

No Personal Jurisdiction Pass For Federal Plaintiffs

By **Jessica Miller, Geoffrey Wyatt and Jordan Schwartz**

Law360, New York (June 26, 2017, 12:26 PM EDT) -- Last Monday, the U.S. Supreme Court, in an 8-1 decision, dealt a significant blow to plaintiffs' attorneys seeking to manufacture personal jurisdiction by joining the claims of resident plaintiffs with those of non-residents in state court. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, No. 16-466, 581 U.S. ---, 2017 WL 2621322 (June 19, 2017).

While many have already interpreted the decision as signaling the death knell of nationwide mass actions, some have suggested that the ruling applies only to state courts. This is an argument with no legs.

In *Bristol-Myers*, more than 600 plaintiffs, most of whom were not California residents, sued Bristol-Myers (BMS) in California state court, alleging that they had been injured by ingesting Plavix, a drug manufactured by BMS. BMS moved to dismiss the nonresidents' claims on the ground that the court lacked personal jurisdiction.

On appeal, the California Supreme Court concluded that the trial court did have specific personal jurisdiction over the claims in light of BMS's extensive contacts with California and the similarity between the claims of the California residents and those of the non-residents.

But the U.S. Supreme Court reversed, explaining that the "mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California — and allegedly sustained the same injuries as did the nonresidents — does not allow the State to assert specific jurisdiction over the nonresidents' claims. ..." *Id.* at *8.

In so doing, the high court made clear that a state court necessarily lacks specific personal jurisdiction over a defendant with respect to plaintiffs whose claims have no connection to the forum where an action is commenced, regardless of whether those plaintiffs join their claims with plaintiffs whose claims have some connection with the forum.

But did the Supreme Court leave the door open to a federal court exercising personal jurisdiction under the same exact circumstances? Some have suggested it did, referencing



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the concluding statement in *Bristol-Myers* that, because the court's "decision concerns the due process limits on the exercise of specific jurisdiction by a State, [it] le[ft] open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." *Id.* at *11.

Bristol-Myers marks at least the third time in which the Supreme Court has declined to weigh in on whether the personal-jurisdiction inquiry under the Fifth Amendment is different from that under the Fourteenth Amendment. See *Omni Capital Int'l Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102, n.5 (1987); *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 n.* (1987).

As a result, there has already been speculation that the ruling does not bar joinder of claims to avoid personal jurisdiction limitations in federal court. This speculation should be nipped in the bud. Courts throughout the country have uniformly recognized that in diversity cases, a federal court's exercise of personal jurisdiction is governed by the same considerations that obtain in state court.

See, e.g., *Wilson v. Belin*, 20 F.3d 644, 646 (5th Cir. 1994) ("[i]n a diversity suit, a federal court has personal jurisdiction over a nonresident defendant to the same extent that a state court in that forum has such jurisdiction."); *Autoscribe Corp. v. Goldman & Steinberg*, No. 94-1749, 1995 WL 56662, at *2-3 (4th Cir. 1995) ("the 'minimum contacts' doctrine originated in a line of cases that dealt only with the jurisdictional powers of state courts," but that "doctrine, of course, spread to federal courts in diversity cases"); *Adhesives Research Inc. v. Newsom*, No. 1:15-CV-0326, 2015 U.S. Dist. LEXIS 48346, at *10 n.5 (M.D. Pa. Apr. 13, 2015) ("[W]hen sitting in diversity, federal courts ... like state courts, are bound by the requirements of the Fourteenth Amendment.").

This is so because "[i]n a diversity case ... the federal district court is constrained by the Fourteenth Amendment's requirements of minimum contacts with the forum state[.]" *Smith v. S&S Dundalk Eng'g Works, Ltd.*, 139 F. Supp. 2d 610, 616-17 (D.N.J. 2001).

In such a case, the district court "must undertake the traditional Fourteenth Amendment jurisdictional analysis under the [forum state's] long-arm statute." *Id.* at 617. Because product liability and other mass tort cases that are filed in — or removed to — federal court are generally grounded in diversity of citizenship as the basis for federal subject matter jurisdiction, the question of personal jurisdiction in these cases will almost always be answered by applying the core holding of *Bristol-Myers*.

None of this means that the Supreme Court's closing remark in *Bristol-Myers* was meaningless. A different analysis may apply in cases brought to enforce substantive rights created by federal law, and indeed, some courts have "adopt[ed] a 'national contacts' standard" in that context, reasoning that it would be anomalous to apply personal-jurisdiction "limitations 'developed under the Fourteenth Amendment,' which by its own terms only applies to the states," when "adjudicating federally created rights." *Autoscribe Corp.*, 1995 WL 56662, at *3 (emphasis added).

Whether the "national contacts" analysis is the proper framework in such cases is expressly the question that the Supreme Court left open in its prior cases and presumably the one it was referring to in the closing lines of *Bristol-Myers*. E.g., *Asahi*, 480 U.S. at 113 n.* (expressly not deciding whether a personal-jurisdiction analysis under the Fifth Amendment Due Process Clause could be "based on the aggregate of national contacts, rather than on the contacts between the defendant and the State in which the federal court sits").

That question has no relevance to "diversity action[s][,which] ... do[] not involve a federal statute with a national service provision." *Chandler v. Barclays Bank PLC*, 898 F.2d 1148, 1154 (6th Cir. 1990).

In short, the reality is that there is no open question about whether the Supreme Court's "minimum contacts" jurisprudence governs cases that end up in federal court based on diversity of citizenship, including — for example — the numerous mass-tort cases grounded in state product-liability law.

Because those cases do not involve a federal statute authorizing nationwide service of process, the "national contacts" theory of personal jurisdiction is irrelevant. As such, any speculation that Bristol-Myers should be cabined to state court proceedings misperceives the applicable law and should be swiftly rejected by courts.

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