

Three Recent Federal Circuit Court Decisions Address Whether a Lead Plaintiff Must Establish Personal Jurisdiction Over the Claims of Absent Class Members

Date: 04/07/20

In 2017, in *Bristol-Myers Squibb Co. v. Superior Court*, the Supreme Court of the United States held that, in federal cases involving multiple plaintiffs, each plaintiff must establish that the court has personal jurisdiction over each of its claims. This severely limited the forums where plaintiffs could bring multiple-plaintiff cases against defendants.

Since then, there has been an open question as to whether *Bristol-Myers*, which involved a mass tort case, applies to nationwide class actions and requires a lead plaintiff to establish that the court has personal jurisdiction over each absent class member's claim. Relying heavily on *Bristol-Myers*, defendants in nationwide class actions have been frequently bringing motions to dismiss absent class members without sufficient contacts with the forum to warrant the exercise of personal jurisdiction. As a practical matter, if courts were to begin granting such motions, they would likely eviscerate most nationwide class actions because, in most cases, a good portion of the absent class members likely could not establish personal jurisdiction in the relevant forum. Three recent decisions by the United States Court of Appeals, for the Fifth, Seventh, and District of Columbia Circuits, demonstrate the different ways appellate courts have been dealing with such motions.

On March 11, 2020, in *Mussat v. IQVIA*, the Seventh Circuit rejected application of *Bristol-Myers* to class actions and held that, for federal question claims, district courts need not have personal jurisdiction over the claims of absent class members because, for purposes of personal jurisdiction, only the named plaintiffs matter.

In contrast, in *Molock v. Whole Foods Market Group*, decided the day before *Mussat*, the District of Columbia Circuit held that the defendant's Rule 12(b)(2) motion to dismiss the absent class members was premature, as those class members are not parties to the case unless and until a class is certified. On March 25, 2020, in *Cruson v. Jackson*, the Fifth Circuit reached a similar conclusion and held that the question of whether a court has jurisdiction over the claims of absent class members is appropriately addressed at the class certification stage because that is when absent class members become part of the case. These decisions leave for another day the question decided in *Mussat* – namely, whether absent class members can be dismissed for lack of personal jurisdiction in a nationwide class action.

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