

## Supreme Court to Hear Specific Personal Jurisdiction Product Cases That Caused Harm in Forum States

Recently, the U.S. Supreme Court agreed to hear a manufacturer's challenge to two state supreme court decisions (Minnesota and Montana) that allowed plaintiffs to bring product defect suits in states where the manufacturer claims it does not have a sufficient connection to either of the forums to satisfy due process. You may recall from an earlier *Alert* that in 2014 and 2017, the Supreme Court limited the ability of plaintiffs to sue defendants in certain jurisdictions because of defects in personal jurisdiction. In *Daimler*, it held that a defendant could only be sued under general personal jurisdiction in its state of incorporation or where it had its principal place of business (absent extraordinary circumstances). In *Bristol-Myers Squibb*, it held that non-resident plaintiffs who were not injured in the state lacked any connection between the forum (California) and the specific claims at issue (injuries from a drug) sufficient to satisfy due process. The cases the Court will hear this term may involve analysis of the type and amount of connection necessary to allow a state (or lower federal court sitting in diversity) to exercise personal jurisdiction constitutionally. A decision in the consolidated appeals will hopefully provide guidance to the lower courts in both federal and state systems as the issue involves constitutional due process limits. The lower courts have been, predictably, all over the place without guidance.

In its 2017 ruling in *Bristol-Myers Squibb*, the Court held that the due process clause requires both that the defendant has "purposefully availed itself of the privilege of conducting activities within the forum state" and that the plaintiff's claims "'arise out of or relate to' the defendant's forum conduct." The defendant in *Bristol Myers-Squibb* did not contest personal jurisdiction as to the California resident plaintiffs who were allegedly injured so the Court's opinion did not address those issues. It now will have the opportunity to do so and, hopefully, address what conduct of truly foreign (out of the country) manufacturers and also out of state manufacturers is sufficient when products they manufacture and place in the stream of commerce cause harm elsewhere.

The issue is critical for subrogating insurers and personal injury attorneys for determining whether foreign or out-of-state manufacturers can be sued at all in the United States and, if so, whether a plaintiff injured by a defective product must sue the manufacturer in its state of incorporation or where it has its principal place of business as set forth in *Daimler* in 2014 for general personal jurisdiction. The Court's decision could leave injured plaintiffs without a forum to sue a foreign manufacturer in this country or with the added expenses and inconvenience of filing suit in the state where the manufacturer is "at home" for a domestic manufacturer.

The issues involve a potential clash between the protections that state legislatures and courts afford their injured citizens under product liability laws and the constitutional boundaries of due process that can divest a court of jurisdiction due to lack of a connection to the state where suit is filed.



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