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Seventh Circuit rules that Bristol-Myers personal jurisdictional ruling does not apply 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 holding in Bristol-Myers to class actions. We anticipated that this issue would continue to be hotly litigated at the district court level until an appellate court took up the mantle. This month, the Seventh Circuit became one of the first to address this issue, holding that *Bristol-Myers* does not apply to a nationwide class action filed in federal court under a federal statute.

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 the defendant pharmaceutical company, which was incorporated in Delaware and headquartered in New York. As Bristol-Myers was not "at home" and therefore not subject to general personal jurisdiction in California, the Supreme Court concluded that the California court lacked personal jurisdiction over Bristol-Myers with respect to the claims of the non-resident plaintiffs. In other words, the California court did not have specific jurisdiction over Bristol-Myers with respect to non-resident claims that had no connection to California. Justice Sotomayor's dissent noted that the majority's holding left open the question of whether it applied to nationwide class actions, a comment that foretold the subsequent district court split on the issue.

As detailed in our prior blog post, district courts have taken two divergent paths since the Supreme Court's decision in *Bristol-Myers*. Some courts have squarely 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 the mass tort litigation at issue in *Bristol-Myers* and have refused to extend its holding to class actions. District courts adopting this latter position have held that *Bristol-Myers* should be limited to mass tort claims and other aggregate actions where each plaintiff is named and is a real party in interest.

The Seventh Circuit now has addressed this issue. In *Mussat v. IQVIA*, No. 19-1204, 2020 WL 1161166 (7th Cir. Mar. 11, 2020), the plaintiff received unsolicited faxes that 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. Because IQVIA was not headquartered or incorporated in Illinois and therefore was not subject to general jurisdiction there, the lower court undertook a specific jurisdiction analysis and found no jurisdiction over IQVIA relative to the claims alleged by those who received unsolicited faxes outside the state.

On appeal, the Seventh Circuit reversed, holding that *Bristol-Myers* is not an obstacle to the filing of a nationwide class action asserting federal statutory claims in federal court. As a threshold matter, the Seventh Circuit held that an order striking class allegations is the functional equivalent of a denial of class certification and thus is appealable under Rule 23(f)'s discretionary appellate process for class actions.

The Seventh Circuit then turned to what it referred to as 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." 2020 WL 1161166, at *4. 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 court further noted that the U.S. Supreme Court had previously decided a number of nationwide class actions without flagging any personal jurisdictional issues. *Id*. at *5. The Seventh Circuit 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.

Forum shopping remains a key issue for courts to wrangle with after *Bristol Myers* and *Mussat*. Class plaintiffs can avoid any and all personal jurisdictional issues simply by filing suit in a defendant's "home" forum (where the defendant is headquartered or incorporated). Of course, plaintiffs' attorneys are still likely to continue to file class actions in what are perceived as "friendly" forums.

Bottom line: In the Seventh Circuit – at least for now – class plaintiffs can continue to bring nationwide class actions under federal statutes without having to satisfy the specific jurisdictional requirements of *Bristol-Myers*.