

Jurisdiction over Absent Class Members Following *Bristol-Myers*: The District Court Split Continues

August 15, 2018

Key Points

- As evidenced by a recent opinion issued in the Northern District of Illinois, district courts continue to wrestle with the applicability of the U.S. Supreme Court's ruling in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) to personal jurisdiction determinations in class actions.
- The judge in *Haj v. Pfizer Inc.*, No. 17 C 6730 (N.D. Ill. Aug. 3, 2018) denied a motion to strike a complaint's nationwide class allegations—holding that *Bristol-Myers* is limited to the mass action context.
- It remains to be seen how the circuit courts will decide this issue or whether, as a result, further review from the U.S. Supreme Court becomes necessary. Until then, the applicability of *Bristol-Myers* to class actions is sure to be a continued source of division among district courts.

As we have [previously reported](#), since the U.S. Supreme Court issued its ruling last September in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), courts have grappled with the applicability of the decision to jurisdictional questions in the class action context.

In a decision that deepens the divide among courts that has emerged in the wake of *Bristol-Myers*, another federal judge has weighed in. The court in *Haj v. Pfizer Inc.*, No. 17 C 6730 (N.D. Ill. Aug. 3, 2018) denied Pfizer's motion to strike the complaint's nationwide class allegations—holding that neither *Bristol-Myers* nor any of the precedent that came before it requires that specific jurisdiction be established as to absent class members.

Background

In September 2017, plaintiffs Karmel Al Haj and Timothy Woodhams sued Pfizer in the Northern District of Illinois, alleging claims for themselves and on behalf of a putative nationwide class of consumers who purchased Robitussin cough syrup. Specifically, Al Haj and Woodhams complained that Pfizer “deceives consumers by charging more for

Contact

Neal Ross Marder
nmarder@akingump.com
Los Angeles
+1 310.728.3740

Ali R. Rabbani
arabbani@akingump.com
Los Angeles
+1 310.728.3742

Andrew S. Jick
ajick@akingump.com
Los Angeles
+1 310.728.3741

Marshall L. Baker
mbaker@akingump.com
Los Angeles
+1 310.229.1074

Brett M. Manisco
bmanisco@akingump.com
Los Angeles
+1 310.229.1086

‘Maximum Strength’ Robitussin cough syrup than for ‘Regular Strength’ Robitussin even though the former has a lower concentration of active ingredients than the latter.”

Earlier this year, Pfizer moved to dismiss Woodhams’ claims for lack of personal jurisdiction. Pfizer, a Delaware corporation with its principal place of business in New York, argued that no general jurisdiction existed over it in Illinois and that no specific jurisdiction existed over Woodhams’ claims because Woodhams is a resident and citizen of Michigan and alleges injuries stemming from there.

In April 2018, the court dismissed Woodhams from the suit, holding that Pfizer was not “at home” in Illinois and that, under *Bristol-Myers*, Woodhams had failed to show that specific jurisdiction existed over Pfizer as it relates to Woodhams’ claims. In so doing, the court rejected Woodhams’ argument that “*Bristol-Myers* does not apply here because it involved a state court mass tort suit, not a federal putative class action.” *Haj v. Pfizer Inc.*, No. 17 C 6730, 2018 WL 1784126, at *6 (N.D. Ill. Apr. 13, 2018) (explaining “[t]hat distinction makes no difference”). Instead, the court observed, “[n]othing in *Bristol-Myers* suggests that it does not apply to named plaintiffs in a putative class action; rather, the Court reaffirmed a generally applicable principle—that due process requires a ‘connection between the forum and the specific claims at issue.’” *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1781).

Following the court’s April 2018 order, Pfizer moved to strike the complaint’s nationwide class allegations, arguing that, under *Bristol-Myers*, “Pfizer is not subject to specific jurisdiction as to absent class members whose claims lack the requisite nexus to Illinois.”

Opinion

Now emphasizing that “*Bristol-Myers* was a mass action, not a class action,” the court denied Pfizer’s motion to strike.

In the court’s view, *Bristol-Myers* cabined itself to mass actions, where, unlike in class actions, there are no absent class members, and each plaintiff “is a real party in interest to the complaints.” Accordingly, the court held, “*Bristol-Myers* thus does not address, let alone resolve, whether due process requires that the defendant be subject to specific jurisdiction not only as to the named plaintiff’s claims, but also as to the absent class members’ claims.”

In this way, the court parted company with the judges who have concluded that *Bristol-Myers* applies in class actions and requires that specific jurisdiction be established as to absent class members. See, e.g., *Chavez v. Church & Dwight Co.*, No. 17 C 1947, 2018 WL 2238191, at *11 (N.D. Ill. May 16, 2018); *Practice Mgmt. Support Servs., Inc. v. Cirque du Soleil, Inc.*, 301 F. Supp. 3d 840, 860 – 62 (N.D. Ill. 2018); *DeBernardis v. NBTY, Inc.*, No. 17 C 6125 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018).

Finally, the court rejected that pre-*Bristol-Myers* precedent required specific jurisdiction to exist as to each absent class member’s claims, rebuffing Pfizer’s argument that absent class members are “parties” for purposes of assessing personal jurisdiction over defendants.

Looking Ahead

We expect defendants to continue to challenge specific jurisdiction in putative class actions filed in states where general jurisdiction does not exist over them. As they do, more district courts will be faced with determining whether *Bristol-Myers* applies to class action jurisdiction determinations.

While this court ultimately answered that question in the negative, we expect courts to continue to be split on this issue. As these decisions make their way to the circuit courts, a split among circuits could pave the way for the Supreme Court to take up the issue.