

Personal Jurisdiction Ruling in St. Louis City Expands the Reach of Specific Jurisdiction

On November 9, 2016, Judge Joan Moriarty issued an order in the multi-plaintiff case of *Gracey, et al., v. Janssen Pharmaceuticals, et al.*, Cause No. 1522-CC00187-01, denying Janssen Pharmaceuticals, Janssen LP, Janssen Research and Development LLC, and Johnson & Johnson's Motions to Dismiss for Lack of Personal Jurisdiction. The Defendants argued there was no personal jurisdiction over them in regards to the claims made by the out-of-state Plaintiffs. This case involved several Plaintiffs both from in-state and out-of-state who were allegedly injured by the antipsychotic drug Risperdal. Plaintiffs alleged that their claims arise out of Defendants' design, marketing, and sale of Risperdal in the State of Missouri.

Judge Moriarty found that Janssen Pharmaceuticals was subject to personal jurisdiction in Missouri as it was served in Missouri; therefore, it had consented to personal jurisdiction in Missouri. The issue of whether a corporation having a registered agent in Missouri is consent to personal jurisdiction is currently in front of the Missouri Supreme Court. *See, State ex rel. Norfolk Southern Railway Company v. The Honorable Colleen Dolan*, Cause No. SC95514. Across the country courts have reached divided opinions on this issue. *See, Bailen v. Air and Liquid System Co.*, 2014 WL 3885949 (N. Y. Sup. Aug. 5, 2014); *Vera v. Republic of Cuba*, 91 F. Supp. 3d 561 (S.D. N. Y. 2015); *Otsuka Pharmaceutical Co., Ltd. v. Mylan Inc.*, 106 F. Supp. 3d 456, 467 (D. N.J. 2015) (finding a registered agent is sufficient consent to personal jurisdiction) *compare with*, *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2nd Cir. 2016); *Neeley v. Wyeth LLC*, 2015 WL 1456984 (E.D. Mo. Mar. 30, 2015); *Genuine Parts Co. v. Cepec*, 2016 WL 1569077 (Del. April 18, 2016) (finding a registered agent is insufficient to consent to personal jurisdiction). Even within the 22nd Judicial Circuit of Missouri there is a circuit split. *See, Sagers v. Agco Corp.*, Cause No. 1422-CC10026 (Judge Dowd's Order dated August 6, 2015); *Kologenski v. The Adel Wiggins Group*, Cause No. 1622-CC00427 (Judge Sengheiser's Order dated September 6, 2016); *Dixon v. Meadwestvaco Corp.*, Cause No. 1422-CC00219 (Judge Moriarty's Order dated August 10, 2015) *compare with*, *Smith v. Union Carbide Corp.*, Cause No. 1422-CC00457 (Judge Dierker's Order dated January 1, 2015); *Bristol v. Ford Motor Co.*, Cause No. 1522-CC10413-01 (Judge Dierker's Order dated October 31, 2016).

In regards to the other Defendants in this case, the Court found personal jurisdiction over them through what appears to be a specific jurisdiction analysis involving Missouri's long-arm

statute, RSMo. § 508.010. For the long-arm statute to apply, Plaintiffs must show that “(1) the cause of action arose out of an activity covered by the long-arm statute, and (2) defendant must have had sufficient minimum contacts with the forum state to satisfy due process.” *Mello v. Giliberto*, 73 S.W.3d 669, 676 (Mo.App. E.D. 2002).

While engaging in its *specific* jurisdictional analysis, the Court confusingly cites to a pre-*Daimler* Missouri case regarding the “systematic and continuous” contacts that are necessary for there to be *general* jurisdiction over a defendant. *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 232 (Mo. banc 2010). In reviewing the Defendants’ “systematic and continuous” contacts with Missouri, the Court does not clearly distinguish each specific Defendant’s contacts. For example, one contact was the hiring of a Washington University professor to conduct and publish research downplaying the risks of Risperdal by Janssen. It is unclear if this Janssen is Janssen Pharmaceuticals, Janssen LP, Janssen Research and Development, or all of the Janssen defendants collectively. Additionally, in its analysis the Court included Janssen Pharmaceuticals’ contacts, despite already finding personal jurisdiction over Janssen Pharmaceuticals by consent.

After reviewing the Defendants’ contacts with Missouri, the Court held that Defendants’ alleged conduct satisfies the Missouri long-arm statute as the Defendants’ tortious acts produced injury in the City of St. Louis. The Court added that “[a]ll Plaintiffs’ claims arise in part from conduct Defendants purposefully directed to Missouri.” Further, the Defendants had sufficient minimum contacts with Missouri, including the marketing, sale, and distribution of Risperdal in Missouri.

It is unclear from this Order, whether there is personal jurisdiction over the Defendants in relation to the out-of-state Plaintiffs because they were joined in the lawsuit with in-state Plaintiffs, who were injured in St. Louis, or if there was also personal jurisdiction over the Defendants in relation to the claims of out-of-state Plaintiffs as those also arose out of the activities of Defendants in Missouri. Other 22nd Judicial Circuit judges have held there is no Missouri law that requires a personal jurisdiction analysis for each individual plaintiff. *See generally, Clark v. Pfizer Inc., et al.*, Cause No. 1522-CC00478-01 (Judge Mullen’s Order dated June 6, 2016); *Hogans v. Johnson & Johnson, et al.*, Cause No. 1422-CC09012-01 (Judge Garvey’s Order dated March 17, 2015); *Anders v. Medtronic, Inc., et al.*, Cause No. 1322-CC10219-02 (Judge Garvey’s Order Dated January 13, 2015); and *Robert Morgan v. Janssen*

Pharmaceuticals, Inc., et al., Cause No. 1422-CC08940-01 (Judge Dowd’s Order Dated November 20, 2015). Consequently, this may incentivize joining multiple plaintiffs in a lawsuit, if personal jurisdiction over a defendant only needs to be established in relation to one plaintiff, and not each individual plaintiff.

A narrow interpretation of this Order is that the Defendants used Missouri doctors and researchers as authors for its studies, which related to the design and marketing of Risperdal in Missouri as well as across the country. Therefore, the act of using Missouri doctors and professors for its research, and subsequent marketing of the drug created personal jurisdiction. *See e.g., M.M. ex rel. Meyers v. GlaxoSmithKline LLC*, 61 N.E.3d 1026 (Il. App. 1st, 2016) (Illinois court found personal jurisdiction over a defendant who conducted clinical trials on a drug in Illinois, as well as in other states, and plaintiffs’ claims were based in part on the deficiencies in the drug trials.)

A more expansive interpretation is that the Court has taken a broad interpretation of specific jurisdiction, and found that because Defendants marketed, sold, and distributed Risperdal in Missouri, a plaintiff from any state where Risperdal was marketed, sold, or distributed could sue in Missouri as the injury would “arise out of or relate to” the same type of act. Other 22nd Judicial Court judges have ruled similarly using this approach. *See, Clark v. Pfizer Inc., et al.*, Cause No. 1522-CC00478-01; *Hogans v. Johnson & Johnson, et al.*, Cause No. 1422-CC09012-01; *Anders v. Medtronic, Inc., et al.*, Cause No. 1322-CC10219-02; *Robert Morgan v. Janssen Pharmaceuticals, Inc., et al.*, Cause No. 1422-CC08940-01. The California Supreme Court has also taken this broad interpretation of specific jurisdiction. *See, Bristol-Myers Squibb v. Superior Court of San Francisco*, 377 P.3d 874 (Cal. 2016). While all these cases have had at least one plaintiff in the forum state, the courts under this expanded interpretation of specific jurisdiction could likely have found specific jurisdiction existed even if there was no in-state plaintiff. States that follow this expansive interpretation of specific jurisdiction will be more likely to attract product liability and other mass tort litigation.