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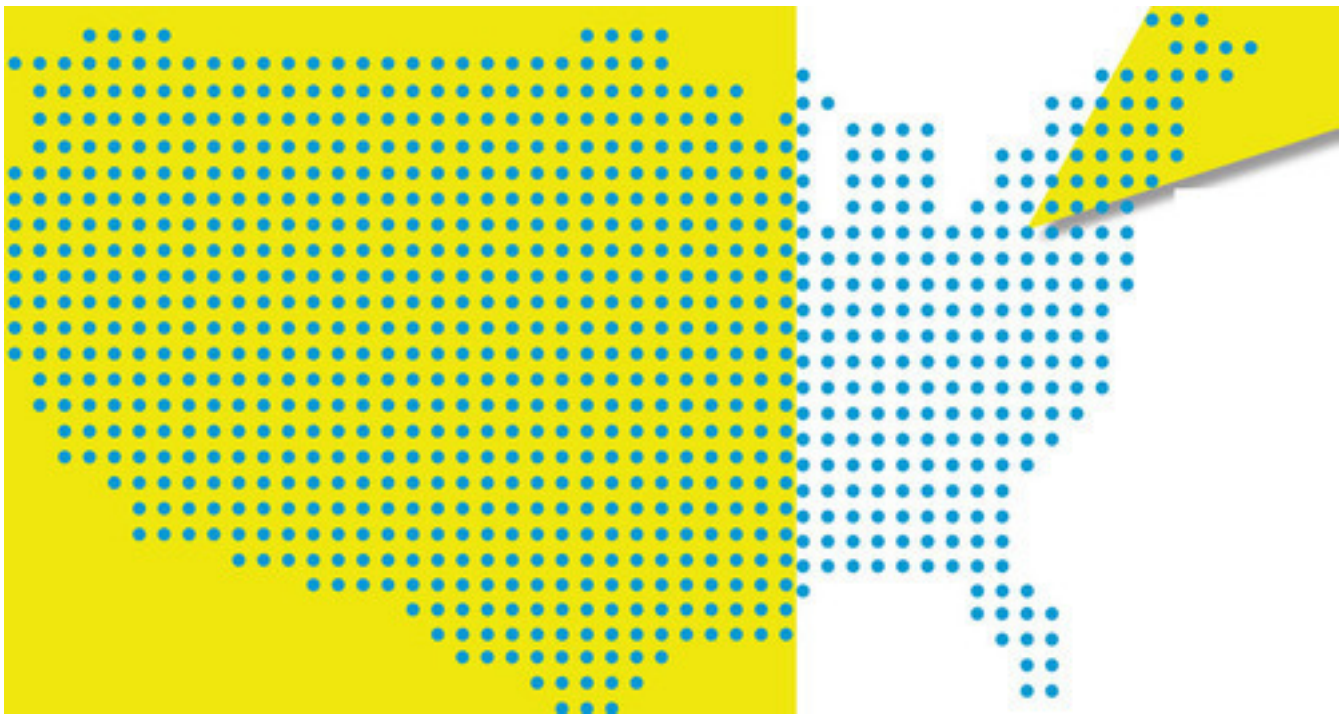
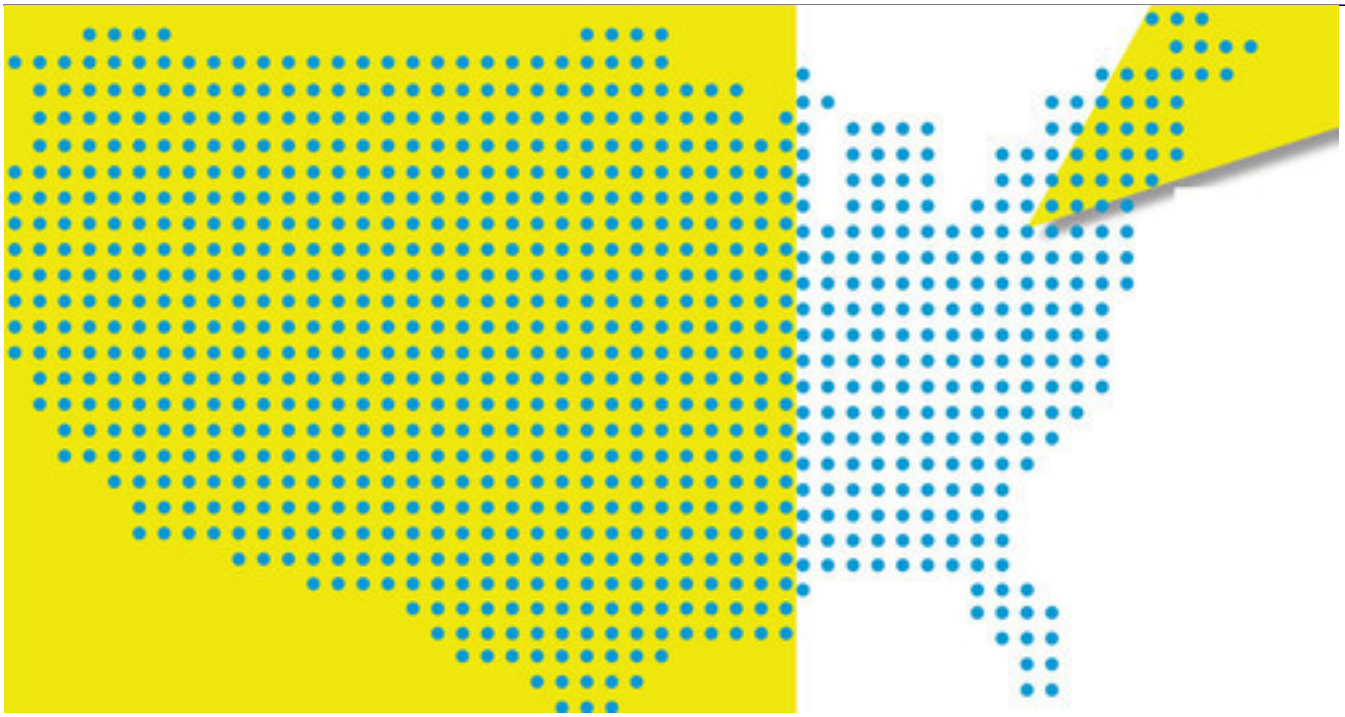
What Do the New Rules of Personal Jurisdiction Mean for In-house Counsel?

Government

Litigation and Dispute Resolution





CHEAT SHEET

- ***General and specific.*** General jurisdiction refers to a court's all purpose power to hear even the cases against a defendant that have no connection to the forum state, while specific jurisdiction is case-linked and depends on the connection between the claim at issue and the defendant's forum-related conduct.
- ***BNSF Railway and Bristol-Myers Squibb.*** Building on a series of prior decisions, the US Supreme Court reinforced that corporations can be sued only in their home states — almost always limited to their state of incorporation or principal place of business — or in a forum that has a sufficient affiliation with each plaintiff and claim to support specific jurisdiction.
- ***New opportunities.*** The new jurisdictional world affords corporate defendants an expanded arsenal for seeking the early dismissal of cases in their entirety, significantly paring back mass (and potentially class) actions, and resisting jurisdictional discovery — even as it complicates some aspects of corporate practice.
- ***Open questions.*** Several as-yet unresolved jurisdictional questions bear watching, including the status of the registration-as-consent and stream-of-commerce theories, and the impact of the Court's new jurisdictional approach on litigation in federal court.

Corporate personal jurisdiction, or a court's authority to assert power over a corporate defendant consistent with due process, is currently undergoing a revolution in the US Supreme Court. In a series of decisions dating to 2011, the Court has reshaped the rules governing personal jurisdiction, making them both simpler and more predictable, and in the process significantly contracting the power of the states to hear suits against nonresident corporations. Earlier this year, it continued and reinforced this trend in two important personal jurisdiction rulings, *BNSF Railway Co. v. Tyrrell*, 137

S.Ct. 1549 (2017), and *Bristol-Myers Squibb v. Superior Court*, 137 S.Ct. 1773 (2017) (BMS). Those decisions confirm that the recent changes are here to stay and foreshadow additional major developments.

While the full implications of the Court's new jurisprudence remains to be seen, the practical consequences are already significant. Under the old rules, plaintiffs could and routinely did sue large national corporations almost anywhere they had substantial operations, even on claims unrelated to the forum where suit was brought. Likewise, plaintiffs' counsel commonly would recruit individuals claiming injury from a defective product — anything from pharmaceuticals to cars — from across the country, and then bring a single mass action in the most favorable forum they could find, even if most of the plaintiffs' claims did not relate to the defendant's activities in the state. The Court's recent rulings will substantially curtail this type of entrepreneurial litigation by limiting product liability and other suits against corporations to a much narrower range of permissible jurisdictions. Those suits can now only be brought in either the corporate defendant's "home" states, or those states with enough of a linkage to each claim to support specific jurisdiction.

In addition to affecting the business models of plaintiffs' firms, these developments will impact how in-house practitioners manage their case dockets and assess and control their clients' litigation risk. Corporations and their litigation counsel now have a much greater ability to fight back against forum shopping and seek the early dismissal of cases that do not satisfy the new, stricter jurisdictional rules. The evolving jurisdictional regime should also give corporations greater freedom to structure their operations, invest in new markets, and select distributors and other business partners without worrying about expanding the forums in which they can be sued on unrelated claims. At the same time, the new rules may present challenges for in-house counsel as well — for example, in their dealings with overseas counterparties and those located in unfavorable US jurisdictions.

Given the magnitude of the recent jurisdictional changes, all in-house business and litigation counsel — in corporations large and small, foreign and domestic — can benefit from learning about the new jurisdictional world the Court has created, why it is important, and what future developments might be in store.

General and specific jurisdiction

The modern personal jurisdiction framework originated with the Supreme Court's landmark decision in *International Shoe Co. v. Washington*, 326 US 310 (1945), which held that a defendant must have "minimum contacts" with a forum in order to be subject to personal jurisdiction there. That standard was then further refined into two distinct categories: general and specific jurisdiction. General jurisdiction refers to a court's all-purpose power to hear even those cases against a particular defendant that have no connection to the forum state; courts with general jurisdiction over a defendant may hear any claim against it. Specific jurisdiction, by contrast, is case-linked, and turns on the connection between the defendant's forum-related conduct and the claims at issue; in other words, specific jurisdiction exists only where a defendant has established sufficient contacts with a forum and the lawsuit arises out of or relates to those contacts.

In the decades after *International Shoe*, the courts adopted expansive and malleable interpretations of both specific and general jurisdiction that led to rampant forum shopping and legal uncertainty for companies seeking to manage and limit their litigation exposure. Since 2011, however, the Court has changed course, issuing a series of decisions that simplify and clarify the rules governing both doctrines. The Court's two personal jurisdiction decisions this past term — *BNSF Railway* and *BMS* — illustrate and reinforce these trends and continue the progress toward a more constrained

jurisdictional regime.

BNSF Railway and *BMS*

The first of these decisions, *BNSF Railway*, addressed general jurisdiction. The Court had previously held, in *Daimler AG v. Bauman*, 134 S.Ct.746 (2014), that general jurisdiction over a corporate defendant lies in two "paradigm" locations: the corporation's place of incorporation and its principal place of business. Because *Daimler* had involved non-US litigants, and because the rule that it established significantly narrowed the scope of general jurisdiction from the prior understanding, some observers thought the Court might be inclined to qualify its new approach. Instead, *BNSF Railway* reaffirmed and further tightened the limits on general jurisdiction.

The case involved two lawsuits brought against *BNSF Railway* in Montana by former employees who resided and were injured outside the state. While the railroad was "doing business" in Montana — with over 2,000 miles of railroad track and 2,000 workers in the state — it was neither incorporated nor maintained its principal place of business there. In an 8-1 decision, the Court first quickly disposed of the plaintiffs' argument that Congress had intended the Federal Employers' Liability Act to expand the scope of general personal jurisdiction over railroads. The Court next turned to the argument that the railroad was subject to suit in the Montana courts under state law because it was "found within" the state. It held that this interpretation of Montana law violated due process under the 14th Amendment because BNSF was neither incorporated in Montana nor had its principal place of business there and because this was not the type of "exceptional" case justifying the exercise of general jurisdiction in a different forum.

Significantly, the Court's discussion of the "exception" made the extraordinary narrowness of this residual category clear. As the single example of a case involving connections "so substantial and of such a nature as to render the corporation at home" in a forum outside its traditional home states, the Court pointed — as it had done in prior cases — to its decision in *Perkins v. Benguet Consol. Mining Co.*, 342 U. S. 437 (1952), which remains the only example of an "exceptional" case the Court has ever identified. There, a company was forced by World War II to temporarily relocate its operations from the Philippines to Ohio, which then became "the center of the corporation's wartime activities." With these extraordinary facts as its reference point, the Court concluded that BNSF was not "so heavily engaged in activity in Montana 'as to render it essentially at home' in that State."

A month and a half later, the Court issued its much-anticipated decision in *BMS*, addressing the scope of specific jurisdiction. Despite the possible temptation to expand specific jurisdiction to mitigate the impact of the constraints on general jurisdiction, the Court instead confirmed and reinforced the stricter specific jurisdiction rules it had already articulated in prior cases.

At issue in *BMS* was the authority of the California courts to hear a mass personal injury action brought against Bristol-Myers Squibb, a resident of Delaware and New York, by almost 600 plaintiffs allegedly injured by the blood-thinning drug Plavix. It was undisputed that California had specific jurisdiction to hear the claims brought by the minority of the plaintiffs who were California residents (and alleged injury in California). What was in the dispute was whether the court also had the jurisdiction to hear the claims brought by the majority of plaintiffs who resided (and had obtained and ingested Plavix) in other states, given that none of the events relevant to their claims — including the development, marketing, manufacturing, labeling, and prescribing of Plavix — were alleged to have occurred in California.

Applying what it called a "sliding scale" approach to specific jurisdiction, the California Supreme

Court had held that "*BMS*'s extensive contacts with California" permitted the exercise of specific jurisdiction "based on a less direct connection between *BMS*'s forum activities and plaintiffs' claims than might otherwise be required."

Again ruling 8-1, the Supreme Court decisively rejected the lower court's methodology and conclusion. Describing the sliding scale approach as akin to "a loose and spurious form of general jurisdiction," the Court reiterated the bedrock requirement of specific jurisdiction: "a connection between the forum and the specific claim at issue." Absent such a connection, the Court explained, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." Thus, while *BMS* sold almost 187 million Plavix pills in California during the relevant time period and received more than US$900 million from those sales, that was irrelevant to the jurisdictional analysis. What mattered instead was that the nonresident plaintiffs, who did not allege any harm suffered in California or any in-state conduct giving rise to their claims, had failed to identify "any adequate link" between California and their claims.

The upshot of the Court's ruling was that the nonresident plaintiffs could not join the California residents in a single suit in the state against *BMS*. Addressing the concern that this "straightforward application . . . of settled principles" would result in a "parade of horribles," the Court noted that those nonresident plaintiffs still had many options for pursuing their claims. They could all join together in a consolidated suit in Delaware or New York, *BMS*'s state of incorporation and principal place of business. Or they could join together with others in separate suits in states with a sufficient connection to their claims to support specific jurisdiction — such as the state where their injury occurred.

Implications of *BNSF Railway* and *BMS*

The clear message of *BNSF Railway* and *BMS* is that the Court will strictly enforce the due process limits on jurisdiction it has established and reject plaintiff efforts to circumvent those limits through creative lawyering. There are several direct implications for corporate practitioners.

When it comes to general jurisdiction, practitioners can expect the lower courts to be unreceptive to plaintiff arguments that a corporation's contacts with a forum other than its traditional home states are sufficiently "exceptional" to justify general jurisdiction there. Since *Daimler* was decided, plaintiffs have regularly seized on a footnote in that decision in attempting to invoke the exception as a basis for suing companies outside of their home states.

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While such arguments were largely unsuccessful — and no federal court of appeals ever found the test for "exceptional" status met — the exact contours of this residual category remained unclear. Courts suggested that the mere presence of extensive operations in a state could subject a corporation to general jurisdiction, and permitted extensive jurisdictional discovery into those activities. These fact-specific approaches created lingering uncertainty for corporate defendants with a multistate presence.

BNSF Railway should dispel any lingering doubt about the permissibility of such artificial line drawing based on arbitrary percentages. The clear implication of the majority opinion, as Associate Justice

Sonya Sotomayor observed in dissent, is that the scope of the residual category is essentially limited "to the exact facts of [*Perkins*]," which involved the unique circumstance of a company locating the entire nerve center of its operations to a "surrogate" head office during a time of war. Outside of that type of extraordinary situation, general jurisdiction will only lie in a corporation's state of incorporation and principal place of business.

Lack of guidance on Fifth Amendment protection

An important limit on the Supreme Court's recent jurisdictional decisions is that they concern only due process under the Fourteenth Amendment, which restricts state authority and does not directly bind the federal courts. The decisions nonetheless significantly impact federal litigation, because the Federal Rules of Civil Procedure generally require federal courts to adhere to state law limits on personal jurisdiction (including Fourteenth Amendment due process). Most federal litigation — whether arising under diversity or federal question jurisdiction — is subject to this requirement.

But some federal statutes, such as the Clayton Act and the Federal Trade Commission Act, empower federal courts to exercise personal jurisdiction more expansively. Many lower courts have taken the position that, in determining whether such broader assertions of personal jurisdiction comport with Fifth Amendment due process, a federal court should look to the defendant's contacts with the nation as a whole, not just the individual forum. BMS, however, expressly "leave[s] open . . . whether the Fifth Amendment imposes the same restrictions [as the Fourteenth] on the exercise of personal jurisdiction by a federal court." Much turns on the ultimate resolution of this question, as the amorphous "national contacts" approach exposes corporations to federal suit in a wider array of potentially alien forums than the standard Fourteenth Amendment analysis.

As with many other important issues addressed in this article, further definitive guidance on the scope of the Fifth Amendment protection will have to await a future case.

The impact of *BMS* may be even more significant. Most obviously, the decision empowers corporate defendants to challenge personal jurisdiction in mass actions involving claims arising in multiple states. Plaintiffs' counsel often seek to consolidate such widely-originating claims in a single preferred jurisdiction in order to maximize their leverage and take advantage of forum rules or practices that favor plaintiffs. That strategy will no longer work unless the forum chosen is the corporation's home state. Each and every plaintiff must now be able to demonstrate an "adequate link" between the forum and his claims to survive jurisdictional challenge in such mass actions.

Although *BMS* did not specifically address class-action practice (a fact that Justice Sotomayor noted in dissent), that should also be affected under the decision's logic. *BMS* holds that a court must have independent jurisdiction over all the claims asserted in a mass action, and that specific jurisdiction cannot be established merely by joining claims lacking a forum connection to similar claims that have one. By the same token, a class-action plaintiff with a forum connection should not be able to represent absent class members who lack such a connection, as is commonly the case in nationwide class actions. Accordingly, while Justice Sotomayor's dissent suggested a basis for treating class and mass actions differently when it comes to the jurisdictional analysis, that seems hard to square with the majority's reasoning. If the other shoe does ultimately drop, it could mean a tectonic shift in how class actions are brought and litigated.

How might the business models and case strategies of plaintiffs' firms change to accommodate these developments? Mass and class actions may increasingly migrate to the home state jurisdictions of corporate defendants, which at least hold the possibility of offering a more level playing field than the current litigation hotspots, which tend to favor plaintiffs. The migration of litigation to home state jurisdictions may in turn impact the calculus of corporations in deciding where to locate. Or plaintiffs' counsel will be forced to initiate multiple smaller suits in the different jurisdictions where their clients' claims arose, potentially impacting the economics of those suits and settlement values.

> That interpretation likely misreads *BMS*, which seems to require a connection that is meaningful and resistant to easy circumvention through creative pleading. But no matter how the standard is ultimately defined and applied, both plaintiffs and defendants will need to adjust to the new reality of heightened jurisdictional scrutiny.

To be sure, the extent to which the new limits meaningfully affect the volume and conduct of mass and class litigation will depend on how the courts apply them in practice. Some lower courts have already signaled a disinclination to give teeth to the requirement of a relationship between the forum and the plaintiffs' claims, treating even a highly attenuated causal affiliation between the two as sufficient to support specific jurisdiction. That interpretation likely misreads *BMS*, which seems to require a connection that is meaningful and resistant to easy circumvention through creative pleading. But no matter how the standard is ultimately defined and applied, both plaintiffs and defendants will need to adjust to the new reality of heightened jurisdictional scrutiny.

While the new jurisdictional landscape should benefit corporations overall, a cautionary note is in order. They (and their counsel) will face challenges as well. Take, for example, a corporation defending a products liability action in its principal place of business that has potential contribution or indemnification claims against a third party domiciled elsewhere. Depending on the affiliation between those third-party claims and in-forum conduct, the defendant might be unable to join the third party in the primary litigation. It may therefore need to seek contribution or indemnification in a separate suit elsewhere, or transfer of the primary action to a forum where joinder is possible. Or consider a pharmaceutical company, embroiled in litigation over an allegedly defective drug, which now may have to face piecemeal litigation across multiple jurisdictions where different plaintiffs suffered injury. Whatever the benefits of avoiding the *in terrorem* value of a single mass action, the need to mount a multi-jurisdiction defense will likely lead to increased litigation costs and more complex case management. And business counsel may need to push for additional jurisdictional language in their clients' contracts with overseas counterparties (or those domiciled in unfavorable US jurisdictions), to ensure that they can be sued in the forum of choice. As with any significant shift in the law, the consequences of this one will be complex and not always easily predictable.

Leveraging the new regime

Seeking early dismissal for lack of jurisdiction

Already in *Daimler*, the Supreme Court noted that personal jurisdiction "should be resolved expeditiously at the outset of litigation," and that "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home." *BNSF Railway* and *BMS* should give corporate practitioners an even greater ability to terminate or significantly prune litigation against their clients that is premised on untenable jurisdictional theories, and resist burdensome and irrelevant jurisdictional discovery.

When a corporation is sued outside of its home states, and assuming plaintiffs lack a plausible way to tie the corporation's in-state conduct to their claims, the corporation should give serious consideration to filing an immediate motion to dismiss for lack of jurisdiction. Absent the most unusual of circumstances, such a motion should be successful — even if the corporation has significant operations in the state in question.

In drafting their motions, practitioners should highlight the Supreme Court's emphasis on the desirability of resolving personal jurisdiction issues early in the litigation and its clear signal that the category of "exceptional" cases does not extend much (if at all) beyond the narrow facts of Perkins. If in-state operations are a small share of the company's total, consideration should also be given to submitting a corporate affidavit that includes basic facts about their relative magnitude — including metrics such as sales, employment, and facility space. Although such considerations should not matter in the post-*BNSF Railway* world (and the briefing should make that clear), they can serve to decisively refute the predictable argument that a company's forum contacts are somehow "exceptional." Providing such facts early on could also help forestall later discovery requests.

Even where dismissal of a case in its entirety is not a viable option, corporate defendants should consider their options for narrowing the scope of the litigation. For example, for any mass action brought outside a company's home states, counsel should immediately initiate a careful review of the relationship (if any) between the individual plaintiffs' claims and the forum. In cases where some or all of the plaintiffs have failed to clearly identify how their claims arise out of or causally relate to the corporation's in-state activities, those claims will be vulnerable to jurisdictional challenge. Joinder of such claims should also be resisted as the litigation proceeds.

In seeking dismissal, to the extent the company can conclusively demonstrate the absence of a causal link between the foreign claims and the forum, it should consider submitting an affidavit attesting to the relevant facts. Such as, for example, evidence that a part alleged to have caused injury was designed, manufactured, marketed, and distributed outside the forum state. Or, if the evidence is not clear-cut or readily ascertainable, at the very least the company should argue that plaintiffs should be held to their burden of alleging plausible jurisdictional facts. A company may also wish to demonstrate how the inclusion of non-forum-related claims will burden it in practice, although the Supreme Court has made clear that such a showing is not necessary to secure dismissal.

Of course, lack of personal jurisdiction is a waivable defense, and multiple considerations may factor into the decision on whether to assert it, even when the chances for success are high. Dismissal might lead to a case being refiled in a less favorable jurisdiction; or the company may be concerned that dismissal could lead to a proliferation of parallel suits in multiple jurisdictions, necessitating a multi-front defense; or the marginal expense of pursuing a jurisdictional challenge may exceed the value of the case to the defendant. But however the costs and benefits are ultimately weighed, litigation counsel should, at minimum, take the necessary steps to preserve the argument when litigation is initiated so the various considerations can be carefully evaluated.

Resisting jurisdictional discovery

Writing in dissent in *Daimler*, Justice Sotomayor predicted that the majority's more constrained approach to general jurisdiction would "lead to greater unpredictability by radically expanding the scope of jurisdictional discovery." Whether or not that was a fair reading of the Daimler opinion, plaintiffs often do respond to jurisdictional challenges by seeking expansive jurisdictional discovery.

To the extent the discovery concerns the corporation's general operations, unrelated to the specific

claims at issue, defendants will have a powerful case for objecting. There is simply no justification for plaintiffs to seek information about such operational details, which have no possible relevance for a viable jurisdictional theory in the wake of *Daimler* and *BNSF Railway*. Defendantsin federal court will also have the benefit of the recent amendments to the federal discovery rules in resisting such discovery, which by definition is completely irrelevant and disproportionate to the needs of the case.

Defendants will face greater difficulty resisting discovery couched as directed to information that might support specific jurisdiction, especially to the extent the complaint hints at a conceivable relationship between the information sought and the claims asserted. The task will be especially challenging in those courts that construe the linkage requirement between the claims and forum as relatively easy to satisfy. For example, in a product liability suit arising from the use of prescription drugs, out-of-state plaintiffs may seek to pursue extensive discovery into all aspects of the defendant pharmaceutical company's in-state activities — such as clinical trials and other steps in the drug approval process — that might conceivably form part of a "but for" causal chain leading to their injuries. Defendants may not be able to completely avoid discovery in such circumstances, but should have greater success in seeking to narrow its subject matter and temporal scope.

What the future holds

The ultimate impact of the Court's jurisdictional revolution will be determined by how the lower courts implement the new rules, and whether the Court's later cases follow the principles it has established to their logical conclusion. Two open issues in particular bear watching.

Registration as consent

The first is how the courts resolve an argument that plaintiffs have recently concocted in an effort to circumvent the new jurisdictional limits: A corporate defendant consents to general jurisdiction by registering to do business in a state and appointing an agent for service of process. The question is significant because every state and the District of Columbia have enacted statutes requiring a company to register and appoint a process agent before doing business there, some of which — such as Pennsylvania's — are explicit in treating registration as consent to jurisdiction. Given the ubiquity of such laws, the theory of "registration as consent" threatens to create a massive due process loophole, essentially giving every state the power to expand the jurisdiction of its courts.

The lower courts have split on the constitutional question, and *BNSF Railway* does not address it directly. But the majority's reasoning — by reiterating and expanding the Court's prior admonishments "against the expansive exercise of general jurisdiction" — strongly indicates that mandating consent to general jurisdiction as a condition of doing business in a state violates due process. One can assume that the lower courts will soon reach a consensus to that effect, or that the Supreme Court will step in to resolve the issue conclusively.

Specific jurisdiction based on the stream of commerce

Another important question that remains after *BMS* is when a state may exercise specific jurisdiction over a defendant that participated in some way in the "stream of commerce" relating to a product that ultimately ended up in the forum and caused injury there. Courts have struggled with this complex issue for many decades, and its importance is only increasing with the expansion of global supply chains and the rise of internet commerce. The absence of clear rules of the road has hampered the ability of companies — which often have no control over where their finished and

component products end up — to assess and control their litigation risk and make sound decisions about a host of important business issues. These include how to price their products, whether to impose limits on where their goods are marketed and sold, and whether to seek additional protections in their distribution and other agreements with downstream business partners.

The Supreme Court has addressed these stream of commerce questions in several decisions over the years, but the opinions have been fractured and no clear guidance has yet emerged. It clearly is not enough to establish specific jurisdiction that a product ended up in a state through a consumer's unilateral actions; several Supreme Court decisions also reject subjecting overseas manufacturers to suit merely because their components and finished goods entered a state through the third-party transactions of independent distributors and final product manufacturers. Still unanswered, however, is whether a manufacturer can be subject to suit in a forum simply because its products are sold in significant quantities there and it was aware of that likelihood, or whether it must also purposefully direct relevant conduct — such as design, advertising, marketing, or sales activities — to the forum.

Although *BMS* does not address that question directly, it strongly suggests that some type of purposeful forum-directed conduct is necessary to support specific jurisdiction based on the stream of commerce. As the Court reiterated, a foreign corporation can be subject to the lawful exercise of state judicial power only if the plaintiffs' claims arise from conduct purposefully directed into the forum; it also made clear that actions by independent third parties do not suffice to establish this linkage. That approach is inconsistent with holding a manufacturer subject to suit merely because it places a product in the stream of commerce with awareness that a third party is selling a significant volume of that product in a particular forum. But this issue remains to be conclusively decided. Given its importance and continuing uncertainty in the lower courts, one hopes the Supreme Court will resolve it soon.

Conclusion

BNSF Railway and *BMS* make clear that the Supreme Court's transformation of the rules of personal jurisdiction is here to stay. As is now conclusively established, corporations can be sued only in their home states — almost always limited to their state of incorporation or principal place of business — or in a forum that has a sufficient affiliation with each of the plaintiffs and claims involved in the litigation to support specific jurisdiction. In-house litigators should consider how this new regime might help them seek the early dismissal or narrowing of cases on their dockets, and business counsel should factor it into the advice they give their clients on business, investment, and contracting decisions. All in-house practitioners should continue to closely monitor developments in this area. More changes are on their way as the courts grapple with open issues like the registration-as-consent and stream of commerce theories.

Further Reading

1 *See Walden v. Fiore,* 134 S. Ct. 1115 (2014); *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 US 915 (2011); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 US 873 (2011).

2 *See Dubose v. Bristol-Myers Squibb Co*., 2017 WL 2775034, at *4 (N.D. Cal. June 27, 2017).

3 *See BMS*, 137 S.Ct. at 1780 (restrictions on personal jurisdiction "are more than a guarantee of

immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States") (internal quotation marks omitted).

4 *See, e.g., Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (additional jurisdictional discovery not warranted where "it is apparent that nothing plaintiffs could discover about [defendant's] contacts with California would make [defendant] 'essentially at home' in California").

5 *See* 42 Pa.C.S.A. § 5301.

6 *Compare Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016), which holds that the registration-as-consent theory does not survive *Daimler*, with the cases identified in footnote 130 of that opinion, identifying cases going the other way.

7 Nicastro, 564 US 873; *Asahi Metal Indus. Co. v. Superior Court*, 480 US 102 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, 298 (1980).

8 See Fed. R. Civ. P. 4(k)(1)(A).

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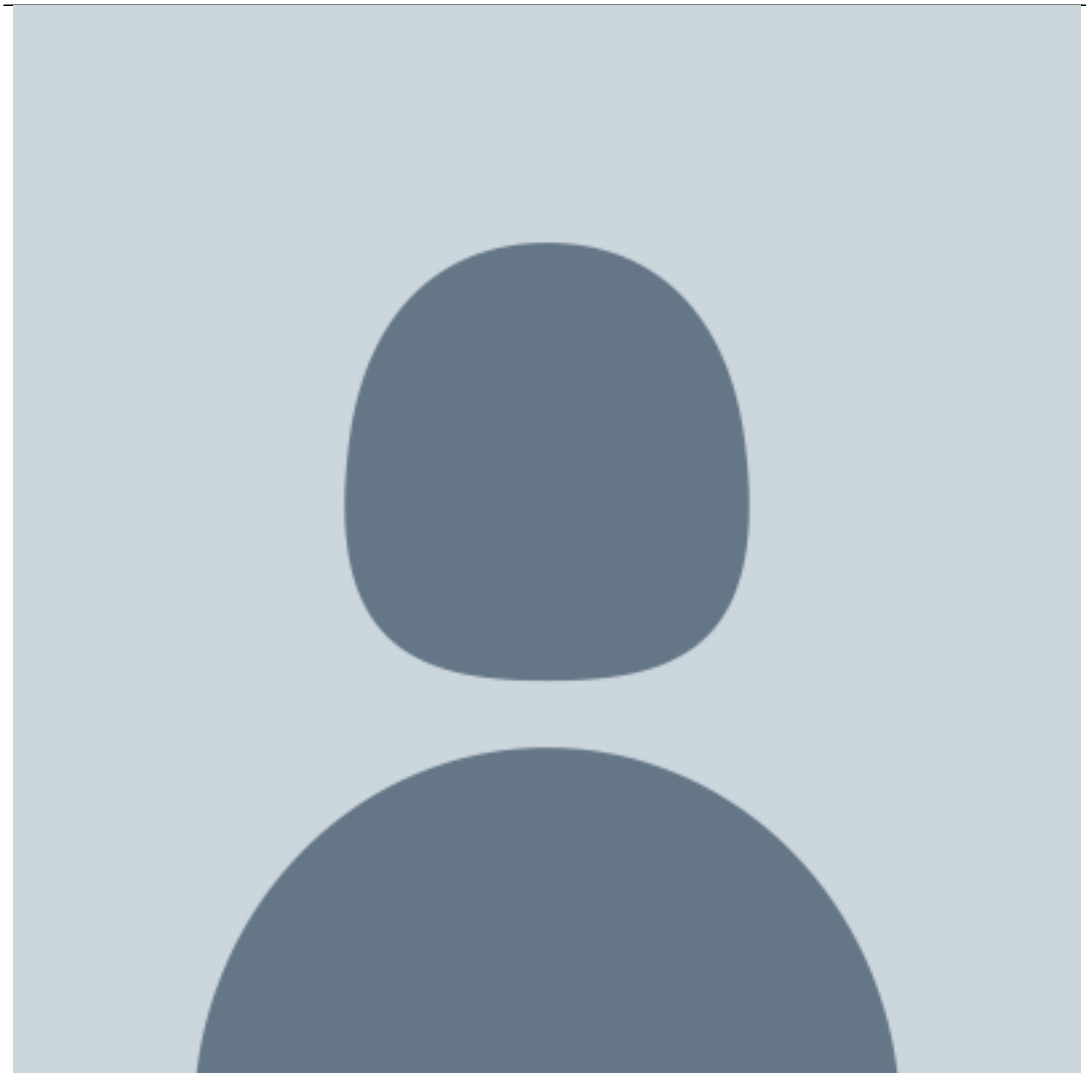

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