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**Alert | Labor & Employment**

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# First Circuit Court of Appeals Rejects *Bristol-Myers Squibb's* Applicability to FLSA Collective Actions; Creates Circuit Split

In 2017, the Supreme Court decided *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773 (2017), addressing due process concerns related to personal jurisdiction where many (but not all) plaintiffs were residents of states outside the jurisdiction where the lawsuit was filed. In short, the Court held "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction" and that no specific jurisdiction existed over Bristol-Myers as to the out-of-state plaintiffs' claims.

In 2021, two circuit courts of appeals ruled on the issue of whether the *BMS* holding applied in the context of Fair Labor Standards Act (FLSA) collective actions, where proposed collectives include plaintiffs who reside outside the state where the action is pending and the jurisdiction is not one where the corporate defendant is subject to general jurisdiction. First, in *Canaday v. The Anthem Companies, Inc.*, 9 F.4th 392 (6th Cir. 2021), the Sixth Circuit held courts may not exercise specific jurisdiction over FLSA claims "unrelated to the defendant's conduct in the forum state." The next day, the Eighth Circuit reached the same conclusion. In *Vallone v. CJS Solutions Group, LLC*, 9 F.4th 861 (8th Cir. 2021), the Eighth Circuit affirmed the district court's exclusion of FLSA claims with no connection to the forum state because "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy." These decisions were the subject of a September 2021 GT Alert.

On Jan. 13, 2022, the First Circuit Court of Appeals reached the opposite conclusion. In *Waters v. Day & Zimmerman NPS, Inc.*, No. 20-1997, the First Circuit reviewed an interlocutory appeal taken from the employer defendant's motion to dismiss those plaintiffs who "opted in" to the proposed collective action

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but – unlike the named plaintiff – worked for the defendant outside of Massachusetts (where the lawsuit was filed). The district court denied the defendant's motion, declining to extent *BMS* to FLSA cases.

In affirming, the First Circuit reviewed the text of Federal Rule of Civil Procedure 4 and the legislative history of the FLSA, ultimately concluding that "[i]nterpreting the FLSA to bar collective actions by out-of-state employees would frustrate a collective action's two key purposes: '(1) enforcement (by preventing violations and letting employees pool resources when seeking relief); and (2) efficiency (by resolving common issues in a single action.'" Citing the dissent in *Canaday*, and seemingly ignoring the prospect of suits in courts of general jurisdiction, the court opined that "[h]olding that a district court lacks jurisdiction over the non-resident opt-in claims would 'force[] those plaintiffs to file separate lawsuits in separate jurisdictions against the same employer based on the same or similar alleged violations of the FLSA.'" It characterized *Canaday* and *Vallone* as "rely[ing] on an erroneous reading of Rule 4" and dismissed the authorities those opinions relied upon as inapposite.

The *Waters* decision has seemingly muddied the waters on *BMS*'s applicability to FLSA collective actions. Whether it will make it more difficult for employers to limit the scope of proposed nationwide FLSA collective actions (at least outside of the Sixth and Eighth Circuits) remains to be seen. But the circuit split certainly increases the likelihood that the Supreme Court will revisit *BMS* to resolve the issue. Employers with nationwide footprints should stay tuned.

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