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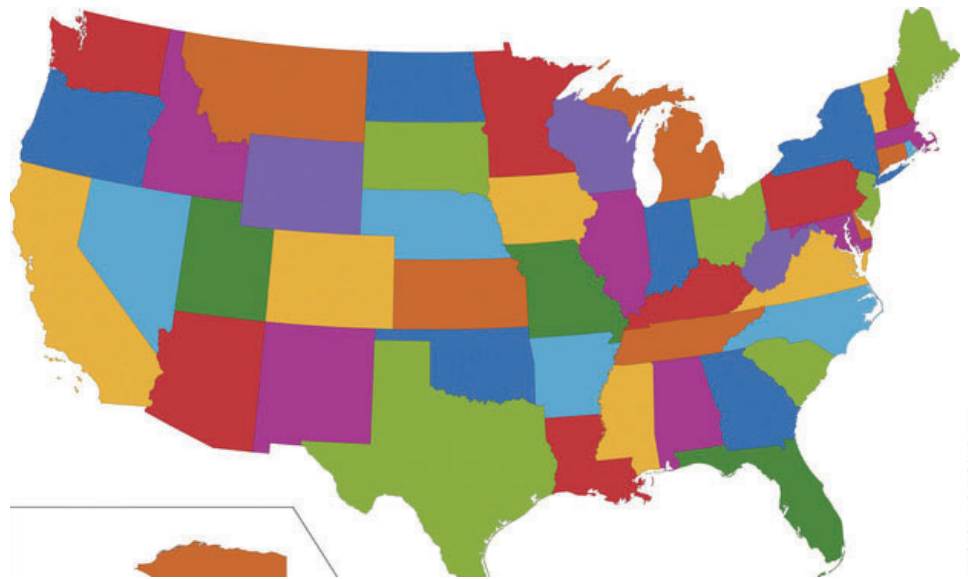
Waiting for the Full Impact of 'Bristol-Myers' in NJ

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The U.S. Supreme Court's decision last term in *Bristol-Myers Squibb Company v. Superior Court of California*, 137 S.Ct. 1773 (June 19, 2017), concerning personal jurisdiction over out-of-state defendants has generated substantial buzz. But a survey of recent cases in the federal and state courts in New Jersey, both before and after the decision, reveals that *Bristol-Myers* did not substantially change the landscape for when out-of-state defendants — and corporate defendants in particular — can be subject to specific personal jurisdiction in New Jersey, except where the plaintiffs also are non-residents.

There also does not appear to be a divergence between state and federal

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courts in New Jersey on the standard for specific personal jurisdiction, which is important for plaintiffs in deciding where to file a complaint and for defendants in deciding whether or not to remove a case to federal court. Nevertheless, *Bristol-Myers*, which specifically addressed claims brought

by out-of-state plaintiffs, does open the door to challenges to many nationwide class actions filed against non-resident defendants, and that potentially could have enormous consequences.

The Supreme Court's recent personal jurisdiction jurisprudence — particularly relating to non-resident corporations —

began three years ago in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014). Citing existing case law, the court clarified that a corporation has two “paradigm” forums for the purposes of general jurisdiction: (1) the state of incorporation; and (2) the principal place of business. Only in “an exceptional case” may “a corporation’s operations in a forum other than its formal place of incorporation or principal place of business” be “so substantial and of such a nature as to render the corporation at home in that State.” *Id.* at 761, n.19. Most courts examining general personal jurisdiction since *Daimler* have observed that *Daimler* “circumscribed the view of general jurisdiction.” *Dutch Run-Mays Draft v. Wolf Block*, 450 N.J. Super. 590 (App. Div. 2017). Thus, after *Daimler*, it is difficult to obtain general jurisdiction over a defendant that is not incorporated in or does not have its principal place of business in the forum state.

Given the difficulties in obtaining general jurisdiction, specific jurisdiction has often assumed utmost importance. This past term, the Supreme Court examined the standards for personal jurisdiction in *Bristol-Myers*. *Bristol-Myers*, a Delaware corporation headquartered in New York, had significant contacts with the forum state of California and was being sued for product liability claims in the very same lawsuit by 86 in-state California plaintiffs as well as 592 out-of-state plaintiffs. The Supreme Court nevertheless confirmed that, consistent with *Daimler*, notwithstanding the substantial presence, facilities, offices, operations, employees and sales of the at-issue drug in California, general jurisdiction was lacking.

The court then considered whether specific jurisdiction was available

over the non-residents’ claims. The Supreme Court rejected specific jurisdiction with respect to the claims by all out-of-state plaintiffs, holding that *Bristol-Myers*’ substantial presence and contacts with California were not relevant to the specific jurisdiction analysis for out-of-state plaintiffs because each plaintiff and “[each] plaintiff’s suit ... must aris[e] out of or relate to the defendant’s contacts with the forum.” *Id.* at 1780. The court further held that “a defendant’s relationship with a ... third party,” such as defendant’s California wholesaler/distributor of the product or the in-state plaintiffs, “is an insufficient basis for jurisdiction.” *Id.* at 1781. The court held that specific jurisdiction requires “[an] activity [by defendant] or an occurrence that takes place in the forum State” as to each plaintiff giving rise to the cause of action.” *Id.* at 1780-81.

Some commentators have concluded that *Bristol-Myers* has circumscribed the standard for specific jurisdiction, as *Daimler* had for general jurisdiction. A review of District of New Jersey and New Jersey state cases before and after *Bristol-Myers* reveals that, other than regarding the claims of out-of-state plaintiffs unconnected to the defendant’s in-state activities, the decision has not resulted in a significant change in the standard, and that these courts consistently have applied a similar standard when assessing specific jurisdiction.

A pair of recent Appellate Division opinions illustrates the point. Two months before *Bristol-Myers* was decided, the Appellate Division analyzed personal jurisdiction in *Fairfax Financial Holdings Limited v. S.A.C.*

Capital Management, 450 N.J. Super. 1 (App. Div. Apr. 27, 2017). (Greenberg Traurig — the firm where the authors of this article practice — represented one of the defendants in this matter.) The court in *Fairfax*, citing U.S. Supreme Court precedent, found that the defendant must deliberately direct its conduct at the plaintiff in the forum state. *Id.* at 74 (quoting *Walden v. Fiore*, 571 U.S. 12, 14–15 (2014)). The court also recognized that specific jurisdiction cannot be based on the connections of a third party, such as a co-defendant, with the forum, but rather that minimum contacts “must be met as to each defendant over whom a state court exercises jurisdiction.” *Id.* The U.S. Supreme Court in *Bristol-Myers* reaffirmed each of these principles.

Nine days after *Bristol-Myers*, the Appellate Division again addressed specific jurisdiction in *Dutch Run-Mays Draft v. Wolf Block*, 450 N.J. Super. 590 (App. Div. July 5, 2017). The law firm defendant in *Dutch Run*, like the corporate defendant in *Bristol-Myers*, had significant contacts with New Jersey. Those contacts, however, were not enough because “the negligence forming plaintiff’s cause of action did not arise from defendant’s contacts with New Jersey. Plaintiff cannot show any relationship between the underlying matter and the business or attorneys in New Jersey.” *Id.* at 604. Thus, as the Supreme Court found in *Bristol-Myers*, the general contacts with the state were insufficient where the conduct forming the basis of the cause of action did not occur in New Jersey. In other words, in both cases, the Appellate Division utilized the same essential principles in determining that specific jurisdiction

was lacking. *Bristol-Myers* did not play a significant part in the subsequent result in *Dutch Run*.

Similarly, two post-*Bristol-Myers* decisions from the District of New Jersey relied not only on *Bristol-Myers* but also on pre-existing principles in their analysis of specific jurisdiction. In *Christie v. National Institute for Newman Studies*, ___ F. Supp. 3d ___ (D.N.J. June 28, 2017), the court noted the three key principles from *Bristol-Myers*: (i) specific jurisdiction depends on a “‘connection between the forum and the specific claims at issue,’” *id.* (quoting *Bristol-Myers*, 137 S.Ct. at 1781); (ii) “[each] plaintiff must show that the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum,” *id.* at *4 (quoting *IMO Indus. v. Kiekert AG*, 155 F.3d 254, 266 (3d Cir. 1998)); and (iii) “[the] contacts with the forum State must be created by the ‘defendant himself’” and not by a third party. *Id.* at *4 (quoting *Walden*, 134 S.Ct. at 1122). Thus, *Christie* recognized that some of the key principles in *Bristol-Myers* already were in place prior to that decision.

Similarly, in *Weerahandi v. Shelesh* (D.N.J. Sept. 29, 2017), the court’s recitation of the standard for specific jurisdiction relied solely on pre-*Bristol-Myers* law. It was not until the court applied that standard that it relied on *Bristol-Myers* to find that the defendant’s substantial, but general, connection to the state was not enough to satisfy specific jurisdiction:

“Plaintiff also argues Individual Defendants should be subject to this Court’s jurisdiction ‘since they are profiting from advertising revenue generated through ... their videos which are viewable worldwide including ... in the State of New Jersey.’ The Supreme Court recently rejected this reasoning. ‘For specific jurisdiction, a defendant’s general connections with the forum are not enough.’ ‘What is needed ... is a connection between the forum and the specific claims at issue.’” *Id.* at *5 (quoting *Bristol-Myers*, 137 S.Ct. at 1781).

Although some commentators have treated *Bristol-Myers* as a watershed event, and some courts elsewhere have even stayed proceedings late in litigation — notably, even mid-trial in one case — to analyze the impact of *Bristol-Myers*, a survey of recent decisions in state and federal courts in New Jersey reveals that *Bristol-Myers* has thus far not significantly altered the standard for specific jurisdiction. Both before and after that decision, federal and state courts in New Jersey have rejected arguments that the defendant’s generalized contacts with New Jersey, even if substantial, are sufficient to establish specific jurisdiction. Rather, consistent with *Bristol-Myers*, those decisions held the defendant must have deliberately directed its conduct at the plaintiff in New Jersey, and that conduct must form a basis for the claims in the case. In other words, arguments based on these principles were just as available pre-*Bristol-Myers* as they are now.

An additional conclusion revealed by this survey is that federal and state courts in New Jersey are consistent

with one another in applying personal jurisdiction principles, although this is perhaps not surprising given that New Jersey’s long-arm statute provides for jurisdiction coextensive with the due process requirements of the U.S. Constitution.

The impact of *Bristol-Myers* on nationwide class actions against non-resident defendants remains uncertain but potentially could be dramatic. *Bristol-Myers* did not involve a class action, and the majority decision did not directly address the impact on nationwide class actions, but Justice Sotomayer in her dissent stated that “[t]he Court today does not confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there.” 137 S.Ct. at 1789 n.4. Nevertheless, some defendants have begun filing motions that nationwide class allegations should be stricken, or the claims of non-resident putative class members dismissed, based on the holding in *Bristol-Myers*, arguing that a court lacks personal jurisdiction over the claims of non-resident class members who have no connection to the forum. The *Bristol-Myers* opinion provides support for such a motion. Given the high-stakes nature of nationwide class actions, we expect this issue will be an important battleground, although the issue likely will have to percolate in the lower courts before the U.S. Supreme Court addresses it. This is the area in which *Bristol-Myers*’ impact could be a game-changer. ■