



The United States Supreme Court Limits Non-Domicile Jurisdiction over Foreign Companies

By Scott J. Hymanⁱ and Erin S. Kubotaⁱⁱ

The inevitable risk of doing business in the United States is that one day your company may be sued. The question is: *but where?* Our system of federalism unfortunately suggests that *where* a company might be sued can be outcome determinative of the result of the case. Accordingly, foreign companies doing business in the United States have faced forum-shopping plaintiffs hailing them into Court in a state where they do business, but where neither the plaintiff nor the wrong have any nexus to the forum state. The United States Supreme Court recently put a stop to such forum-shopping Plaintiffs in *Bristol-Myers Squibb Company v. Superior Court of California*, 582 U.S. ___ (June 19, 2017) (“*Bristol-Myers*”), and clarified where a foreign business may be subject to suit.

First, a brief primer on personal jurisdiction and our system of federalism is warranted. The 14th Amendment of the United States’ Constitution limits the extent to which State courts can exercise personal jurisdiction over a defendant. Personal jurisdiction is necessary in order for a State court to exercise legal authority over a party and to render a valid judgment. The defendant’s relationship to and activity in a forum State determines whether a State can exercise personal jurisdiction over a defendant.

Obviously, a defendant who is domiciled in the State is subject to the State’s jurisdiction. This is called general jurisdiction. A business’s “domicile” is often regarded as its home, such as where it is incorporated or where it maintains its principal place of its business. For example, a business that is incorporated in California can readily be sued in California, regardless of the subject-matter or the nexus of the wrong to the forum state (subject to some exceptions not applicable here).

But, obviously, businesses regularly do business in states where they are not domiciled, and the rub is the scope of jurisdiction that a State can exercise on a non-domiciled defendant. The answer, like those to most legal questions, *depends*. In order for there to be personal jurisdiction over a nonresident defendant, the lawsuit must “aris[e] out of or relat[e] to the defendant’s contact with the forum.” (*Bristol-Myers*, 582 U.S., at ___ (slip op. at 5)). In other words, there must be a connection between the forum and the underlying controversy. Without this connection, there is no personal jurisdiction by a State court over a nonresident defendant. Courts must consider a variety of interests, such as the burden on the defendant, the interest of the plaintiff in proceeding in the forum of the plaintiff’s choice, the interests of the forum State, and the Due Process Clause of the 14th Amendment – the latter of which may be the decisive factor, according to *Bristol-Myers*.

In *Bristol-Myers*, more than 600 plaintiffs, the majority who were not California residents, filed a lawsuit against Bristol-Myers Squibb Company (“BMS”), a pharmaceutical company, in California state court for injuries allegedly suffered by a BMS drug. BMS is incorporated in Delaware, headquartered in New York, and has substantial business operations in both New York and New Jersey. BMS engaged in business activities in California, but all of its business activities regarding the specific drug took place outside of California. Furthermore, the plaintiffs were not California residents and had no ties to California relating to the drug at issue.

In reversing the California Supreme Court, the U.S. Supreme Court in *Bristol-Myers* found that there was no personal jurisdiction over BMS as to the non-resident plaintiffs’ claims, because there was a missing connection between the forum (California) and the specific claims at issue. The *Bristol-Myers* Court noted that the nonresidents did not purchase the subject drug in California, were not prescribed the drug in California, did not ingest the drug in California, and were not injured by the subject drug in California. The Court also found it irrelevant that BMS had contracted with a California distribution company for the drug, noting that the requirements for personal jurisdiction “must be met as to each defendant over whom a state court exercises jurisdiction.” Because there was a missing connection between the forum and the underlying controversy, *Bristol-Myers* held that the California courts could not claim personal jurisdiction over BMS as to the non-residents’ claims.

Bristol-Meyers put a stop to forum-shopping by Plaintiffs, but not surprisingly confirms the kind of forum-shopping analysis that corporate defendants do anyway: ensuring that their domicile (state of incorporation and principal place of business) is in litigation-friendly and business-friendly states. Foreign businesses also should remain diligent in protecting their legal rights when faced with a lawsuit in the United States – diligence that ensures protection against being hailed into an improper forum having no nexus to the litigant or to the alleged wrong. As the *Bristol-Myers* case makes clear, just because a foreign business has business ties to the United States, does not mean that such ties are a sufficient basis for it to be sued in any State.

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