

Litigation Alert

January 25, 2018

Key Points

- A judge in the Northern District of Illinois held that the U.S. Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) is applicable to personal jurisdiction determinations, not only in mass tort actions, but also in class actions. This adds to the emerging split among federal judges as to the applicability of *Bristol-Myers* to class actions.
- The Illinois opinion recognized that forum-shopping concerns are just as prevalent in nationwide class actions as in mass torts.
- The judge also predicted that it is "more likely than not" that *Bristol-Myers* will be used to "outlaw nationwide class actions" filed in jurisdictions where there is no general jurisdiction over defendants.



Judge Dismisses Nationwide Class Claims for Lack of Jurisdiction Following *Bristol-Myers*

Last Thursday, a federal judge in Chicago dismissed putative nationwide class action claims in a consumer fraud case, relying on the Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). The judge in *DeBernardis v. NBTY, Inc.*, No. 1:17-cv-06125 (N.D. Ill. Jan. 18, 2018) found that the court lacked jurisdiction over the claims of consumer fraud concerning a nationwide class. In so holding, the court adds to the split among district court judges on the applicability of *Bristol-Myers* to class action jurisdiction determinations.

Background

In August 2017, Illinois resident Joshua DeBernardis brought suit in the Northern District of Illinois against NBTY, Inc., a dietary supplement distributor headquartered in New York, and its affiliated company United States Nutrition, Inc., on behalf of himself and similarly situated individuals alleging consumer fraud and regarding the labeling of Body Fortress 100% Pure Glutamine Powder.

In his complaint, DeBernardis claimed that the company misrepresented the product's health benefits in violation of state laws and regulations. The plaintiff claimed that the labeling of Body Fortress 100% Pure Glutamine Powder touted the product's health benefits, but that scientific evidence showed that the supplement had no effect on health. DeBernardis brought suit individually and on behalf of all individuals who purchased the product nationwide.

Opinion

In ruling on the defendant's motion to dismiss the complaint, the court held that *Bristol-Myers* applied to the putative nationwide class action, resulting in dismissal for lack of jurisdiction.

In the June 19, 2017, *Bristol-Myers* decision, the Supreme Court established limitations on personal jurisdiction over nonresident plaintiffs in a mass action. Hundreds of plaintiffs—only some of whom were California residents—filed suit against Bristol-Myers in California state court, alleging claims based on the company's drug Plavix. Bristol-Myers, however, was incorporated in Delaware and headquartered in New York. The court held that California courts lacked specific jurisdiction over the nonresident plaintiffs' claims unrelated to Bristol-Myers' contacts with California.

Relying on *Bristol-Myers*, the district court judge in *DeBernardis* noted that "the primary concern" in deciding personal jurisdiction "is the burden on the defendant." The court found that, while the applicability of *Bristol-Myers* to the case was "a close question," the Supreme Court's focus on federalism made it more likely than not that *Bristol-Myers* applies to nationwide class actions where there is no general jurisdiction over the defendant.

Although DeBernardis argued that class actions are distinguishable from mass tort cases, such as *Bristol-Myers*, the judge ruled that the decision was equally applicable to class actions. While noting distinctions between mass torts and class actions, the judge pointed out that forum-shopping—a major consideration in *Bristol-Myers*—was prevalent in both class actions and mass torts.

Following *Bristol-Myers*, the court found that there was no general or specific jurisdiction over the claims of out-of-state plaintiffs against the New York company and dismissed all counts seeking to recover on behalf of classes consisting of out-of-state plaintiffs.

Takeaways

Since the Supreme Court issued the *Bristol-Myers* decision last year, district courts have split on whether the case affects personal jurisdiction determinations in class actions. With this decision, the Northern District of Illinois joins courts (such as the Eastern and Northern Districts of New York) that have found *Bristol-Myers* relevant to the determination while expressly disagreeing with the courts (such as the Northern District of California and the Eastern District of Louisiana) that have found that, as a mass tort case, *Bristol-Myers* does not apply to class actions.

This decision is also noteworthy for its finding that forum-shopping is "just as present" in multistate class actions as in mass torts. The judge made a strong prediction on the future of class actions, stating, "it is more likely than not based on the Supreme Court's comments about federalism that the courts will apply *Bristol-Myers Squibb* to outlaw nationwide class actions . . . where there is no general jurisdiction over the Defendants." While it is still early, further developments on these issues are likely to have significant impacts on forum-shopping efforts by plaintiffs and the ability of companies to obtain early resolution of nationwide class claims.

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