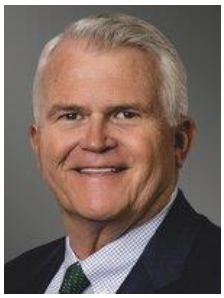
What 6th, 8th Circ. Rulings Mean For FLSA Collective Actions

By **Charles Thompson and Ryan O'Connor** (September 28, 2021)



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In 2017, the U.S. Supreme Court decided Bristol-Myers Squibb Co. v. Superior Court of California,[1] addressing due process concerns related to personal jurisdiction in the context of an action in which the vast majority of plaintiffs resided in states outside the jurisdiction where the lawsuit was filed.

The Supreme Court, quoting prior case law, held in Bristol-Myers that "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction," and thus, where plaintiffs fail to show "a connection between the forum and the[ir] specific claims," no specific jurisdiction exists.

Since Bristol-Myers, employers have argued that Fair Labor Standards Act collective actions require a similar analysis and that Bristol-Myers should preclude out-of-state plaintiffs from participating in the proposed collective because the court lacks specific jurisdiction over their claims.

Nearly 50 district courts have weighed in and have split almost evenly on the issue.

Last month, however, two circuit courts ruled on the issue, and both decided in favor of defendant employers.

The Decisions: Canaday and Vallone

On Aug. 17, the U.S. Court of Appeals for the Sixth Circuit became the first court of appeals to decide the issue.

The court held unequivocally in Canaday v. The Anthem Companies Inc. that "the principles animating Bristol-Myers's application to mass actions under California law apply with equal force to FLSA collective actions under federal law," and therefore, courts "may not exercise specific personal jurisdiction over [FLSA] claims unrelated to the defendant's conduct in the forum State."

Canaday involved a proposed FLSA collective action of so-called review nurses filed in Tennessee, but including similarly situated employees in various other states across the country.

The Sixth Circuit affirmed the district court's decision excluding all out-of-state employees from the proposed collective.

The day after the Sixth Circuit issued Canaday, the U.S. Court of Appeals for the Eighth Circuit reached the same conclusion in Vallone v. CJS Solutions Group LLC.

The plaintiffs in Vallone were medical record-keeping consultants alleging unpaid wages for travel time.

The Vallone court, quoting Bristol-Myers, affirmed the district court's refusal to adjudicate

the FLSA claims of proposed collective members with no connection to the forum state, stating:

> "In order for a court to exercise specific jurisdiction over a claim," there must be an "affiliation between the forum and the underlying controversy."

Takeaways

In both Canaday and Vallone, the courts recognized that because the FLSA does not authorize nationwide service of process, Federal Rule of Civil Procedure 4(k) constrains effective service within the limits prescribed by a forum state's long-arm statute and the due process clause of the U.S. Constitution's 14th Amendment.

Under the due process clause, courts may assert general jurisdiction over a defendant in its home state — for a corporation, generally where it is incorporated and headquartered — or specific jurisdiction over a defendant if a claim arises out of or relates to the defendant's conduct in the forum.

Because neither Canaday nor Vallone chose to file their lawsuits in their respective employers' home states, only specific jurisdiction could potentially apply to their claims.

The Sixth and Eighth Circuits both rejected the plaintiffs' contentions that the FLSA's collective action mechanism obviated the need for individual out-of-state plaintiffs to show a connection between the forum and their specific claims, holding that Bristol-Myers requires that all collective action opt-in plaintiffs individually establish that their claims are connected to the defendant's forum conduct.

Thus, under the interpretation endorsed by the courts in Canaday and Vallone, and expressed by the Sixth Circuit:

> Where ... nonresident plaintiffs opt in to a putative collective action under the FLSA, a court may not exercise specific personal jurisdiction over claims unrelated to the defendant's conduct in the forum State.

The Canaday and Vallone decisions are significant and provide powerful ammunition for employers defending against FLSA collective actions where (1) the action is pending outside the employer's home forum and (2) the proposed collective includes employees from multiple states.

Both opinions explicitly endorse the view, previously adopted by numerous district courts, that Bristol-Myers limits FLSA collectives to resident, or in-state, plaintiffs where the named plaintiffs file the lawsuit in a forum where the employer defendant is not subject to general jurisdiction.

Accordingly, any employer facing a putative collective action in a forum outside of one where it is subject to general jurisdiction should now consider challenging certification of the proposed FLSA collective — or even moving to dismiss the claims of putative out-of-state plaintiffs — based on a lack of personal jurisdiction.

Practitioners representing employers facing or expecting to face nationwide FLSA collective actions may now rely upon Canaday and Vallone to oppose conditional certification outside of the forum state, or seek partial dismissal of the collective claims based on personal jurisdiction.

Even prior to engaging in motion practice, defense counsel may be able to leverage Canaday and Vallone to pressure early settlement of nationwide collective actions or limit their scope.

In short, these decisions represent a significant shift in favor of employers and a rejection of plaintiffs' — and certain district courts' — more limited interpretation of Bristol-Myers in the FLSA collective action space.

Conclusion

The Vallone and Canaday decisions expressly extended Bristol-Myers' holding to cases involving FLSA collectives.

For employers with presences in multiple states, these opinions provide a potential — and now a quite persuasive — means to limit the size and scope of FLSA collective actions.

The contrary line of authority embraced by some district courts remains, however, and a case pending before the U.S. Court of Appeals for the First Circuit, Waters v. Day & Zimmerman NPS Inc., will either further strengthen employers' position or provide support for FLSA plaintiffs and create a circuit split.

Should the First Circuit disagree with the Sixth and Eighth Circuits, the applicability of Bristol-Myers to FLSA collective actions may well reach the U.S. Supreme Court.

Unless and until the Supreme Court resolves this issue, however, employers and their counsel preparing defense strategies for proposed nationwide FLSA collective action claims must keep Vallone and Canaday in mind.

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[1] Bristol-Myers Squibb Co. v. Superior Court of California, 137 S.Ct. 1773 (2017).