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TCPA Class Action Update: Whole Foods Seeks Guidance from the US Court of Appeals for the DC Circuit: Does Bristol-Myers Apply to Class Actions?

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In 2017, the United States Supreme Court decided the *Bristol-Myers Squibb* case, which limited state court jurisdiction. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1777 (2017). In *Bristol-Myers*, 600 plaintiffs filed a civil action in California state court against Bristol-Myers, asserting California state-law claims. Of the 600 plaintiffs, 86 were California residents. The remaining 592 were residents from 33 other states. *Id.* at 1778.

The California Supreme Court originally held that the California courts have specific jurisdiction since Bristol-Myers engages in extensive activities in California. *Id.* The United States Supreme Court disagreed, granting certiorari to decide whether the California courts' exercise of jurisdiction violates the Due Process Clause of the Fourteenth Amendment. *Id.* at 1779. Reiterating that "a defendant's general connections with the forum are not enough" to find specific jurisdiction, the Supreme Court found the nonresidents' claims and the connection to California were too weak to support a claim of specific jurisdiction. *Id.* at 1781-82. A court must have personal jurisdiction over every plaintiff's claim. *Id.* at 1781.

The *Bristol-Myers* case is being used by Whole Foods in its defense against nine store managers' class action against it. On January 28, 2019, Whole Foods appealed from an interlocutory order on Whole Foods' motion to dismiss for lack of personal jurisdiction in the United States District Court for the District of Columbia. See Brief for Petitioner, *Whole Foods Market Group, Inc. v. Michael Molock, et al.*, (No. 18-7162). This case involves the "alleged underpaying of Gainsharing 'bonuses' to Whole Foods' current and former Team Members across the country." *Id.* at 1. Gainsharing is Whole Foods' incentive-based bonus program. *Id.* In December 2016, nine Whole Foods store managers were terminated when Whole Foods allegedly determined they manipulated numbers to meet requirements of the bonus program. *Id.* at 2. These nine store managers filed a lawsuit against Whole Foods for their termination in January 2017 and assert claims on behalf of themselves and a putative nationwide class of current and former Whole Foods store managers. *Id.* at 3-4.

The issue presented to the DC Circuit Court of Appeals by Whole Foods is, "[w]hen a class action is brought in federal court under diversity jurisdiction against a nonresident corporation, does the court have jurisdiction to determine claims brought on behalf of unnamed putative class members who could never individually satisfy the requirements for personal jurisdiction?" *Id.* at xiii.

So the real question here is, does the *Bristol-Meyers* mass-tort ruling also apply to class actions? Whole Foods argues that it does: "*Bristol-Myers* has obvious parallels to a putative nationwide class action in federal court, and its rationale applies with equal force to class actions." *Id.* at 14. No Federal Circuit court has addressed this question yet. This is an important question, and if *Bristol-Myers* is found to apply to class action claims, the landscape of class actions may change.



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