Legal Update Article

Seventh Circuit Stands Firm on *Bristol-Myers* Application: Employee Forum Shopping on Collective Actions Gets Harder

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Takeaways

- The Seventh Circuit will not rehear the case that led to its 2024 decision that the U.S. Supreme Court's *Bristol-Myers* decision and its jurisdictional principles apply to FLSA collective actions.
- A solid majority of circuits to address the issue have held that *Bristol-Myers* applies in the FLSA context.
- As a result, employers will be less vulnerable to nationwide collective actions in a jurisdiction where they are not headquartered or do not have their principal place of business.

Related links

- Another Circuit Rules *Bristol-Myers* Applies to FLSA Collective Actions, Bars Out-of-State Opt-Ins
- *Bristol-Myers* Decision Applies to Plaintiffs in FLSA Collective Actions, Third Circuit Holds
- Appeals Court Creates Circuit Split on Whether *Bristol-Myers* Applies to Collective Actions
- It's been a busy month for *Bristol-Myers*

Article

In its 2024 opinion in *Vanegas v. Signet Builders, Inc.,* the U.S. Court of Appeals for the Seventh Circuit joined a growing number of federal circuits to hold that would-be plaintiffs from out of state cannot join a collective action brought under the Fair Labor Standards Act (FLSA) unless the court has general jurisdiction over the employer. *Vanegas v. Signet Builders, Inc.,* 2024 U.S. App. LEXIS 20780 (7th Cir. Aug. 16, 2024). With the decision, Illinois, Indiana, and Wisconsin were added to the list of jurisdictions where employers may not be subjected to nationwide collective actions of federal wage and hour, equal pay, or age discrimination claims unless the suit is brought in the state in which they are headquartered or incorporated.

The good news for employers was tentative, though. A month after the *Vanegas* decision was issued, the plaintiff filed a petition for rehearing by the three-member Seventh Circuit panel or, alternatively, *en banc* rehearing by the full circuit court. On Jan. 13, 2025, however, the Seventh Circuit denied the plaintiff's petition. The Seventh Circuit held firm, leaving the original August 2024 decision to stand. *Vanegas v. Signet Builders, Inc.,* 2025 U.S. App. LEXIS 700.

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Bristol-Myers

At issue in *Vanegas* at the Seventh Circuit was whether the U.S. Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California,* 582 U.S. 255 (2017), applies to collective actions. In *Bristol-Myers,* a mass tort case, the Supreme Court held that a California federal court did not have personal jurisdiction over claims against a non-resident company brought by out-of-state plaintiffs. Personal jurisdiction requires that the claims "arise out of or relate to" the defendant's contacts with the forum state, and that jurisdictional requirement applies to each individual claim brought by each plaintiff, the Supreme Court explained. The out-of-state plaintiffs could not meet this requirement, so the California federal court could not hear their claims (but could hear the claims brought by California residents).

Bristol-Myers sharply limited nationwide multi-plaintiff suits. But the Court left unanswered whether the decision applies to class actions brought under Rule 23 or to collective actions under the FLSA.

Vanegas Case

Vanegas was a putative wage-hour collective action against a construction company that was incorporated and headquartered in Texas but maintained operations nationwide. The case was filed in Wisconsin, where the named plaintiff worked, so the federal court had jurisdiction over the named plaintiff's claims. When employees who worked for the company outside Wisconsin sought to join the collective, the employer sought to limit notice of the lawsuit to individuals who had worked in Wisconsin and bar the claims from out-of-state plaintiffs pursuant to *Bristol-Myers.* The district court ordered broad notice, however, and explained it would resolve the jurisdictional issues later.

On an interlocutory appeal, a three-member Seventh Circuit panel held that *Bristol-Myers* applies. Because the Wisconsin district court did not have jurisdiction over the out-of-state employees' individual claims against the company, those employees could not opt in to the action. With the appellate court's decision to deny rehearing, the collective action must be limited to employees within Wisconsin.

A Clear Majority

The Seventh Circuit joins three other federal circuits on this issue, resulting in a 4-1 circuit split that favors employers. The Third, Sixth, and Eighth Circuits have held that *Bristol-Myers* applies to collective actions. Only the First Circuit has held that *Bristol-Myers* does not apply.

The Ninth Circuit will consider the issue next. It is poised to hear oral argument on Feb. 7 in *Harrington v. Cracker Barrel,* a proposed collective action brought by employees alleging that the restaurant chain violated the FLSA's tip credit provisions. In 2023, the federal court in Arizona issued notice of the putative collective action to Cracker Barrel employees outside the state, observing that the majority of district courts within the circuit have declined to apply *Bristol-Myers* to FLSA collection actions. That holding is before the Ninth Circuit on interlocutory appeal.

Takeaways

The clear trend among the federal circuit courts is to apply the Supreme Court's *Bristol-Myers* decision and its jurisdictional principles to FLSA collective actions. This trend is

likely to continue. That means it is much harder for employees to engage in forum shopping so that they can bring massive nationwide collective actions in hand-picked favorable jurisdictions. An employer still faces the prospect of defending a nationwide FLSA collective action in the state in which it has its principal place of business, is incorporated, or is subject to general jurisdiction. Moreover, plaintiffs can always bring a collective action in their home state limited to employees who live in that state, so employers may be subjected to duplicative collective actions in different jurisdictions.

Finally, courts of appeals have been more reluctant to apply *Bristol-Myers* to Rule 23 class actions, however. Several federal appeals courts (including the Seventh Circuit) have ruled that *Bristol-Myers* does not apply to Rule 23 class action suits. If a consensus emerges that *Bristol-Myers* applies to collective but not class actions, it may alter plaintiffs' calculation of where, and under what statute, to sue. This is one more element of complexity in the constantly evolving world of class-collective litigation.

Contact a Jackson Lewis attorney if you have questions about the Vanegas decision or the application of *Bristol-Myers* to class and collective actions.