The Latest On Bristol-Myers' Class Action Application

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In Bristol-Myers Squibb Co. v. Superior Court of California,[1] the U.S. Supreme Court held that a California state court could not properly exercise personal jurisdiction over a nonresident defendant with respect to nonresident plaintiffs' mass tort claims. The court called its decision a "straightforward application ... of settled principles of personal jurisdiction," yet the decision left open the question of whether the holding extends to nationwide class actions. District courts' application of BMS has resulted in a mixed bag of opinions.

Many courts have extended the Supreme Court's holding in BMS to class actions and dismissed nonresident class members' claims.[2] These courts primarily rely on the Supreme Court's emphasis in BMS on the federalism concerns in the due process clause, which requires a sufficient nexus between a defendant, the underlying claims, and the forum state to confer jurisdiction, regardless of the nature of the case.[3] Yet, a growing number of courts have refused to extend BMS to class actions.[4] Those courts provide two primary bases for reaching this conclusion. Some courts find a meaningful distinction between mass tort actions, where each plaintiff is named in the complaint, and class actions, in which "the citizenship of the unnamed plaintiffs is not taken into account for personal jurisdiction purposes."[5] Others have held that the court's federalism concerns in BMS apply only to state court claims and do not affect a federal court's jurisdiction over claims brought under federal statutes allowing for nationwide service of process.[6] Some courts have further held that jurisdiction also extends to state claims under the doctrine of "personal pendent jurisdiction," in which "a court may assert ... jurisdiction over a defendant with respect to a claim for which there is no independent basis of personal jurisdiction so long as it arises out of a common nucleus of operative facts with a claim in the same suit over which the court does have personal jurisdiction.[7]

While no circuit court of appeals has weighed in on the issue, two circuits — the Fifth Circuit and the D.C. Circuit — are on the verge of doing so.

Cruson v. Jackson National Life Insurance Co.[8]

In November 2016, plaintiffs filed a putative nationwide class action complaint in the Eastern District of Texas against Jackson National Life Insurance Company. The plaintiffs later amended their complaint, claiming that Jackson National improperly administered variable annuity contracts. Jackson National moved to dismiss the claims under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). The court denied the motion as to three of the plaintiffs' claims but granted the motion as to the plaintiffs' negligent representation claim. Discovery ensued before plaintiffs moved for class certification.

In May 2018, the district court granted the plaintiffs' motion for class certification. In doing so, the court rejected Jackson National's argument that in light of BMS the district court lacked personal jurisdiction over Jackson National with respect to the claims of class members who are unconnected with Texas. The court determined that Jackson National had waived its personal jurisdiction objection by not including it in its earlier motion to dismiss. Jackson National sought interlocutory appeal of the court's class certification, and in June 2018, the Fifth Circuit granted permission to appeal.

Jackson National filed its opening brief on Oct. 17, 2018, presenting three issues to the court, including the procedural issue of "[w]hether an objection to personal jurisdiction with respect to the claims of unnamed members of a putative class is 'available' for purposes of Rule 12 before the class has been certified." In the appeal, Jackson National argues that "before certification, the claims of unnamed members of a putative class are merely hypothetical and that a defendant need not — and cannot — move to dismiss them for lack of personal jurisdiction."

The plaintiff-appellees filed their response brief on Nov. 16, 2018. In response to Jackson National's jurisdictional argument, the plaintiff-appellees argue that the district court correctly found that Jackson National had waived its personal jurisdiction argument by failing to include it in its earlier 12(b) motion to dismiss. They further argue that establishing a Rule 23 exception to Rule 12 would "create chaos" by allowing class defendants to "sleep on their defenses, waiting until after certification to claim error."[9]

Jackson National may face an uphill battle. If the Fifth Circuit rules Jackson National did not waive personal jurisdiction because "the claims of unnamed members of a putative class are merely hypothetical," the appellate court could remand the case with instruction to the trial court to address the merits of Jackson National's personal jurisdiction argument. Jackson National will then find itself in the potentially awkward position of having to rely on district court opinions that did exactly what Jackson National says is improper: extend BMS to unnamed class members before class certification.[10] If the appellate or trial court reaches the merits of Jackson National's personal jurisdiction defense, the company will then have to distinguish the growing body of cases concluding that BMS does not apply to class actions because "the citizenship of the unnamed plaintiffs is not taken into account for personal jurisdiction purposes."[11]

A ruling from the Fifth Circuit is expected in the first half of 2019.

Molock v. Whole Foods[12]

On Dec. 20, 2016, plaintiffs filed a putative class action in the U.S. District Court for the District of Columbia against defendant Whole Foods Market Group Inc., or WFMG. The plaintiffs, who are current and former employees of WFMG, alleged that WFMG abused an internal employee bonus program for employees nationwide. On March 15, 2018, the district court granted in part and denied in part WFMG's motion to dismiss the plaintiffs' claims. Importantly, the court rejected WFMG's assertion that the Supreme Court's BMS decision required dismissal of the claims of unnamed putative class members residing outside of the District of Columbia for lack of personal jurisdiction. Upon WFMG's motion, the district court certified the question of "whether the jurisdictional limits proscribed in Bristol-Myers Squibb extend to unnamed, nonresident members of a putative nationwide

class in federal court," via interlocutory appeal to the D.C. Circuit. The district court stayed all discovery with respect to certification of a nationwide class during the appeal. On Oct. 11, 2018, the D.C. Circuit granted permission to appeal.

As of the date of publication, the D.C. Circuit has not issued a briefing schedule in Molock. It appears, however, that corporations will receive circuit court clarification and direction on the application of BMS to class actions in 2019.

Conclusion

Until circuit courts of appeals issue definitive guidance on BMS' application to nationwide class actions, defendants should continue to challenge specific jurisdiction in putative class actions filed in courts lacking general jurisdiction over them. Based on the growing body of law in support of BMS' extension to class actions, defendants have substantial authority to support that personal jurisdiction is lacking in such circumstances. However, as case law likewise builds on the other side of the issue, depending upon how circuit courts answer, the question appears likely to return to the Supreme Court. Perhaps those principles of personal jurisdiction aren't so straightforward after all.

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[1] 137 S. Ct. 1773 (2017).

[2] See, e.g., Am.'s Health & Res. Ctr., Ltd. v. Promologics, Inc., No. 16 C 9281, 2018 WL 3474444, at *3 (N.D. Ill. July 19, 2018) (finding that the due process concerns underlying the jurisdictional issue "do not differ between class and non-class actions" and barring claims of nonresident class members); Muir v. Nature's Bounty (DE) Inc., No. 15 C 9835, 2018 WL 3647115, at *5 (N.D. Ill. Aug. 1, 2018) ("Because the non-Illinois Plaintiffs' claims do not arise from or relate to Defendants' contacts with Illinois, and because Bristol-Myers bars Illinois courts from exercising pendent personal jurisdiction based on the alleged existence of a common nucleus of operative fact between those claims and the claims of the Illinois Plaintiffs, Defendants' motion to dismiss ... is granted."); Moore v. Bayer Corp., No. 4:18 CV 262 CDP, 2018 WL 4144795, at *5 (E.D. Mo. Aug. 29, 2018) (dismissing nonresident plaintiffs based on a lacking "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State"

(quoting Goodyear Dunlop Tires Operations SA v. Brown, 564 U.S. 915 (2011)); Hinton v. Bayer Corp., No. 4:16CV1679 HEA, 2018 WL 3725776, at *4 (E.D. Mo. July 27, 2018) (finding "the individual plaintiffs' claims are too attenuated from [the defendant's alleged in-state] activities to provide specific, 'case-linked' personal jurisdiction"); Gaines v. Gen. Motors LLC, No. 17CV1351-LAB (JLB), 2018 WL 3752336, at *3 (S.D. Cal. Aug. 7, 2018) ("Because there is no basis for the Court to exercise personal jurisdiction over the proposed out-of-state named plaintiffs' claims against GM arising entirely from out-of-state activities, leave to amend the complaint to add these claims is denied."); Horowitz v. AT&T Inc., No. 3:17-cv-4827-BRM-LHG, 2018 WL 1942525, at *15 (D.N.J. April 25, 2018) (dismissing nonresident plaintiffs' claims against defendants and stating that "courts have found that nothing in Bristol–Myers suggests that it does not apply to named plaintiffs in a federal putative class action"); Maclin v. Reliable Reports of Texas Inc., 314 F. Supp. 3d 845, 850–51 (N.D. Ohio 2018) ("[T]he Court cannot envisage that the Fifth Amendment Due Process Clause would have any more or less effect on the outcome respecting FLSA claims than the Fourteenth Amendment Due Process Clause, and this district court will not limit the holding in Bristol–Myers to mass tort claims or state courts."); In re Dental Supplies Antitrust Litig., No. 16 Civ. 696 (BMC)(GRB), 2017 WL 4217115, at *9 (E.D.N.Y. Sept. 20, 2017) ("Personal jurisdiction in class actions must comport with due process just the same as any other case."); Spratley v. FCA US LLC, No. 3:17-CV-0062, 2017 WL 4023348, at *7–8 (N.D.N.Y. Sept. 12, 2017) (dismissing claims of out-of-state plaintiffs, and stating, "in this case, the out-of-state Plaintiffs have shown no connection between their claims and [Defendant's] contacts with New York"); Plumber's Local Union No. 690 Health Plan v. Apotex Corp., Civ. A. No. 16-665, 2017 WL 3129147, at *9 (E.D. Pa. July 24, 2017) (finding that nonforum state claims "do not arise out of or relate to any of ... Defendants' conduct within the forum state").

[3] See, e.g., DeBernardis v. NBTY Inc., No. 17-C-6125, 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018) ("The Court believes that it is more likely than not based on the Supreme Court's comments about federalism that the courts will apply Bristol-Myers Squibb to outlaw nationwide class actions in a form, such as in this case, where there is no general jurisdiction over the Defendants.").

[4] See, e.g., In re Morning Song Bird Food Litig., No. 12CV01592 JAH-AGS, 2018 WL 1382746, at *5 (S.D. Cal. March 19, 2018) (Refusing to extend Bristol-Myers Squibb to federal claims in nationwide class action and finding that "claims of unnamed class members are irrelevant to the question of specific jurisdiction"); Morgan v. U.S. Xpress Inc., No. 3:17-CV-00085, 2018 WL 3580775, at *5 (W.D. Va. July 25, 2018) (reasoning that "in a mass tort action [like Bristol-Myers Squibb], each plaintiff is a real party in interest to the complaints; by contrast, in a putative class action [like the instant case], one or more plaintiffs seek to represent the rest of the similarly situated plaintiffs, and the 'named plaintiffs' are the only plaintiffs actually named in the complaint"); Haj v. Pfizer Inc., No. 17 C 6730, 2018 WL 3707561, at *3 (N.D. Ill. Aug. 3, 2018) (holding that "absent class members are not 'parties' for purposes of assessing personal jurisdiction over the defendant, and thus specific jurisdiction is not required to be assessed as to each absent class member's claim"); Michael Knotts, on Behalf of Himself & All Others Similarly

Situated, Plaintiff, v. Nissan N. Am., Inc., Defendant., No. 17-CV05049 (SRN/SER), 2018 WL 4922360, at *15 (D. Minn. Oct. 10, 2018) (finding "meaningful differences between [mass torts and class actions] that merit different approaches to this jurisdictional question"); Dennis v. IDT Corp., No. 1:18-CV-2302-LMM, 2018 WL 5631102, at *3 (N.D. Ga. Oct. 18, 2018) (rejecting defendants' argument that Bristol-Myers Squibb extends to class actions and stating, "The concerns regarding a state overreaching its status as a coequal sovereign simply does not exist in a nationwide class action in federal court"); Sanchez v. Launch Tech. Workforce Sols. LLC, 297 F. Supp. 3d 1360, 1365 (N.D. Ga. 2018) (concluding that due process concerns do not foreclose the court's exercise of personal jurisdiction over defendant as to the claims of the resident named plaintiff both on his own behalf and on behalf of unnamed nonresident plaintiffs); Becker v. HBN Media Inc., 314 F. Supp. 3d 1342, 1345 (S.D. Fla. 2018) (rejecting defendant's argument that the court cannot exercise personal jurisdiction over it with regard to Telephone Consumer Protection Act claims brought by non–Florida residents); Tickling Keys Inc. v. Transamerica Fin. Advisors Inc., 305 F. Supp. 3d 1342, 1351 (M.D. Fla. 2018) (same).

[5] See, e.g., Fitzhenry-Russell v. Dr. Pepper Snapple Grp. Inc., No. 17-CV-00564 NC, 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017); In re Chinese–Manufactured Drywall Prods. Liability Litig., 2017 WL 5971622, at *12–13 (E.D. La. Nov. 30, 2017).

[6] In re Packaged Seafood Prod. Antitrust Litig., __ F. Supp. 3d ___, 2018 WL 4222506, at *32 (S.D. Cal. Sept. 5, 2018).

[7] Sloan v. Gen. Motors LLC, 287 F. Supp. 3d 840, 860 (N.D. Cal. 2018), order clarified, No. 16-CV-07244-EMC, 2018 WL 1156607 (N.D. Cal. March 5, 2018).

[8] No. 18-40605 (5th Cir. June 27, 2018).

[9] Cruson, No. 18-40605, Appellee Brief at 49 (5th Cir. Nov. 16, 2018).

[10] See EN 2.

[11] See EN 5.

[12] No. 18-8006 (D.C. Cir. Oct. 11, 2018).