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PERSPECTIVE

Ruling effectively rolls out a welcome mat for out-of-state plaintiffs

By Kim Stone

Last month, the California Supreme Court, in *Bristol-Myers Squibb Company v. Superior Court*, 2016 DJDAR 8952 (Aug. 29, 2016), laid out the welcome mat for out-of-state plaintiffs to sue out-of-state companies in California. The court held, in a divided 4-3 opinion authored by the chief justice, that California jurisdiction for mass tort cases that involve out-of-state plaintiffs, out-of-state defendants, and out-of-state events, is valid because the defendant corporation advertised and sold its products within California and because California plaintiffs hold parallel claims.

This case has the potential to open the door to more out-of-state plaintiffs bringing suit in California for cases that would be more properly decided elsewhere.

The case involved 678 plaintiffs suing Bristol-Myers Squibb (BMS) for injuries allegedly arising from their use of Plavix, a prescription medicine used to inhibit blood clotting after a heart attack or stroke. The case is allowed to proceed in California because BMS advertised and sold Plavix in California and because some (86, or 12.6 percent) of the plaintiffs are from California. The other 592 plaintiffs (87.4 percent) are from 34 other states. Justice Kathryn Werdegar noted in her dissent that none of the nonresident plaintiffs received their prescriptions from a California doctor. She noted that there was no evidence that Plavix was manufactured in California. She notes there was no evidence that Plavix was distributed in California to the nonresident plaintiffs. The majority nonetheless found that BMS could be sued by the 592 non Californians at the same time as the 86 Californians. This case has profound implications, as Werdegar said:

"As California holds a substantial portion of the United States population, any company selling a product or service nationwide, regardless of where it is incorporated or headquartered, is likely to do a substantial part of its business in California. Under the majority's theory of specific jurisdiction, California provides a forum for plaintiffs from any number of states to join with California plaintiffs seeking redress for injuries from virtually any course of business conduct a defendant has pursued on a nationwide basis, without any showing of a relationship between the defendant's conduct in California and the nonresident plaintiffs' claims. The majority thus sanctions our state to regularly adjudicate disputes arising purely from conduct in other states, brought by nonresidents who suffered no injury here, against companies who are not at home here but who simply do business in the state."

With this case, the court lays out the welcome mat for out-of-state plaintiffs when we can barely afford to keep our civil courtrooms open for our own disputes. There are a lot of non-California residents in the country. In fact, seven out of eight Americans live outside of California. California should not adjudicate all their disputes — they should sue in their own state, or in the state where the defendant company is, or in the state where the injury allegedly occurred.

The Civil Justice Association of California recently published a study on out-of-state plaintiffs in pharmaceutical cases filed in San Francisco and Los Angeles between January 2010 and May 2016. In that time, CJAC found 2,919 cases filed including 25,503 plaintiffs. Of those, only 10.1 percent of the plaintiffs were from California. California has approximately 12 percent of the nation's population, so our residents were actually under-represented somewhat in this sample! Sixty-seven percent of the cases involved had no California plaintiffs whatsoever and over 85 percent of the cases involved more than half of the plaintiffs from out of state.

There is no good reason for California to become the arbiter of the nation's disputes. And there are good reasons not to. One, we can't afford it and two, it's not fair.

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