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Calif. High Court Greenlights Non-Residents' Plavix Suits

By **Emily Field**

Law360, New York (August 29, 2016, 7:29 PM ET) -- The California Supreme Court on Monday ruled that nearly 600 non-Californians who have filed suit in the state alleging injuries from their use of Bristol-Myers Squibb Co.'s blood-thinner drug Plavix can proceed with their suits, saying that state courts have jurisdiction over their claims.

The state's high court, in a published 4-3 split opinion, said that given the company's extensive contacts with California — such as its marketing and distribution of the drug, as well as research and development facilities located there — the state courts have specific personal jurisdiction over the non-residents' claims.

The California Supreme Court upheld a lower court's ruling that although the company's business contacts in the state weren't sufficient to invoke general jurisdiction, which enables a court to exercise jurisdiction over a defendant no matter the subject of the litigation, state courts have specific personal jurisdiction over the company in light of the nature of the action and the company's activities in California.

A court may have specific jurisdiction when the litigation in question arises out of obligations that are connected to a company's activities in that state, the high court said.

At issue in the ruling are eight separate complaints filed in San Francisco in March 2013 by 86 Californians and 592 residents of 33 other states, according to the opinion. Each one has the same allegations — including negligence, false or misleading advertising and strict product liability claims — according to the ruling.

In its decision, the state high court pointed to the U.S. Supreme Court's ruling in *Daimler AG v. Barbara Bauman*, which set out **limits on general jurisdiction**.

In that 2014 ruling, the nation's highest court said that California courts couldn't hear a suit against the German automaker over an Argentine subsidiary's union-busting activities and human rights violations committed in collaboration with the Argentine government.

"As the high court warned in *Daimler*, to conclude that BMS may be sued in California on any cause of action, whether or not related to its activities here, under a theory of general jurisdiction, would be to extend globally the adjudicatory reach of every state in which the company has significant business operations," the state high court said.

However, the California Supreme Court said the question of whether a court has specific jurisdiction over a defendant who isn't a resident of the state involves three factors: whether that defendant has "purposefully directed" its activities at that state, whether the claims are related to those activities and whether exercising jurisdiction would be reasonable.

"In the present matter, there is no question that BMS has purposely availed itself of the privilege of conducting activities in California, invoking the benefits and protection of its laws, and BMS does not contend otherwise," the state high court said. "Not only did BMS market and advertise Plavix in this state, it employs sales representatives in California, contracted with a California-

based pharmaceutical distributor, operates research and laboratory facilities in this state, and even has an office in the state capital to lobby the state on the company's behalf."

And both the Californians and non-Californians claims are based on the same allegedly defective drug and allegedly misleading marketing of that drug, the state high court said.

"Thus, the nonresident plaintiffs' claims bear a substantial connection to BMS's contacts in California," the California high court said. "BMS's nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between the nonresident plaintiffs' claims and the company's contacts in California concerning Plavix."

The court rejected the company's argument that joining the nonresidents' claims to the smaller group of Californians would be burdensome, since it would have to defend itself against all nationwide claims in a state where only a minor part of its sales took place, according to the opinion.

"Certainly, the addition of 592 nonresident plaintiffs is a significant added burden, but the alternative is to litigate the claims of these other 592 nonresident plaintiffs in a scattershot manner in various other forums, in potentially up to 34 different states," the state high court said. "Such an alternative would seem to be a far more burdensome distribution of BMS's resources in defending these cases than defending them in a single, focused forum."

The majority said that its decision doesn't make the state an all-purpose forum for filing suit against Bristol-Myers Squibb over any issue.

"Rather, as with any matter concerning specific jurisdiction, the minimum contacts test is applied on a case-by-case basis, focusing on the nature and quality of the defendant's activities in the state," the court said.

Justice Kathryn Mickle Werdegar penned the dissent, in which she disagreed with the majority's conclusion that the non-Californians' claims share a connection with the state.

"If real parties in interest had purchased Plavix while in California or from a California source, their claims could be considered substantially related to BMS's sale of Plavix in this state," she wrote. "But the record contains no evidence connecting the Plavix taken by any of the nonresident plaintiffs to California."

She was joined in the dissent by Justices Ming Chin and Carol Corrigan.

Justice Tani Gorre Cantil-Sakauye wrote the majority opinion, with which Justices Goodwin Liu, Mariano-Florentino Cuéllar and Leandra Kruger concurred.

"We think the Supreme Court of California took the reasonable and expected approach to applying Daimler in a situation where a defendant is being sued by hundreds of in-state plaintiffs and the out-of-state plaintiffs don't complicate or increase the burden for this defendant," Hunter J. Shkolnik of Napoli Shkolnik PLLC, counsel for the plaintiffs, told Law360 on Monday.

A spokeswoman for Bristol-Myers Squibb declined comment.

Bristol-Myers Squibb is represented by Jerome B. Falk of Howard Rice Nemerovski Canady Falk and Rabkin, Sean SeLegue, Steven G. Reade, Maurice A. Leiter and Anand Agneshwar of Arnold and Porter LLP and Jon B. Eisenberg of Horvitz and Levy LLP.

The plaintiffs are represented by Kelly Ann McMeekin of Napoli Bern Ripka Shkolnik and Associates, William Audet of Audet and Partners LLP, Hunter J. Shkolnik, John Lytle, Jennifer Liakos and Shayna E. Sacks of Napoli Shkolnik PLLC and Stuart B. Esner of Esner Chang & Boyer.

The case is Bristol-Myers Squibb Co. v. Super. Ct, case number S221038 in the California Supreme Court.

--Editing by Patricia K. Cole.

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