WINSTON & STRAWN LLP

CLIENT ALERT

Honey, I Shrunk the Nationwide Class: District Court Cuts Class Size from 50 States to One

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Corporate defendants received good news last week about a useful tool for cutting nationwide class actions down to size. Building on the Supreme Court's recent decision in *Bristol-Myers Squibb v. Superior Court of California*, a federal court held that out-of-state class members may not piggyback on the specific personal jurisdiction of in-state name plaintiffs. As a result, the court—located in Illinois—refused to include the out-of-staters in the class and instead certified a class solely of Illinois residents. Here is what happened, along with some initial thoughts on what it may mean for class-action defense.

What happened. As Supreme Court watchers know, the Court in recent years has been aggressively tightening the law of personal jurisdiction—both general and specific. Most recently, in *Bristol-Myers*, the Court rejected the California Supreme Court's finding of specific jurisdiction over mass tort claims filed by non residents. Because the defendant drug company engaged in all relevant "activities in either New York or New Jersey," and because the nonresident plaintiffs were not prescribed or injured by the drug in California, California courts lacked specific jurisdiction over the company. "The mere fact that other plaintiffs were [harmed in] California," the Court explained, "does not allow the State to assert specific jurisdiction over the nonresidents' claims."

Bristol-Myers was a mass tort case, however—not a class action. In *Practice Management v. Cirque Du Soleil*, 2018 WL 1255021 (N.D. Ill. Mar. 12, 2018), the district court considered whether to apply *Bristol-Myers* to class actions. Specifically, the question was whether to certify a nationwide class under the Telephone Consumer Protection Act, given that the court lacked general jurisdiction over the defendant; and specific jurisdiction depended entirely on a fax received by the name plaintiff in Illinois. The court acknowledged that, as a mass tort case, *Bristol-Myers* did not directly address the issue but nevertheless found that its reasoning applied.

As the Court explained, *Bristol-Myers* held "that the Fourteenth Amendment's due process clause precludes nonresident plaintiffs injured outside the forum from aggregating their claims with an in-forum resident." And given that "Rule 23's [class action] requirements must be interpreted in keeping with Article III constraints and with the Rules Enabling Act—which instructs that federal procedural rules may not abridge substantive rights— "a defendant's due process interest should be the same in the class context." Thus, the court dismissed the claims of non-Illinois class members, and shrank the class to consist only of Illinois residents.

What it means. *Bristol-Myers* already directly posed massive implications for mass actions; *Practice Management* shows that its reasoning applies equally to class actions. As such, *Practice Management* is a useful tool for corporate defendants facing nationwide class claims based on specific jurisdiction, which is often the case under consumer-protection statutes. If adopted, the court's reasoning will force plaintiffs' counsel either to: (a) find name plaintiffs and file suit in every state; or (b) abandon the 50-state strategy and sue the defendant corporation on its home turf. This is arguably not only true for new cases, but also in pending cases where the court has not yet considered class certification. In all such cases, *Practice Management* will typically leave the corporation in a stronger position to defend itself.
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