

CLIENT ALERT

Does *Bristol-Myers Squibb* Apply to Nationwide Class Actions in Federal Court? The First Two Federal Circuits Weigh In

Mar.17.2020

Can a federal court, after *Bristol-Myers Squibb Co. v. Superior Court of California*,¹ⁱ still exercise specific jurisdiction over a nationwide class action? Trial courts have debated the question for nearly three years. Last week, two federal circuits became the first appellate courts to decide. One held that a federal court can do so; the other, that the question is premature until the class is certified. At stake is the viability of nationwide or multi-state class actions in a forum where the defendant is not “at home” for purposes of general jurisdiction.

In *Bristol-Myers Squibb*, the U.S. Supreme Court held in 2017 that California state courts lacked jurisdiction to hear the mass tort claims of non-resident plaintiffs who alleged that they were harmed in other states by conduct occurring outside California. The Court ruled that the Fourteenth Amendment’s Due Process Clause allows a state court to exercise specific jurisdiction only to the extent that each individual plaintiff’s claims “arise out of or relate to the defendant’s contacts with the forum.”²ⁱⁱ Writing for an 8-1 majority, Justice Alito explicitly left open the question whether the same restrictions would apply in federal court under the Fifth Amendment.³ⁱⁱⁱ Justice Sotomayor, in her dissent, also questioned whether *Bristol-Myers Squibb* would apply to nationwide class actions.^{4iv}

On March 10, 2020, the D.C. Circuit decided *Molock v. Whole Foods Market Group, Inc.*^{5v} The plaintiffs in that case sought to represent a class of past and present Whole Foods employees alleging lost wages as a result of Whole Foods’ manipulation of its bonus program. Although Whole Foods is incorporated in Delaware and headquartered in Texas, plaintiffs brought their diversity action in the District of Columbia. Whole Foods moved to dismiss, arguing, in part, that the court lacked personal jurisdiction over the claims of nonresident putative class members. The district court denied the motion, but certified an interlocutory appeal under 28 U.S.C. § 1292(b).

The D.C. Circuit held that the personal jurisdiction inquiry was premature. While unnamed members of certified classes are deemed parties for some purposes, the court said, “putative class members—at issue in this case—are *always* treated as nonparties.”^{6vi} Only certification of the class “brings unnamed class members into the action and triggers due process limitations on a court’s exercise of personal jurisdiction over their claims.”^{7vii} Until then, the court should not entertain a motion to dismiss absent putative class members for lack of jurisdiction.

The next day, the Seventh Circuit decided *Mussat v. IQVIA, Inc.*^{8viii} In that case, arising under the federal Telephone Consumer Protection Act, a single named plaintiff sought to represent all persons who had received unsolicited junk faxes from the defendant in the past four years. The suit was filed in the Northern District of Illinois. IQVIA, a Delaware corporation with its headquarters in Pennsylvania, moved to strike the class definition, and the district court granted the motion.

The Seventh Circuit reversed. It first held that an order striking class allegations is the functional equivalent of a denial of class certification; as such, it is appealable under Rule 23(f). It then pointed out what it called “the critical distinction” between a mass

action such as *Bristol-Myers Squibb* and a class action: in the former, “all of the plaintiffs are named parties to the case.”^{9ix} In a class action, the court held, unnamed class members need not demonstrate either general or specific jurisdiction in order to proceed. “[N]othing in the Rules,” the court concluded, “frowns on nationwide class actions, even in a forum where the defendant is not subject to general jurisdiction.”^{10x}

In *Mussat*, the Seventh Circuit squarely held that *Bristol-Myers Squibb* is no impediment to nationwide class actions, at least those brought under federal statutes. The D.C. Circuit in *Molock*, while agreeing that putative class members don’t count in the jurisdictional analysis, held only that the issue isn’t triggered until class certification. Future circuit court cases will likely continue to debate several class action-specific questions: the proper vehicle for challenging jurisdiction; whether absentee class members are to be considered in determining jurisdiction; whether the difference between mass and class actions matters; whether federalism concerns partly underlying *Bristol-Myers Squibb* distinguish that case from federal class actions; and even whether *Bristol-Myers Squibb* applies in federal court at all. In the meantime, for those challenging jurisdiction over nationwide class actions, Judge Silberman’s elaborate dissent in *Molock*—concluding that *Bristol-Myers Squibb* does indeed bar such actions—is recommended reading. As he notes, succinctly capturing the forum-shopping that brought the case to the D.C. Circuit, “[T]he plaintiffs could have avoided the whole personal jurisdiction imbroglio simply by driving 110 miles down the road and filing this class action in Wilmington.”^{11xi}

¹ *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1780 (2017)

² *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780.

³ *Id.* at 1784 (“[W]e leave open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.”).

⁴ *Id.* at 1789 n.4

⁵ *Molock v. Whole Foods Market Group, Inc.*, No. 1:16-cv-02483 (slip op., March 10, 2020)

⁶ *Id.* at 6 (emphasis in original)

⁷ *Id.* at 8.

⁸ *Mussat v. IQVIA, Inc.*, No. 17 C 8841 (slip op., March 11, 2020)

⁹ *Id.* at 9

¹⁰ *Id.* at 11-12

¹¹ *Molock*, dissent slip op. at 10 (parentheses omitted)

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