No. S221038

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

vs.

SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO,
Respondent.

BRACY ANDERSON, ET AL.,
Real Parties in Interest.

REAL PARTIES IN INTEREST BRACY ANDERSON, ET AL'S ANSWER TO PETITIONER BRISTOL-MYERS SQUIBB COMPANY'S PETITION FOR REVIEW

Court of Appeal No. A140035
(San Francisco County Super. Ct. J.C.C.P No. 4748)

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INTRODUCTION

This late-filed Petition, following the Court of Appeal's denial of a petition for writ of mandate, challenges the Court of Appeal's decision upholding the trial court's denial of a motion to quash service of summons brought by Bristol-Myers Squibb Company ("BMS") on the grounds of lack of personal jurisdiction, should be denied as untimely. Additionally the Petition should be denied because review by the Supreme Court is neither necessary to secure uniformity of decision nor to settle an important question of law to warrant review under California Rules of Court, Rule 8.500.

Contrary to Petitioner's contention, the Court of Appeal's opinion below ("Opinion")[1] does not alter the California Supreme Court's long held precedent regarding specific jurisdiction. Further, this case will not have widespread implications, as Petitioner suggests because as the Court of Appeals described in its Opinion, the facts herein are unique.

The long standing principles of specific jurisdiction remain unchanged. BMS contacts and transactions have been purposefully directed towards the State of California; furthermore, BMS, through co-defendant McKesson Corporation ("McKesson"), distributed Plavix to the Plaintiffs/Real Parties in Interest ("RPI") who, as the Court of Appeals correctly stated, all have "identical claims" and are "based on the same alleged wrongs." As shown below, the RPI's claims bear a substantial connection to Petitioners' contacts with the

[1] The Opinion is attached to the Appendix ("App.") of the Petition For Review.

State of California, thereby supporting the assertion of specific jurisdiction and requiring Petitioner to come to California to defend this action, where BMS was properly served.

BMS raises a narrow issue not worthy of this Court's attention, namely, a supposed conflict regarding one element of specific jurisdiction, relatedness. BMS fails to meet the considerable burden required for this Court to grant their Petition. The Petition is no more than a failed attempt to correlate the facts and holdings of distinguishable cases in an effort to support Petitioner's unpersuasive assertions that a conflict exists between California Supreme Court precedent and the Opinion that must be resolved immediately. As previously stated, this is not so. Ultimately, BMS's retreat to policy arguments at the end of their Petition, only underscores the weaknesses in its application and position as it pertains to the law.

Quite simply, BMS' Petition must be denied. The Opinion which affirmed the trial court's order denying the motion to quash based on the doctrine of specific jurisdiction was consistent with, and does not contradict the State of California's well settled precedent regarding specific jurisdiction. The Superior Court of California has personal jurisdiction over the instant action.

As the Opinion reads, "BMS has engaged in substantial, continuous economic activity in California, including the sale of more than a billion dollars of Plavix to Californians. That activity is substantially connected to the RPI's claims, which are based on the same alleged wrongs as those alleged by the California resident plaintiffs."

BMS's contacts are more than sufficient to establish specific jurisdiction, even under the most conservative standard. Accordingly, this Court must deny Petitioner BMS' Petition in its entirety, and allow these cases to proceed to trial in the San Francisco Superior Court.

STATEMENT OF FACTS

For the purposes of this Answer only, RPI adopts the statement of facts as set forth in the Opinion.

ARGUMENT

I. STANDARD OF REVIEW

At the onset, despite Petitioner's lengthy Petition to the California Supreme Court, noticeably absent is the proper standard that the Supreme Court will follow when considering a petition for review. It must be assumed that Petitioners do so as they know there is no necessity for review in the present case.

Under California Rules of Court 8.500(b)(1), Supreme Court review exists "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (Cal. R. Ct. 8.500(b)(1)). The purpose of Supreme Court review is to (i) rectify disputes between and among the Courts of Appeal, and (ii) resolve pressing issues of public importance; the purpose is not merely to review the merits of any decision of the Court of Appeal. (*See* 9 Witkin, Cal. Proc. 5th (2008) Appeal, § 915, at 976 (discussing Cal. R. Ct. 8.500(b)(1))).

This Court's guidance is not necessary as there is no lack of uniformity of decision between California Supreme Court precedent and the Opinion, nor an important question of law to settle. A decision by this Court on these issues would have limited impact because this case involves an everyday application of the doctrine of specific jurisdiction to a unique fact pattern, and will not have widespread implications, despite Petitioner's allegations. Lastly, the alleged burden on the California courts and on other litigants is irrelevant to determine review.

II. THE PETITION MUST BE DENIED

A. The Petition is Untimely

California Rules of Court Rule 8.500(e)(1) provides: "A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court. For purposes of this rule, the date of finality is not extended if it falls on a day on which the clerk's office is closed."

Because the Opinion became final on Wednesday, July 30, 2014, Petitioner had ten days from that date - up to Friday, August 9, 2014 - to file and serve their Petition.

Petitioners failed to comply with the requirements of California Rules of Court, Rule 8.500(e)(1). This Court's docket reflects that the Petition was filed on September 5, 2014. Its proof of service states that it was served on September 5, 2014. The Petition is therefore untimely and should not be considered.

B. There is No Lack of Uniformity of Decision Between California Supreme Court Precedent and the Opinion Regarding the Doctrine of Specific Jurisdiction

Where the law is uniform, there is no basis for this Court to grant review "to secure uniformity of decision ...." *See* Cal. R. Ct. 8.500(b)(1). *See also, e.g., Toland v. Sunland Hous. Group, Inc.* (1998) 18 Cal. 4th 253, 264 ("Because of these conflicting views by the Courts of Appeal, we granted review to clarify the scope of our holding...."); *Marvin v. Marvin* (1976) 18 Cal. 3d 660, 665 ("Courts of Appeal ... have arrived at conflicting positions .... We take this opportunity to resolve that controversy....").

In the instant case, there is no lack of uniformity of decision between California Supreme Court precedent and the Opinion. The time-honored principles of specific jurisdiction remain unchanged. Specific jurisdiction arises when a defendant "has purposefully availed" themselves of the forum state's benefits and when the "controversy is related to or arises out of a defendant's contacts with the forum." *Burger King v. Rudzewicz*, 471 U.S. 462, 472-473 (1985). Furthermore, the exercise of specific jurisdiction is appropriate "as long as the claim bears a substantial connection to the nonresident's forum contacts." *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 452. In its Opinion, the Court of Appeals did not stray from this precedent. It appropriately applied it to the record in this case.

Importantly, Petitioner concedes that the Opinion does not conflict with the holding in *Diamler AG v. Bauman* (2014) __ U.S. ___ [134 S.Ct. 746], yet would have this Court review the Opinion on

dicta and fear tactics. The California Supreme Court need not waste its limited resources on a second review such trite non-issues, especially given the fact that BMS agrees there is no conflict with *Daimler*.

C. There Is No Important Question of Law To Settle

In the instant case, there is no an important question of law to settle. Petitioner is attempting to convert an issue and set of facts, which the Court of Appeal itself labels as unique, into an important question of law justifying review under Rule 8.500(b)(1).

This case will not have widespread implications as Petitioner suggests. RPI maintains that this Court should not grant this Petition and that the Opinion correctly analyzed and applied the well-settled doctrine of specific jurisdiction in California.

D. The Alleged Burden on the California Courts and on Other Litigants is Irrelevant to Determine Review

Burden on the court is not a factor statutorily identified that the Supreme Court must consider when reviewing a petition. As Petitioners failed to even address the statutory requirements of Supreme Court review, in keeping with the general theme of their Petition, Petitioners manufacture a quasi-burden herein and thereby demand inappropriate review by this Court.

CONCLUSION

The Petition does not demonstrate grounds for review by this Court under Rule 8.500(b)(1) of the California Rules of Court. Having presented no grounds for review, its Petition should be denied.

Dated: September 24, 2014

Respectfully submitted,

By: _____

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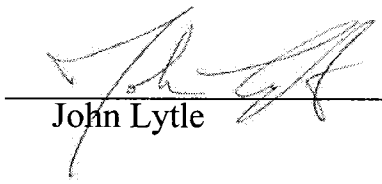
CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify based on the "Word Count" feature in my Microsoft Word 2011 software, this brief contains 1,419 words including footnotes.

Dated: September 24, 2014



John Lytle

PROOF OF SERVICE

I, **Shayna E. Sacks,** declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at Napoli Bern Ripka Shkolnik & Associates, LLP.

On September 24, 2014, I served the attached:

REAL PARTIES IN INTEREST
BRACY ANDERSON, ET AL'S ANSWER TO
PETITIONER BRISTOL-MYERS SQUIBB COMPANY'S
PETITION FOR REVIEW

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

and served the named document in the manner indicated below:

☒ **BY FEDERAL EXPRESS**: I caused true and correct copies of the above documents, to be placed and sealed in Federal Express envelope(s) for next business day delivery by Federal Express to the offices of the addressees as indicated on the Service List on this date to a facility regularly maintained by Federal Express.

☐ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 24, 2014 at New York, New York.

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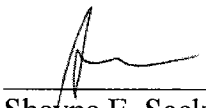

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