Third Circuit Addresses Bristol Myers' Impact on Nationwide Actions Brought in Federal Court, Deepening Circuit Split

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In 2017, the Supreme Court of the United States limited the venues in which plaintiffs can pursue mass-tort suits in *Bristol-Myers Co*. v. *Superior Court*, ruling that *each* plaintiff in a mass-tort suit must demonstrate personal jurisdiction over its claims to comport with due process. Since then, lower courts have differed on how to treat jurisdictional issues in other varieties of multi-party suits. A circuit split has emerged as to how to apply *Bristol-Myers* to collective actions brought under the Fair Labor Standards Act (FLSA), with one view holding that each plaintiff in an FLSA collective action must establish personal jurisdiction to pursue any claims and another holding that each plaintiff in such an action need not do so.

On July 26, 2022, the United States Court of Appeals for the Third Circuit held in *Fischer* v. *Federal Express Corp*., that plaintiffs who could not establish personal jurisdiction over their claims could not join an FLSA putative collective action. In so holding, the Third Circuit joined the United States Circuit Courts of Appeals for the Sixth and Eighth Circuits, which had reached similar conclusions, and expressly rejected the approach of the United States Court of Appeals for the First Circuit in *Waters v. Day & Zimmerman NPS, Inc*., which held that each plaintiff that opts into an FLSA collective action does not need to establish personal jurisdiction over their claims to participate.

Despite a clear and on going circuit split on this issue, on March 6, 2023, the Supreme Court denied the *Fischer* plaintiffs' petition for a writ of certiorari. The status quo may encourage forum shopping for plaintiffs seeking to file an FLSA collective action. As other circuits address this question, the circuit split may deepen and the issue may eventually be decided by the Supreme Court.

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