As its term drew to a close, the Supreme Court handed down its latest decision on personal jurisdiction in a case entitled *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*[1] Over the last six years, the Supreme Court has issued six opinions clarifying the limits of courts’ personal jurisdiction, each invalidating the exercise of jurisdiction. Given these major, relatively fast-moving developments in such a fundamental area of the law, we thought a brief overview would be helpful for companies to better understand where they can and cannot be sued. This post will take each of the Court’s recent decisions in turn to give you the brass tacks of what you should know about the holding and conclude with some thoughts about where the Supreme Court might go from here.

In *Goodyear*, the Supreme Court addressed whether foreign subsidiaries of an Ohio parent corporation were subject to general jurisdiction in North Carolina state court (the plaintiffs’ domicile) for a fatal automobile accident that occurred in Paris. All nine justices agreed that the North Carolina courts lacked personal jurisdiction over corporate defendants in Turkey, France, and Luxembourg under the Due Process Clause of the Fourteenth Amendment. Justice Ginsburg’s opinion for the Court attempted to resolve confusion over the so-called “stream-of-commerce” theory of personal jurisdiction discussed decades earlier in *Asahi Metal Industry Co. v. Superior Court of Cal., Salano Cty.*[3] Chiding the North Carolina courts for failing to distinguish between specific and general jurisdiction, the Supreme Court held the “[f]low of a manufacturer’s products into the forum . . . may bolster an affiliation germane to *specific* jurisdiction. . . But ties serving to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has *general* jurisdiction.”[4] Remember, general jurisdiction gives a court the ability to hear any claim against a defendant, while specific jurisdiction only extends to claims that arise out of the defendant’s contacts with the forum. The entire Court agreed in *Goodyear* that the stream-of-commerce theory cannot serve as a basis for a state court’s exercise of general jurisdiction.

2. **J. McIntyre Mach., Ltd. v. Nicastro**[5]

On the same day that the Court rendered its decision in *Goodyear*, it also decided a case asking whether a foreign manufacturer could be subject to specific jurisdiction arising out of products sold within the forum by an independent distributor. Here, the Court was deeply divided. Justice Kennedy, joined by Justices Roberts, Scalia, and Thomas, wrote an opinion cabining *Asahi’s* stream-of-commerce theory and holding that the manufacturer had not engaged in “conduct purposefully directed” at New Jersey by manufacturing – at most – four products that ultimately reached New Jersey, focusing on the defendant’s lack of an “intent to invoke or benefit from the protection of [New Jersey’s] laws.”[6]

Justice Breyer authored a concurrence, to which Justice Alito joined, expressing concerns about the language used in Justice Kennedy’s opinion and its application to the modern economy, but concurring in the result on the basis of the facts presented and earlier precedent. In dissent, Justice Ginsburg (who had written the opinion for the Court in *Goodyear*) objected to the plurality’s focus on a defendant’s consent to jurisdiction, instead arguing that the motivating concepts should be “reason and fairness” and that the defendant’s decision to distribute products in the United States made the exercise of specific jurisdiction reasonable.

3. **Daimler AG v. Bauman**[7]

Three years after *Goodyear* and *J. McIntyre*, the Court stepped in to decide whether foreign nationals could sue a foreign parent corporation in California federal court based on the forum contacts of a U.S. subsidiary under a general jurisdiction theory. Justice Ginsburg, writing for a majority of eight justices, again stressed the limits of
general jurisdiction. Based on federal due process, the Court held that, to be a
proper exercise of general jurisdiction over a foreign corporation, the defendant’s
contacts with the forum must not only be “in some sense ‘continuous and
systematic’” but rather “so ‘continuous and systematic’ as to render it essentially at
home in the forum State.”[8] For practical purposes, the opinion limited general
jurisdiction over corporations almost exclusively to entities either incorporated
within the forum or with their principal place of business there. Importantly, the
decision also instructed lower courts to consider a corporation’s contacts with a
forum in light of the entirety of their business, stating that a “corporation that
operates in many places can scarcely be deemed at home in all of them.”[9]

4. **Walden v. Fiore**[10]

A month after *Daimler*, the Supreme Court returned to personal jurisdiction, this time
in a case involving only natural persons. The defendant in *Walden* was a Georgia
police officer sued in federal court in Nevada for confiscating a large amount of cash
carried by two Nevada residents in an airport on their travels back to Las Vegas.
The Ninth Circuit had held that personal jurisdiction was appropriate because the
Georgia police officer was alleged to have “expressly aimed” conduct at Nevada
residents. Justice Thomas, delivering the opinion of the unanimous court, ruled that
such a standard was incompatible with its jurisprudence on specific jurisdiction
because it focused on the plaintiff’s connections with the forum, rather than the
defendant’s.[11] In addition, the opinion emphasized that the defendant’s contact
must be with the forum state itself, not merely with residents who reside within the
forum, ruling that “the plaintiff cannot be the only link between the defendant and
the forum” and held that an injury to a forum resident is not sufficient in itself to
create personal jurisdiction.[12]

5. **BNSF Ry. Co. v. Tyrrell**[13]

Earlier this spring, Justice Ginsburg again addressed personal jurisdiction, writing
an opinion for eight of the nine justices, with Justice Sotomayor lodging a partial
dissent. *Tyrrell* involved employees’ Federal Employers’ Liability Act (FELA) claims
brought in Montana state court: the employees neither lived in Montana nor were
injured there, and the employer was not incorporated in Montana and did not have
its principal place of business there either. The decision reversed the Montana
Supreme Court, which had held that the exercise of personal jurisdiction was proper
based on FELA’s statutory language. Justice Ginsburg explained that that statutory
provision at issue addressed venue and subject matter jurisdiction, not personal
jurisdiction, and reaffirmed *Daimler*’s central holding that general jurisdiction over a
corporation outside of its state of incorporation or principal place of business is
proper only in an “exceptional case.”[14] *Tyrrell* also clarified that the personal
jurisdiction analysis does not vary based on the type of claim asserted or the type of
business enterprise sued.[15]

6. **Bristol-Myers Squibb Co. v. Superior Court of Cal., San
Francisco Cty.**
The Supreme Court’s decision in *Bristol-Myers* emphasized the connection between the plaintiff’s claim and the forum, rather than the defendant’s contacts with the forum. The claims at issue belonged to non-California residents who joined a mass tort action in California against a pharmaceutical manufacturer that was neither incorporated in California nor had its principal place of business there. The Court, in an effort to maintain a firm distinction between general and specific jurisdiction, rejected the California courts’ “sliding scale approach” (which purported to lower the bar for specific jurisdiction as the defendant’s unrelated contacts with the forum increased), calling it a “loose and spurious form of general jurisdiction.”[16] Instead, the Court maintained that specific jurisdiction required “a connection between the forum and the specific claims at issue;” a defendant’s unrelated contacts with a forum are irrelevant to the specific jurisdiction analysis.[17] However, the Court expressly noted that its decision addressed the Due Process limits applicable to state courts and left open the possibility that the rule might differ for federal courts.[18]

### 7. Concluding Remarks

To recap, the Supreme Court has issued six decisions addressing personal jurisdiction since 2011. In all six, the Court has held that a forum’s exercise of jurisdiction over the defendant was improper. The basic rules: general jurisdiction is strictly limited to where a defendant can be said to be “at home” (e.g., state of incorporation and principal place of business) and specific jurisdiction requires a direct connection between the plaintiff’s claim, the defendant’s conduct, and the forum. This line of cases serves to limit plaintiffs’ ability to forum shop.

The *Bristol-Myers* decision is particularly notable for what it might portend about the viability of nationwide class actions and how personal jurisdiction applies in that setting. If a particular state cannot exercise personal jurisdiction over a defendant with respect to non-resident plaintiff’s claims in a mass tort action, it is unclear how it could do so in a nationwide class action. Furthermore, the Rules Enabling Act prevents Rule 23 from being used as an end run around Due Process requirements. Indeed, the *Bristol-Myers* opinion reiterated the Court’s position that each state’s individual sovereignty carries with it limits on a state’s ability to exercise control beyond its borders. At a minimum, *Bristol-Myers* is a resource to which class action defense lawyers will be able to refer courts to the extent those courts are contemplating the certification of a national or regional classes under the laws of states where the parties are not residents or have limited ties.


However, federal courts ordinarily follow state law to determine the bounds of their personal jurisdiction, see Daimler, 134 S. Ct. at 753, and there is not an immediately-obvious reason why specific jurisdiction would differ between the Fifth and Fourteenth Amendments’ Due Process Clauses.

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