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SCOTUS Denies Cert on Seventh Circuit Refusal to Apply Bristol-Myers Personal Jurisdictional Ruling to Class Actions

by Stephanie N. Bedard

Takeaway: We previously wrote that a number of district courts had split on whether to apply the Supreme Court's personal jurisdictional ruling in *Bristol-Myers* to class actions. We then wrote an update that the Seventh Circuit had addressed this issue in *Mussat v. IQVIA*, 953 F.3d 441 (7th Cir. 2020), holding that *Bristol-Myers* does not apply to a nationwide class action filed in federal court under a federal statute. The U.S. Supreme Court has now declined to review the Seventh Circuit's ruling in *Mussat*, keeping that decision in place for the time being.

By way of background, in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), both resident and non-resident plaintiffs filed suit in California state court against Bristol-Myers, a company incorporated in Delaware and headquartered in New York. As Bristol-Myers was not subject to general personal jurisdiction in California, the U.S. Supreme Court concluded that the California court lacked specific personal jurisdiction over Bristol-Myers with respect to the claims asserted by the non-resident plaintiffs. Justice Sotomayor's dissent noted that the majority's holding left open the question of whether it applied to nationwide class actions, an issue that has been hotly litigated ever since.

As detailed in our first post, district courts have taken two divergent paths since *Bristol-Myers*. Some courts have applied *Bristol-Myers* to class actions and have required that personal jurisdiction exist over the defendant with respect to the claim of each putative class member. Other district courts have distinguished class actions from mass tort litigation, where each plaintiff is named and is a real party in interest, and have declined to extend *Bristol-Myers* to class actions.

The Seventh Circuit then squarely addressed this issue in *Mussat v. IQVIA*, where the plaintiff received unsolicited faxes that allegedly failed to include the opt-out notice required by the Telephone Consumer Protection Act ("TCPA"). Mussat brought a putative nationwide TCPA class action against IQVIA in Illinois district court.

The district court granted IQVIA's motion to strike the class definition, reasoning that under *Bristol-Myers*, both the named plaintiff and the unnamed class members had to show minimum contacts between the defendant and the forum state. IQVIA was not subject to general personal jurisdiction in Illinois, and the lower court found no specific personal jurisdiction over IQVIA relative to the claims of out-of-state putative class members.

On appeal, the Seventh Circuit reversed, holding that *Bristol-Myers* does not preclude filing a nationwide class action asserting federal statutory claims in federal court. Its decision turned on the "critical distinction" between class actions – with unnamed class members who are not "full parties" – and other types of aggregate litigation such as mass torts, where "all of the plaintiffs are named parties to the case." 953 F.3d at 447. Reasoning that nothing in the Federal Rules "frowns on nationwide class actions, even in a forum where the defendant is not subject to general jurisdiction," the appellate court noted that the U.S. Supreme Court had previously decided a number of nationwide class actions without flagging any personal jurisdictional issues. *Id*. at 448. The Seventh Circuit panel concluded that unnamed class members do not each have to show minimum contacts with the forum state in order to establish personal jurisdiction over a class defendant. In May 2020, the Seventh Circuit turned town *en banc* review of the panel's decision.

In January 2021, the U.S. Supreme Court denied IQVIA's petition for certiorari to overturn the Seventh Circuit's decision. *IQVIA Inc. v. Mussat*, No. 20-510, --- S.Ct. ---, 2021 WL 78484, at *1 (U.S. Jan. 11, 2021). Justice Amy Comey Barrett, who was on the Seventh Circuit during the earlier appeal, declined to take part in the decision denying review.

The U.S. Supreme Court's denial of certiorari means that personal jurisdiction will remain a hotly-litigated issue in class actions after *Bristol Myers* and *Mussat.* It may be the case that the high court will weigh in after more appellate courts have addressed the issue. Until then, class plaintiffs can always avoid personal jurisdiction disputes by filing suit in a defendant's home forum (where the defendant is headquartered or incorporated). The challenge for plaintiffs' attorneys will be whether that home forum is otherwise a "friendly" forum.

Bottom line: At least for now, class plaintiffs in the Seventh Circuit can continue to bring nationwide class actions under federal statutes without having to satisfy the specific jurisdiction requirements of *Bristol-Myers*. The U.S. Supreme Court's decision not to weigh in on this issue means that the *Mussat* decision will likely be persuasive in other jurisdictions as well.