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PRACTICE FOCUS / CLASS ACTION LITIGATION

Why Bristol Myers Doesn't Apply to Class Actions

Commentary by Tal J. Lifshitz and Rachel Sullivan

Class action defendants are attempting to rewrite longstanding principles of personal jurisdiction, trying to defeat certification of nationwide classes by arguing that a court lacks personal jurisdiction over out-of-state class members' claims where the defendant does not reside in the court's forum state. The court cannot certify a class, the argument goes, unless it can establish personal jurisdiction over the claims of every out-of-state class member.

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Defendants base this argument on a flawed interpretation of the Supreme Court's recent opinion in *Bristol-Myers-Squibb v. Superior Court of California*, 137 S. Ct. 1773 (2017). *Bristol-Myers* was a mass products liability action brought by more than 600 individual plaintiffs in California state court against a pharmaceutical manufacturer, involving only California claims. The defendant challenged the state court's jurisdiction over nonresidents' claims on the ground that neither the conduct challenged, nor those plaintiffs' injuries, had occurred in California. The court held that it lacked jurisdiction over the nonresidents' claims because they lacked any connection to California, and "the conduct giving rise to [their] claims [had] occurred elsewhere."

Justice Sonia Sotomayor noted in her dissent that the court "had not confronted the question whether its opinion … would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there." The court was clear, however, that its decision would not upset its longstanding personal jurisdiction jurisprudence, noting that "settled principles regarding specific jurisdiction controlled the case." And the court did address the opinion's effect on class actions, if only by implication.


Lifshitz

The respondents had argued that if personal jurisdiction did not attach to nonresidents' claims, future federal litigants would be prohibited from aggregating claims resulting in, among other things, a multiplication of lawsuits. Respondents reasoned: District courts rely in such cases on their home states' long-arm statutes—which typically extend to the same due process limit—for their personal jurisdiction … The same multiplication of litigation thus inevitably results; the federal courts will have no more power to hold these cases together than their state court counterparts. That seemingly includes even the most obviously appropriate class actions … under Rule 23."

Seemingly addressing the respondents' conclusions, the Supreme Court assured that its "straightforward application" of settled personal jurisdiction principles "would not result in the parade of horribles that respondents conjure up." Thus, by insisting that its opinion only affirmed well-settled personal jurisdiction jurisprudence, and that the "parade of horribles" imagined by respondents would be avoided, the court at least implicitly held that its opinion would not disturb the long-standing rule that personal jurisdiction lies with the named parties of a suit, not absent class members.

District courts have already recognized *Bristol-Myers*' limitations. In *Chinese-Manufactured Drywall Products Liability Litigation*, for example, the court explained that *Bristol-Myers* "did not change existing law," noting "a significant difference" between mass tort actions, where due process protections might be lacking for defendants haled into court by nonresident plaintiffs, and class actions. Similarly, in *Fitzhenry-Russell v. Dr. Pepper Snapple Group,* the court held that *Bristol-Myers* does not extend to class actions because, unlike in a mass tort action where "each plaintiff was a real party in interest to the complaints, … in a putative class action … one or more plaintiffs seek to represent the rest of the similarly situated plaintiffs," 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017).

Other courts have recognized *Bristol Myers*' limitations, though not ultimately reaching the issue of its application to class actions. And a few have even gone the other way and refused to exercise jurisdiction over the claims of out-of-state named plaintiffs and out-of-state absent class members. But these decisions are devoid of analysis and ultimately fail to persuade.

At bottom, though, the *Bristol-Myers* opinion makes good sense as far as it goes. But it goes

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nowhere near federal class actions. By conducting a rigorous Rule 23 analysis and confirming that named plaintiffs, their counsel, and their claims fairly represent the class, a federal court sufficiently resolves the due process concerns that compelled dismissal in *Bristol-Myers*. The majority of courts to address the application of *Bristol-Myers* in the class action context have appropriately concluded as much. Courts across the country should continue to follow suit.

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