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## U.S. Supreme Court Further Limits Forum Shopping

The U.S. legal system is often considered to be “plaintiff-friendly.” Relatively low court fees, the availability of contingency fees, extensive pre-trial discovery, jury trials, and the potential for punitive damages awards all foster that perception. As a result, U.S. courts have attracted claims by plaintiffs even when there is little or no connection between the place where the lawsuit is filed (the “forum”) and the plaintiffs or legal issues in question – a practice known as “forum shopping.”

In recent years, however, the U.S. Supreme Court has substantially curtailed the phenomenon of “forum shopping” by restricting a U.S. court’s jurisdiction – essentially the court’s power to hear a case – to certain kinds of claims and types of parties. Of particular interest to German companies is the Supreme Court’s recent jurisprudence regarding “personal jurisdiction” – the power of a U.S. court to bring foreign defendants into the U.S. or have them risk the entry of a default judgment. There are two types of personal jurisdiction – “general” and “specific” – and the Supreme Court has recently circumscribed both.

### General Jurisdiction

General jurisdiction gives a court the power over a particular defendant to decide claims against that defendant even where those claims arose outside of the forum, including outside the U.S. We have previously reported here (Vol. 2, 2016, at pages 4-5) that, after the U.S. Supreme Court decision in *Daimler v. Bauman*, courts now have “general jurisdiction” only (with few exceptions) where the corporate defendant is “essentially at home,” i.e., in the state of incorporation or at the location of the company’s principal place of business.

### Specific Jurisdiction

A court has specific jurisdiction over a defendant if the plaintiff’s claim “arises out of” a particular contact with the state, e.g., out of the defendant’s sale of a product in the forum state. In June 2017, the Supreme Court clarified the limits of specific jurisdiction by emphasizing the requirement that the claim must “arise out of” conduct that the defendant had “purposefully directed” toward the forum state.

In *Bristol-Myers Squibb Co. v. Superior Court*, 678 plaintiffs sued a U.S. drug company (“BMS”) in a California state court for damages allegedly resulting from a particular drug. Of the 678 plaintiffs, 592 were not residents of California, and BMS challenged the court’s personal jurisdiction as to the claims raised by those nonresidents.



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BMS was incorporated in Delaware and headquartered in New York. Thus, the California court did not have “general jurisdiction” over BMS because the company was not “at home” in California.

As to specific jurisdiction, the Supreme Court held that (based on the fairness requirement in the constitutional “due process” clause applicable to state courts) a plaintiff in a state court must demonstrate an “adequate link” between his claim and the defendant’s conduct in the forum state. The Court noted that the nonresidents were not prescribed the drug in California, did not obtain or ingest it there, and were not injured in that state. The Court then examined the conduct that BMS had purposefully directed toward California and held: “The bare fact that BMS contracted with a California distributor is not enough to establish personal jurisdiction in the State.”

Thus, the Supreme Court found that the nonresident plaintiffs had not shown an adequate link between BMS’s conduct in California and the claims of the plaintiffs who resided outside of California. In other words, the claims of the non-Californian plaintiffs did not “arise out of” BMS’s California conduct. The California court, therefore, did not have “specific jurisdiction” over any of the claims brought by the nonresident plaintiffs.

The Supreme Court expressly left open the question whether the constitutional analysis that limited the jurisdiction of state courts would apply equally to federal courts.

## **Conclusion**

In recent years, U.S. courts have significantly limited the power of courts over parties and claims that have little if any connection to the forum. As a result, U.S. courts today are far less welcoming than they were only 10 or 15 years ago to plaintiffs who seek to bring claims that either arose outside of the U.S. or are brought against non-U.S. defendants. Nonetheless, plaintiffs (and their counsel) are likely to develop creative arguments and strategies to achieve their “forum shopping” goals, and German companies remain well-advised to continue to be prepared for litigation in U.S. courts and to be knowledgeable about the various jurisdictional defenses available to them.

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