

Bristol-Myers and class actions: Emerging trends

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Since the U.S. Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), litigants and commentators have argued about whether the ruling, although it involved a mass tort, nonetheless controls the personal jurisdiction analysis in class-action cases.

A series of recent rulings has created a split among courts on the issue. This expert analysis will address that emerging case law.

THE BMS DECISION

The *BMS* case involved product liability claims filed by hundreds of plaintiffs — only some of them California residents — seeking to hold Bristol-Myers liable in California state court for injuries allegedly caused by Plavix, the company's blood-thinning drug.

Although Bristol-Myers is a Delaware corporation headquartered in New York, the state trial court held that it was subject to general jurisdiction in California because of its extensive activity in that state. *In re Plavix Prod. & Mktg. Cases*, No. JCCP4748, 2013 WL 6150251 (Cal. Super. Ct., S.F. Cty. Sept. 23, 2013).

Since the *BMS* decision, courts have grappled with its applicability to class actions.

An intermediate state appeals court disagreed with that reasoning but affirmed on other grounds, saying the trial court had specific, rather than general, jurisdiction to hear the plaintiffs' claims. *Bristol-Myers Squibb Co. v. Super. Ct.*, 175 Cal. Rptr. 3d 412 (Cal. Ct. App., 1st Dist. 2014).

The California Supreme Court upheld that decision, finding that the company's significant overall activity in California gave the state's courts specific jurisdiction to hear the case. *Bristol-Myers Squibb Co. v. Super. Ct.*, 1 Cal. 5th 783 (Cal. 2016).

Bristol-Myers appealed to the U.S. Supreme Court, arguing that the California court did not have jurisdiction over the company with respect to nonresidents' claims.

The Supreme Court agreed, holding that California courts lacked specific jurisdiction over claims by nonresidents that were unrelated to the company's activities in the state.

AN EMERGING SPLIT OF AUTHORITY

Since the *BMS* decision, courts have grappled with its applicability to class actions.

Because the case was a mass tort lawsuit rather than a class action, the Supreme Court decision did not specifically address class actions, as Justice Sonia Sotomayor expressly noted in her dissent.

There are important distinctions between mass actions and class actions.

A class action is a suit filed on behalf of all similarly situated individuals by a single named plaintiff or a small group of plaintiffs against the same defendant or defendants. Class members are treated as a single party represented by the lead plaintiff.

Federal Rule of Civil Procedure 23, moreover, imposes a series of detailed requirements for class actions that do not apply to mass actions, which involve the consolidation of similar claims by many named individuals representing only themselves.

A recurring fact pattern has emerged in the cases that have considered whether, and to what extent, the *BMS* decision applies to class actions.

The question has most often arisen at the motion-to-dismiss stage of putative class actions. The plaintiff or plaintiffs have generally been residents of the forum state who have sued on behalf of a proposed nationwide class, and the defendant has typically been an out-of-state corporation not subject to general jurisdiction in the forum where the suit was filed.

Defendants in this scenario have relied on the *BMS* decision to support dismissal motions based on an alleged lack of jurisdiction. Plaintiffs have responded by arguing that *BMS* does not control because it applies only to mass tort cases.

Despite the similar factual circumstances presented by these cases, court rulings have produced divergent results. Notably, a divide has emerged between the U.S. District Court for the Northern District of Illinois, which in many cases has found that the *BMS* decision applies to class actions, and the U.S. District Court for the Northern District of California, which has repeatedly held that it does not.

THE ILLINOIS APPROACH

A leading decision from Illinois is *McDonnell v. Nature's Way Products LLC*, No. 16-cv-5011, 2017 WL 4864910 (N.D. Ill. Oct. 26, 2017), which is one of the first rulings to apply the reasoning of the *BMS* decision to a class action.

The plaintiff in *McDonnell* was an Illinois resident who filed a putative class action against a manufacturer and seller of nutritional supplements. The plaintiff proposed a class that included residents of several other states.

Nature's Way, a Wisconsin-based company organized under Wisconsin law, relied on *BMS* to assert a lack of jurisdiction, arguing that no injury alleged by any nonresident of Illinois had any link to any of the company's activities there.

The Chicago federal court agreed, dismissing the claims of the non-Illinois class members. The court called the *BMS* decision "instructive" and noted that "a state may not assert specific jurisdiction over a nonresident's claim where the connection to the state is based on the defendant's conduct in relation to a resident plaintiff."

Although most cases presenting the issue have involved out-of-state defendants and nationwide classes proposed by in-state plaintiffs, the question has also emerged in other contexts. Courts considering these distinct situations have split regarding the applicability of *BMS* to class actions.

Similarly, in *DeBernardis v. NBTY Inc.*, No. 17-cv-6125, 2018 WL 461228 (N.D. Ill. Jan. 18, 2018), an Illinois resident brought a putative class action on behalf of a proposed nationwide class against a dietary supplement distributor licensed in Delaware and based in New York.

The U.S. District Court for the Northern District of Illinois granted the defendant's motion to dismiss the claims of the putative nationwide class, saying it lacked personal jurisdiction over the claims of nonresidents.

The District Court attempted to distinguish the case, as a class action, from the *BMS* ruling in a mass tort case. But the court ultimately concluded that "based on the Supreme Court's comments about federalism," *BMS* would ultimately lead to a ban on nationwide class actions "where there is no general jurisdiction over the defendants."

More recently, the court reaffirmed the applicability of the *BMS* decision to class actions in *Anderson v. Logitech Inc.*, No. 17-cv-6104, 2018 WL 1184729 (N.D. Ill. Mar. 7, 2018).

The Illinois plaintiff in *Anderson* proposed a nationwide class action (excluding California) against Logitech, a California-based company also incorporated there.

The *Anderson* court dismissed the nationwide class claims on jurisdictional grounds.

CALIFORNIA CASES

By contrast, judges in the U.S. District Court for the Northern District of California have found the *BMS* decision inapplicable to similar class actions.

In *Broomfield v. Craft Brew Alliance*, No. 17-cv-1027, 2017 WL 3838453 (N.D. Cal. Sept. 1, 2017), an early post-*BMS* case, the court considered nationwide class claims brought by California residents against an Oregon-based beer brewing company.

The company argued that the *BMS* decision prevented the court from exercising jurisdiction over the claims of nonresident class members.

But the District Court disagreed, saying the *BMS* decision "expressly left open" the question of its applicability to class actions. The trial court ultimately denied the motion to dismiss the nonresidents from the class, deferring consideration of the issue until class certification.

Shortly after *Broomfield*, the District Court decided *Fitzhenry-Russell v. Dr Pepper Snapple Group*, No. 17-cv-564, 2017 WL 4224723 (N.D. Cal. Sept. 22, 2017), a proposed nationwide class action by California residents against a Texas-based Delaware corporation.

When the company moved to dismiss the suit for lack of personal jurisdiction over the nationwide claims, the plaintiffs argued that *BMS* applies only to mass actions and not to class actions.

The District Court sided with the plaintiffs, noting that in mass tort cases, unlike in class actions, each plaintiff is a real party-in-interest. Finding the distinction meaningful, the court declined to apply the personal jurisdiction analysis of the *BMS* ruling, concluding that it had personal jurisdiction over the entire nationwide case.

UNIQUE CIRCUMSTANCES

Although most cases presenting the issue since *BMS* have involved out-of-state defendants and nationwide classes proposed by in-state plaintiffs, the question has also emerged in other contexts. Courts considering these distinct situations have also split regarding the applicability of *BMS* to class actions.

In a case from the U.S. District Court for the Eastern District of New York, for example, a group of dentists and dental practices sued various dental supply distributors on behalf of a proposed nationwide class of dentists.

One of the distributors moved for dismissal, arguing it had neither a New York presence nor sufficient connections to the state to justify personal jurisdiction under *BMS*.

The court agreed, dismissing that defendant entirely from the suit for lack of personal jurisdiction, rather than tossing only the claims filed against that defendant by out-of-state plaintiffs. *In re Dental Supplies Antitrust Litig.*, No. 16-cv-696, 2017 WL 4217115 (E.D.N.Y. Sept. 20, 2017).

In a recent case from the U.S. District Court for the District of Columbia, a group of plaintiffs brought a putative class action on behalf of past and present employees of two Texas-based companies, one incorporated in Texas and the other in Delaware. The proposed class included employees who did not live or work in the District of Columbia.

The companies argued that the court lacked personal jurisdiction over the claims of two of the named plaintiffs and all putative class members who were nonresidents of the District of Columbia.

The District Court agreed that it lacked jurisdiction under *BMS* over the two named plaintiffs who had no connection to the District of Columbia. *Molock v. Whole Foods Mkt.*, 297 F. Supp. 3d 114 (D.D.C. 2018).

But it also decided that *BMS*, as a mass torts decision, was inapplicable to the nonresident class members. The court, highlighting the distinctions between mass torts and class actions, denied that part of the dismissal motion.

OTHER RULINGS

The U.S. District Court for the Northern District of New York considered the *BMS* question in a putative class action proposing four state-specific classes rather than a nationwide class. *Spratley v. FCA US LLC*, No. 17-cv-62, 2017 WL 4023348 (N.D.N.Y. Sept. 12, 2017).

In *Spratley*, eight named plaintiffs, including six from outside New York state, sued a Delaware corporation based in Michigan. The court dismissed the out-of-state plaintiffs from the case, citing *BMS* and saying they had shown no link between their claims and the company's New York business activities.

Finally, the U.S. District Court for the Eastern District of Louisiana considered the applicability of *BMS* in a complex multidistrict case involving a foreign company and named plaintiffs from Louisiana, Florida and Virginia who sought to certify a nationwide class. *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2017 WL 5971622 (E.D. La. Nov. 28, 2017).

Unlike the other decisions, most of which were issued at the motion-to-dismiss stage, the ruling in the Chinese drywall case was delivered after the case had proceeded to class certification.

Despite the difference in factual and procedural context, the court reached a familiar conclusion, holding that the Supreme Court's decision in *BMS* is inapplicable to class actions.

CONCLUSION

While it is still early, it is clear that a split has begun to emerge among federal district courts over the critically important issue of whether the *BMS* decision applies to nationwide class-action suits filed against companies in states where they are not subject to general jurisdiction.

Further development of this issue is likely to have a significant impact on forum-shopping efforts by plaintiffs and on the ability of companies to obtain early resolution of nationwide class claims.

It remains to be seen how courts in other jurisdictions will resolve this issue. As with other class-action questions in recent years, the question will likely work its way up through the courts — and perhaps even to the Supreme Court.

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