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Can Courts Exercise Jurisdiction Over Out-of-State Class Members?

It is only a matter of time before the issue becomes ripe for Supreme Court review. Until then, counsel on both sides of the class action bar will have to carefully follow developments as they consider where to litigate their cases.

BY **JESSICA ORTIZ AND LEONID GRINBERG**

The federal courts have been grappling recently with a thorny question of major significance to the class action bar: Can courts exercise personal jurisdiction over claims brought by unnamed, out-of-state class members? The answer impacts access to justice as well as the costs of litigation.

In 2017, the U.S. Supreme Court decided *Bristol-Myers Squibb Co. v. Superior Court*, which involved a California "mass tort" action against an out-of-state defendant. The court held that the state court could not exercise jurisdiction over claims brought by out-of-state plaintiffs for injuries that occurred out of state. Justice Sonia Sotomayor dissented, warning that "[t]he majority's rule will make it difficult to aggregate the claims of plaintiffs across the country whose claims may be worth little alone," and that the decision "will result in piecemeal litigation and the bifurcation of claims." Class actions are designed to alleviate such problems, and the court limited its holding to state "mass actions," reserving the question of whether its ruling would apply to federal class actions as well. Since then, lower courts have been filling in the blanks.

The courts have not been unanimous. In decisions issued over the last three years, federal

judges in districts across the country, including in Colorado, Washington, Maryland and Florida, have all declined to extend *Bristol-Myers* to class actions, exercising jurisdiction in cases involving out-of-state plaintiffs alleging out-of-state injuries. Those rulings emphasized the court's narrow holding, observed that absent class members are not formally parties to the lawsuit, and contended that Federal Rule of Civil Procedure accords defendants adequate due process protections. Meanwhile, many cases out of the Northern District of Illinois extended *Bristol-Myers* to federal class actions, reasoning that the court's logic compels that result. A 2017 order from the District of Arizona also stated that *Bristol-Myers*

applies to class actions, albeit in a terse footnote with no analysis. The split has trickled into other areas of complex litigation as well. Some courts have had to confront whether *Bristol-Myers* applies to the "collective action" procedure under the Fair Labor Standards Act. (The Southern District of Texas said no in 2018; the Eastern District of Missouri said yes in 2020.)

In March, the U.S. Court of Appeals for the Seventh Circuit weighed in and decided *Mussat v. IQVIA*, overturning the Illinois district court precedents. Citing *Bristol-Myers'* qualifying language and Justice Sotomayor's dissent, the court observed that extending *Bristol-Myers* would effectively preclude nationwide class actions against defendants in any state where they are not subject to general jurisdiction, noting that such a result "would have been far from the routine application of personal-jurisdiction rules that *Bristol-Myers* said it was performing." Adding that class actions "are different from many other types of aggregate litigation," the Seventh Circuit concluded that unnamed class members need not establish personal jurisdiction over a defendant.

Two other circuits have also recently run into the issue, but neither resolved it directly. A day before *Mussat* was decided, the D.C. Circuit decided *Molock v. Whole Foods Market Group*, which involved an uncertified class including putative members who were located out of state. Rather than ruling on the defendant's motion to dismiss for lack of personal jurisdiction, the court held that the motion was premature. Because the class was uncertified, the court reasoned, the putative class members were not parties to the lawsuit at all, and the defendant's personal jurisdiction argument should be decided only when and if the class is certified.

Judge Laurence Silberman dissented in *Molock*. In his view, the district court could have ruled on the motion, because it would be dismissing the claims of the putative class members rather than the putative class members themselves. He agreed with the Illinois courts, concluding that "logic dictates" that *Bristol-Myers* applies to federal class actions. Observing that a class action, like a mass tort action, is "just a species of joinder" and that the requirements of personal jurisdiction "must be satisfied independently for the specific claims at issue," he would have held that personal jurisdiction has to be analyzed claim by claim, even in a class action.

A few weeks later, the U.S. Court of Appeals for the Fifth Circuit also skirted the question in *Cruson v. Jackson National Life Insurance Co.* In that case, the court vacated a class certification order in which the district court had held, among other things, that a personal jurisdiction defense had been waived. The court held that the defense was preserved and, in a lengthy footnote, noted the split of authority on the *Bristol-Myers* question. But the court did not weigh in on the debate, leaving it for the district court to decide on remand.

Since only the Seventh Circuit has definitively ruled on the issue, the district courts will be left to resolve the issue on their own. As these cases percolate through the court system, other circuit judges may be persuaded by Silberman's reasoning, and a circuit split may soon emerge. It is only a matter of time before the issue becomes ripe for Supreme Court review. Until then, counsel on both sides of the class action bar will have to carefully follow developments as they consider where to litigate their cases.

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