

11-13-2020

Rios v. Bayer: The Illinois Supreme Court Recognizes Bristol-Myers Squibb

Jamison Winters
Saint Louis University School of Law

Follow this and additional works at: <https://scholarship.law.slu.edu/lawjournalonline>



Part of the [Law Commons](#)

Recommended Citation

Winters, Jamison, "Rios v. Bayer: The Illinois Supreme Court Recognizes Bristol-Myers Squibb" (2020).
SLU Law Journal Online. 54.
<https://scholarship.law.slu.edu/lawjournalonline/54>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in SLU Law Journal Online by an authorized administrator of Scholarship Commons. For more information, please contact erika.cohn@slu.edu, ingah.daviscrawford@slu.edu.

Rios v. Bayer: The Illinois Supreme Court Recognizes Bristol-Myers Squibb

Jamison Winters*

I. Introduction

In Madison County, Illinois, lawsuits are commonplace. In 2019, 4,062 asbestos-related lawsuits were filed in the United States.¹ Of those, 1,150, or 28.3%, were filed in Madison County, easily making it the top jurisdiction for asbestos litigation.² In contrast, St. Clair County, Illinois, immediately south of Madison County, ranked in at a not-so-close second place for asbestos litigation, with 9% of all asbestos-related lawsuits nationwide filed there in 2019.³ Further, of the plaintiffs who filed asbestos lawsuits in Illinois, only 8% resided in the state.⁴ These statistics, coupled with the fact that the average asbestos lawsuit names a whopping sixty-five defendants,⁵ are enough to raise the eyebrows of anyone with an elementary understanding of personal jurisdiction.

This excessive use of the tort system is not new to Madison County and is not limited to the asbestos docket. Over the years the county has garnered a reputation as America's preeminent "judicial hellhole," a "jackpot jurisdiction," a "local slot machine," "lawyer heaven," and an "asbestos mecca."⁶ Madison County's tort system abuse problem is so well-known that George W. Bush traveled to the county to give a speech on tort reform in early 2005.⁷ Abuse of class certification in class action lawsuits, uniquely successful welding rod litigation, and medical malpractice claims that literally drove physicians out of the county are just a few additional

* J.D. Candidate, 2022, Saint Louis University School of Law

¹ *Asbestos Litigation: 2019 Year in Review*, KCIC 3 (2020), <https://www.kcic.com/media/2059/kcic-2019-asbestos-report.pdf>.

² *Id.* at 5–6.

³ *Id.*

⁴ *Id.* at 12.

⁵ *Id.* at 11.

⁶ Victor E. Schwartz et al., *Asbestos Litigation in Madison County, Illinois: The Challenge Ahead*, 16 WASH. U. J.L. & POL'Y 235, 235–36, 243 (2004).

⁷ *President Bush Visits Collinsville to Discuss Tort Reform*, ST. LOUIS BUSINESS JOURNAL (Jan. 5, 2005), <https://www.bizjournals.com/stlouis/stories/2005/01/03/daily37.html>.

examples of tort system abuse in the county.⁸ Madison County was also the origin of the famous Philip Morris cigarette case, in which the trial judge awarded the plaintiffs' attorneys a hefty \$1.78 billion in fees.⁹ To say the least, Madison County is an attractive option to forum shoppers.

II. *Bristol-Myers Squibb*

Over the past decade, the Supreme Court has decided several cases related to personal jurisdiction,¹⁰ and these cases have done much to discourage forum shopping.¹¹ The case most relevant to defendants facing lawsuits from nonresident plaintiffs in the Madison County courthouse is *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*,¹² wherein the Court dismissed hundreds of nonresident plaintiffs from a mass tort lawsuit.¹³ The Court restated the requirement that, in order for a court to exercise jurisdiction, the plaintiff's claims must "arise out of" or "relate to" the defendant's contacts with the forum state,¹⁴ and the case has largely been regarded as narrowing that requirement.¹⁵

III. *Rios v. Bayer*

In 2016 and 2017, two mass tort actions were filed in the circuit court of Madison County against pharmaceutical giant Bayer for injuries related to Bayer's Essure device.¹⁶ The two suits involved 180 plaintiffs from at least twenty-five different states.¹⁷ Citing recently-decided *Bristol-Myers Squibb*,

⁸ Schwartz, *supra* note 6, at 239–244.

⁹ Vanessa O'Connell, *Illinois Judge Orders Philip Morris To Pay \$10.1 Billion in Damages*, WALL ST. J. (Mar. 24, 2003), <https://www.wsj.com/articles/SB104829437457872000>.

¹⁰ See e.g., *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Walden v. Fiore*, 571 U.S. 277 (2014).

¹¹ See generally Howard M. Erichson et al., *Case-Linked Jurisdiction and Busybody States*, 105 MINN. L. REV. HEADNOTES (forthcoming 2020).

¹² 137 S. Ct. 1773.

¹³ *Id.* at 1777.

¹⁴ *Id.* at 1780.

¹⁵ See, e.g., Megan Crowe, *Can You Relate? Bristol-Myers Narrowed the Relatedness Requirement but Changed Little in the Specific Jurisdiction Analysis*, 63 ST. LOUIS U. L.J. 505, 514 (2019) ("The Court's holding [in *Bristol-Myers Squibb*] demonstrated an attempt to narrow the scope of the relatedness requirement.").

¹⁶ *Rios v. Bayer Corp.*, Nos. 125020 & 125021, 2020 WL 2963318, at *1 (Ill. Jun. 4, 2020).

¹⁷ *Id.*

Bayer filed motions to dismiss the nonresident plaintiffs for lack of personal jurisdiction.¹⁸ The circuit court of Madison County denied the motions to dismiss, and Bayer sought an interlocutory appeal.¹⁹ After the appellate court affirmed the circuit court of Madison County, the cases were consolidated and went up to the Illinois Supreme Court.²⁰

Plaintiffs argued that the circuit court had jurisdiction over Bayer because it conducted clinical trials for Essure, created a training program for physicians related to Essure, and developed a marketing campaign for Essure, all in Illinois.²¹ At the outset of its analysis, the court recognized the distinction in personal jurisdiction between general and specific jurisdiction and found that general jurisdiction was not at issue.²² Citing *Bristol-Myers Squibb*, the court further recognized that specific jurisdiction requires the defendant to purposefully avail itself of contacts in the forum state and that the plaintiff's claims must "arise out of" or "relate to" the defendant's contacts.²³

Bayer admitted to having purposefully directed activities at Illinois.²⁴ It did not dispute that it had conducted clinical trials, organized a physician training program, and created a marketing campaign, all related to its Essure device, in Illinois.²⁵ However, Bayer argued, and the court ultimately held, that the plaintiffs' claims did not "arise out of" or "relate to" Bayer's activities in Illinois.²⁶ Plaintiffs, for example, alleged defects in Bayer's manufacturing of Essure, but Essure was manufactured in California, Mexico, and Costa Rica — not Illinois.²⁷ Similarly, Plaintiffs alleged Bayer "willfully disseminated false and misleading information" about Essure, but the nonresident plaintiffs did not allege that they received false information about Essure in Illinois.²⁸

¹⁸ *Id.*

¹⁹ *Id.* at *2.

²⁰ *Id.* at *3.

²¹ *Rios*, 2020 WL 2963318, at *4.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at *5.

²⁵ *Id.*

²⁶ *Rios*, 2020 WL 2963318, at *5.

²⁷ *Id.*

²⁸ *Id.*

“In short,” the court held, “the nonresident plaintiffs have identified no jurisdictionally relevant links between their claims and Illinois.”²⁹ The court went on to acknowledge that, following *Bristol-Myers Squibb*, the United States District Court for the Eastern District of Missouri had dismissed hundreds of nonresident plaintiffs from mass tort lawsuits related to Essure across the river in St. Louis on the same grounds.³⁰ Finally, because the nonresident plaintiffs had not articulated a reason why Illinois could be a convenient location to litigate their claims when they were not implanted with or sold Essure in the state, and because Illinois “has no particular interest in resolving claims that did not arise out of or relate to activities that occurred” in the state, the court concluded that allowing the nonresidents plaintiffs’ claims to proceed in Illinois would be unreasonable.³¹

IV. Conclusion

The Illinois Supreme Court’s recognition of *Bristol-Myers Squibb* in *Rios* is a victory, not only for defendants being sued in Madison County by plaintiffs who do not reside in the state, but also for Illinois residents, who are forced to endure the negative economic effects of tort system abuse.³² Although at least one expert has speculated that not much is likely to change in Madison County,³³ *Rios* could potentially be used to dismiss lawsuits brought against asbestos manufacturers and other defendants by nonresident plaintiffs, the majority of which could simply bring their lawsuits in the jurisdictions where they were sold the allegedly defective products. At the very least,

²⁹ *Id.* at *6.

³⁰ *Id.*

³¹ *Rios*, 2020 WL 2963318, at *7.

³² See generally *Economic Benefits of Tort Reform: An Assessment of Excessive Tort Costs in Illinois and Potential Economic Benefits of Reform*, THE PERRYMAN GROUP (Nov. 2019), https://d3n8a8pro7vhnmx.cloudfront.net/california/pages/67/attachments/original/1582657304/CALA_Tort_Reform_Impact_IL_Report.pdf?1582657304.

³³ Ann Maher, *Bayer Ruling an Important Check on Greed and Fairness of Courts, Asbestos Reform Lawyer Says*, MADISON – ST. CLAIR RECORD (Jun. 8, 2020), <https://madisonrecord.com/stories/539217528-bayer-ruling-an-important-check-on-greed-and-fairness-of-courts-asbestos-reform-lawyer-says>.

Rios is one arrow in the quiver of defendants with deep enough pockets to litigate personal jurisdiction.

Edited by Ben Davisson