, 2015).

10

Daimler AG v. Bauman (January 14, 2014)

General Jurisdiction Case: The "at home" case:

- The Daimler case involved residents of Argentina who alleged that a subsidiary of Daimler AG, Mercedes-Benz of Argentina, conspired with Augusto José Ramón Pinochet Ugarte's forces to kidnap, torture and kill the plaintiffs or their relatives.
- Plaintiffs did not sue Mercedes-Benz of Argentina.
- Plaintiffs sued only Daimler AG in California under the theory that another subsidiary, Mercedes-Benz of USA, had a sufficient connection to California to grant the California courts general jurisdiction over Daimler AG to California.
- There was no connection between the atrocities, perpetrators, or victims in Argentina and California.
- Instead, plaintiffs argued for general jurisdiction over Daimler in California.

11

Daimler AG v. Bauman (January 14, 2014)

- The U.S. Supreme Court framed the issue as whether Daimler's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum state." 134 S.Ct. at 761.
- The Court generally held that corporations are subject to general jurisdiction in only two states – their state of incorporation and the state of their principal place of business, i.e., their home state.
- But there is a footnote: Footnote 8.

"We do not foreclose the possibility that in an exceptional case, . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State. But this case presents no occasion to explore that question, because Daimler's activities in California plainly do not approach that level. It is one thing to hold a corporation answerable for operations in the forum State, . . . quite another to expose it to suit on claims having no connection whatever to the forum State." 134 S.Ct. at 761.

12

Daimler AG v. Bauman (January 14, 2014)

Thus, under Daimler, there are 3 ways to establish general jurisdiction:

1. Defendant’s formal place of incorporation;
2. Defendant’s principal place of business; or
3. The exceptional case where a “corporation’s operations in a forum . . . [are] so substantial and of such a nature as to render the corporation at home in that State.”

13

Daimler AG v. Bauman (January 14, 2014)

- So, what is an exceptional case?
- The Supreme Court identified Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) as an example.
- In Perkins, the Court found that the defendant, a Philippine corporation, could be subject to general personal jurisdiction in Ohio based on its extensive contacts within the state.
- During WWII, the corporation moved most of its operations from the Philippines to Ohio. The company maintained an office, kept company files there, ran its employees from the location, paid salaries to officers there, maintained bank accounts there, held directors meetings there, and managed company property in the Philippines from Ohio.
- Held: the Ohio court had general jurisdiction in that case.

14

Questions About All Cases

- Will these general and specific jurisdiction cases mean that fewer cases get filed in states like Utah because (a) few companies are incorporated here and/or have their principal place of business here; and (b) fewer alleged victims are located here due to our small population?
- What level of causation of harm, if any, is required for specific jurisdiction, i.e., is *any fact* connecting the alleged harm to the forum sufficient?
- See, e.g., M.M. v. GlaxoSmithKline LLC, 61 N.E. 3d 1026 (Ill. App. 2016), which predicated specific jurisdiction on the fact that 17 of 361 clinical trials for the drug at issue included Illinois in-state investigators.

15

Questions About All Cases

- Will there be substantial jurisdictional discovery now in general jurisdiction cases?
 - Justice Sotomayor pointed out in her concurrence in Daimler AG:

“The majority’s approach will also lead to greater unpredictability by radically expanding the scope of jurisdictional discovery. Rather than ascertaining the extent of a corporate defendant’s forum-state contacts alone, courts will now have to identify the extent of a company’s contacts in every other forum where it does business in order to compare them against the company’s in-state contacts.” 134 S.Ct. at 770-71.
- What did Justice Sotomayor mean by that statement? What types of discovery in a general jurisdiction case?

Questions About All Cases

Is jurisdictional discovery limited to general jurisdiction cases?
 What about jurisdictional discovery in specific jurisdiction cases to establish an in-state link to the alleged harm?
 As soon as a defendant argues that a plaintiff’s claim is unrelated to the defendant’s actions in the forum, doesn’t that open the door to extensive jurisdictional discovery into what the defendant actually did in the forum state?
 What about consent to jurisdiction statutes?
 Many states have statutes that require consent to jurisdiction as a condition of registration to do business in a state. Does that change after these cases? Is that a statutory mechanism to circumvent Daimler? Which governs?
 If a defendant consented to jurisdiction in a state as a condition of doing business in the state, do these cases overrule that statute? See Plumbers’ Local Union No. 690 Health Plan v. Apotex Corp., 2017 WL 3129147, at *11 (E.D. Pa. July 24, 2017).

Questions About All Cases

- What impact will these decisions have on removal jurisdiction?
- For example, can a defendant remove to federal court, challenge personal jurisdiction over out-of-state plaintiffs to get them dropped from a lawsuit, keeping the in-state plaintiffs, and therefore establish diversity?

Thank You

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19
