

## Personal Jurisdiction in Federal Nationwide Class

### Actions: Still Unclear

Related Practice Areas: **Antitrust / Competition, Deceptive Business Practices and Consumer Protection**

In 2017, the U.S. Supreme Court held in *Bristol-Myers Squibb Company v. Superior Court of California*, that California state courts lacked personal jurisdiction over the defendant, Bristol-Myers Squibb, for mass-tort claims brought by those plaintiffs who were not California residents, and therefore did not suffer their alleged injuries in California. The Court held that state courts could only exercise specific jurisdiction over a claim if there exists an “affiliation between the forum and the underlying controversy, principally [an] activity or an occurrence that takes place in the forum state”—which the non-California plaintiffs lacked. Justice Alito ended the majority’s opinion by stating: “since our decision concerns the due process limits on the exercise of specific jurisdiction by a State, we leave open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.”[1] In so doing, the Supreme Court provided no clarity as to whether federal courts can exercise personal jurisdiction over a nationwide class action based solely on the basis of the defendant’s interactions with the named plaintiffs.

Since then, district courts have interpreted the limits of a federal court’s personal jurisdiction over a putative national class in varying ways. Some have held that federal courts are equally bound by *Bristol-Myers Squibb*, while others have held that personal jurisdiction over absent class members is not necessary until a class has been certified because until then they are not fully parties to the case.[2] This uncertainty is most problematic for plaintiffs in nationwide class actions who may believe they are required to bring suit in the defendant’s primary place of business or place of incorporation to avoid potential *Bristol-Myers Squibb* implications on personal jurisdiction. It is also an issue for defendants who lack judicial guidance as to when is the appropriate time in a class action’s adjudicative process to raise this jurisdictional question.[3]

The first three circuit court decisions to address the issue were decided last month. By providing three distinct responses to the *Bristol-Myers Squibb* question, the circuit courts have provided some guidance, but have also left some uncertainty.

The first decision was issued by the D.C. Circuit in *Molock v. Whole Foods*, a wage dispute case brought by plaintiffs from various states claiming violations of District of Columbia, Maryland, and Oklahoma wage payment and collection laws. The defendant Whole Foods is incorporated in Delaware and has its principal place of business in Texas, yet plaintiffs filed their nationwide class action in the U.S. District Court for the District of Columbia. Relying on *Bristol-Myers Squibb*, Whole Foods filed a motion to dismiss nonresident putative class members. The district court denied the motion but certified its decision for immediate appeal to the D.C. Circuit. The D.C. Circuit ruled that the district court was correct. The motion to dismiss was premature because putative class members were not yet parties to the case. It declared that motions to dismiss absent class members would be appropriate “only after the putative class members are added to the action—that is, ‘when the action is certified as a class under Rule 23.’” [4]

The very next day, *Mussat v. IQVIA* was decided by the Seventh Circuit. In that case, an Illinois plaintiff, alleging violations of the federal Telephone Consumer Protection Act, sued in Illinois district court, despite the defendant being headquartered in Pennsylvania. The district court struck the nationwide class allegations pursuant to Federal Rule of Civil Procedure 12(f), stating the court did not have personal jurisdiction over IQVIA for incidents outside Illinois. The plaintiffs filed an immediate appeal.

In an opinion by Judge Wood, the Seventh Circuit ruled that the appeal under Rule 23(f) was appropriate because the district court's decision was tantamount to a denial of class certification under Rule 23. Relying on three Supreme Court decisions that have allowed nationwide class actions to proceed,[5] the Seventh Circuit determined that the motion to strike should have been denied, and remanded the case to the district court with the nationwide class intact. The Seventh Circuit added that *Bristol-Myers Squibb* does not hinder federal nationwide class actions, because putative nationwide class actions are fundamentally different from mass-tort cases. While all plaintiffs in mass-tort cases are full parties to the case, absent class members are considered nonparties until the trial court decides the class certification motion., Thus, there is no need to conduct a personal-jurisdiction analysis until then.[6]

Still later in March, the Fifth Circuit issued its decision in *Cruson v. Jackson National Life Insurance Company*, in which Texas residents, alleging breach of contract, breach of fiduciary duty, and negligent misrepresentation, sued Jackson National Life Insurance Company ("Jackson"), a Michigan Corporation, in the Eastern District of Texas. The district court had certified a nationwide class of similarly situated plaintiffs and determined that Jackson waived any *Bristol-Myers Squibb* personal jurisdiction defense "by failing to raise it in its Rule 12 motions..." On appeal, the Fifth Circuit held, as had the D.C. Circuit, that the personal jurisdiction defense wasn't available as to absent class members until class certification proceedings. As had the D.C. Circuit in *Molock*, the Fifth Circuit declared that, since absent class members "were not yet before the court when Jackson filed its Rule 12 motions," they were not a factor to be considered in a Rule 12 motion.[7]

Given the remaining uncertainty of the applicability of *Bristol-Myers Squibb* to nationwide class actions, it appears that still future circuit court cases will continue to consider: (i) if and when defendants should raise personal jurisdictional challenges to claims by purported nationwide classes; (ii) what role, if any, absent class members play in determining personal jurisdiction in such cases; and (iii) whether *Bristol-Myers Squibb* applies in federal courts at all.