

Did *Bristol-Myers Squibb* Kill the Nationwide Class Action?

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ABSTRACT. Over the last two years, federal courts have confronted a question with profound implications for the future of class actions: When do courts in one state have jurisdiction over a class-action defendant with respect to the claims of unnamed class members in other states? Many commenters have argued that the Supreme Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court* made it unconstitutional for courts to proceed in multistate and nationwide class actions in all but a very limited set of circumstances. Some commenters have also suggested that courts have already adopted that conclusion by a wide margin. But up to now, no comprehensive survey has shed light on this major question facing class litigation.

This Essay presents the first such survey, examining every federal district court opinion in the first two years after *Bristol-Myers Squibb* that addresses the question of personal jurisdiction over unnamed class members. It reveals that, contrary to those commenters, a significant supermajority of cases—fifty of the sixty-four rulings on the issue from June 2017 through September 2019, and four out of every five judges—have rejected the argument that *Bristol-Myers Squibb* constrains courts' jurisdiction over defendants with respect to unnamed class members. The survey also demonstrates that the question of *Bristol-Myers Squibb's* application is more complicated than many realize, potentially amounting to at least four distinct questions where some courts and commenters have treated it as only one. These findings thus suggest that the future of personal jurisdiction in class actions is more complicated, and possibly more favorable for class actions, than many have thought.

INTRODUCTION

When the Supreme Court handed down its decision in *Bristol-Myers Squibb Co. v. Superior Court*¹ (*BMS*), commenters immediately speculated that it might

1. 137 S. Ct. 1773 (2017).

spell “the end of an era” for class actions.² *BMS* itself was a mass-tort case, in which individual plaintiffs are treated as distinct, and not a class action, in which a small set of named plaintiffs represents a broad class of people whose claims rise or fall together. But many saw *BMS*’s holding – that plaintiffs from states around the country could not join together in California to sue the pharmaceutical company Bristol-Myers Squibb – as plausibly extending to multistate and nationwide class actions.³ The week after the decision came out, one Illinois law professor told the *Chicago Tribune* that “the days of a nationwide class action being filed against a California company in Madison County . . . are over.”⁴

Such an outcome would, of course, be of immense significance for U.S. civil law enforcement. Multistate and nationwide class actions have been a major structural feature of the legal system, playing a substantial role in the enforcement of laws governing consumer protection, civil rights, antitrust, securities regulation, and more.⁵ Where a company or a government engages in widespread wrongdoing, class actions provide one of the few mechanisms for compensation and deterrence that operates on a similar scale.⁶ But in recent years, class actions have been significantly curbed along a variety of dimensions, most notably through the Class Action Fairness Act of 2005 and the Supreme Court’s enforcement of class waivers in arbitration clauses in *AT&T Mobility v. Concepcion*.⁷ Extending *BMS* to class actions would be a new, substantial limit on class litigation around the country, as in most states, defendants would be subject only to much narrower suits than are currently available.⁸

2. Richard Levick, *The Game Changes: Is Bristol-Myers Squibb The End Of An Era?*, FORBES (July 11, 2017, 2:21 PM), <https://www.forbes.com/sites/richardlevick/2017/07/11/the-game-changes-is-bristol-myers-squibb-the-end-of-an-era> [https://perma.cc/PY44-8KWF].

3. *Id.*

4. Robert Channick & Becky Yerak, *Supreme Court Ruling Could Make it Harder to File Class-Action Lawsuits Against Companies*, CHI. TRIB. (June 22, 2017, 11:28 AM), <https://www.chicagotribune.com/business/ct-supreme-court-ruling-mass-actions-illinois-0625-biz-20170622-story.html> [https://perma.cc/EW8X-FQB6].

5. See, e.g., J. Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law*, 53 WM. & MARY L. REV. 1137, 1163 (2012).

6. See, e.g., David Marcus, *The Public Interest Class Action*, 104 GEO. L.J. 777, 782 (2016) (noting that Rule 23 allows for liability that “mirrors the scope of [a defendant’s] misconduct”).

7. See Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729, 745-823 (2013) (surveying how the Class Action Fairness Act and changes in federal class-action case law have led to a general decline in plaintiffs’ ability to bring class actions); Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of AT&T Mobility v. Concepcion*, 79 U. CHI. L. REV. 623, 640-52 (2012) (discussing the effects of class waivers in arbitration clauses on class actions); see also *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

8. See *infra* Part I.

Some commenters have treated the extension of *BMS* to class actions as nearly inevitable – and possibly already largely accomplished. In March 2018, after a number of district courts had weighed in on the application of *BMS* to class actions, the Washington Legal Foundation declared that “[j]udicial trends to date warrant cautious optimism” that *BMS* will significantly curtail class actions.⁹ A “practice points” commentary published earlier this year by the American Bar Association’s Section of Litigation stated that federal courts “generally align” with decisions applying *BMS* to render multistate class actions unconstitutional.¹⁰ And one overview of the case law by an industry blog “found the caselaw to stand at 12-2 in favor of applying [*BMS*] to curtail multi-jurisdictional class actions.”¹¹ To hear these accounts, *BMS* has already “sound[ed] the death-knell for nationwide class actions . . . unless brought where a corporate defendant is ‘at home.’”¹²

This Essay demonstrates that the “death” of class actions after *BMS* has been greatly exaggerated. It presents the first comprehensive survey of federal district court cases that have considered *BMS*’s application to out-of-state unnamed class members in class actions. It finds that a substantial majority of district courts have not read *BMS* to prohibit those class members’ participation and have instead permitted class actions to proceed largely as they would have before *BMS* was decided.

This is an important time for these issues. It has been two years since the Supreme Court handed down its decision in *BMS*, and many federal district courts have weighed in on this major question. But federal appeals courts have yet to address the issue.¹³ We are therefore at a unique moment: more than fifty federal judges have addressed a novel issue of national significance, but there is

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9. James M. Beck, *Due Process Limits on Nationwide Class Actions Post-BMS v. Superior Court* (Washington Legal Foundation: Critical Legal Issues Working Paper Series, No. 207, 2018), <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/03-18BeckWP.pdf> [<https://perma.cc/97ZX-T449>].
 10. Joan R. Camagong, *Applying Bristol-Myers Squibb to Class Actions*, AM. B. ASS’N (Feb. 5, 2019), <https://www.americanbar.org/groups/litigation/committees/products-liability/practice/2019/applying-bristol-myers-squibb-to-class-actions> [<https://perma.cc/85DR-SB37>].
 11. James M. Beck (“Bexis”), *Bristol Myers & Multi-State Class Actions – A Reply*, DRUG & DEVICE L. (July 30, 2018), <https://www.druganddevicelawblog.com/2018/07/bristol-myers-multi-state-class-actions-a-reply.html> [<https://perma.cc/GSM4-BSKQ>].
 12. Beck, *supra* note 9, at 4.
 13. As of publication, several cases are pending in federal courts of appeals that raise issues of *BMS*’s application to class actions, but no federal appellate court has reached a decision on the matter. See *Mussat v. IQVIA, Inc.*, No. 19-1204 (7th Cir. filed Feb. 1, 2019); *Molock v. Whole Foods Mkt., Inc.*, No. 18-7162 (D.C. Cir. filed Oct. 31, 2018); *Tredinnick v. Jackson Nat’l Life Ins.*, No. 18-40605 (5th Cir. filed June 27, 2018).

still essentially no binding case law on the matter. There has also been little comprehensive analysis of the reasoning given by the judges who have discussed the issue so far.¹⁴

This Essay makes two contributions—one quantitative and one qualitative. First, the Essay provides a complete snapshot of how *BMS* has played out in federal district courts over the last two years. It finds that, contrary to the assertions of many commenters, a large supermajority of courts to consider the issue have held that the exercise of personal jurisdiction in nationwide class actions continues to be permissible in much the same way as it was before *BMS*. Of the sixty-four rulings to reach the question of *BMS*'s application to out-of-state unnamed class members, fifty have held that the exercise of jurisdiction is permissible—a nearly four-to-one ratio in favor of exercising jurisdiction.

This Essay's second, qualitative contribution is to demonstrate that the question of *BMS*'s application to class actions is significantly more complex than many courts have acknowledged. The various decisions issued to date reveal that the question of how *BMS* applies in federal class actions could be treated as at least four distinct questions: (1) How does *BMS* apply to named plaintiffs serving as class representatives?; (2) How does it apply to unnamed class members?; (3) How does it apply in diversity cases?; and (4) How does it apply in federal question cases? Federal courts have at times confused, elided, or oversimplified these questions, which has resulted in miscitations and vague or potentially flawed holdings.

This Essay proceeds in three parts. Part I provides a brief overview of the Supreme Court's decision in *BMS* and the issues it raises. Part II then presents a quantitative summary of the survey results. Finally, Part III discusses the *BMS* case law qualitatively, illustrating the distinct questions *BMS* raises and the ways some courts have gone astray.

I. BRISTOL-MYERS SQUIBB AND NATIONWIDE CLASS ACTIONS

Personal-jurisdiction doctrine limits the territorial scope of courts' power.¹⁵ The doctrine provides that a defendant who is haled into court may be subject to the court's power in two different ways. Where the defendant is "at home," it is subject to "general jurisdiction," and any suit may be brought against it

14. The most detailed discussion of *BMS*'s application to class actions to date can be found in 2 WILLIAM B. RUBENSTEIN, *NEWBERG ON CLASS ACTIONS* § 6:26 (5th ed. June 2019 update), which categorizes key district court decisions to date but does not purport to catalogue the case law as a whole.

15. See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-74 (1985).

regardless of where the underlying events giving rise to the suit occurred.¹⁶ In any other location, a defendant is only subject to “specific jurisdiction.”¹⁷ That is, a defendant may only be sued in the location if the suit “arises out of or relates to” some contact the defendant has had with that location.¹⁸

Over the last decade, the Supreme Court has dramatically narrowed the scope of power afforded under personal-jurisdiction doctrine. In *Goodyear Dunlop Tires v. Brown* and *Daimler AG v. Bauman*, the Court modified the standard for general jurisdiction, effectively limiting general jurisdiction over a corporate defendant to two locations: the forum state where it is incorporated, and the state where it has its principal place of business.¹⁹ As a result, in the years since *Bauman*, many cases that could previously have been brought under a theory of general jurisdiction must now rely on a specific-jurisdiction rationale.

BMS was one such case.²⁰ In *BMS*, a group of more than six hundred people living in thirty-four states brought a mass action against the pharmaceutical company Bristol-Myers Squibb in California state court.²¹ They alleged that they had suffered severe side effects from taking the company’s blood-thinner drug Plavix, and brought claims for products liability, negligent misrepresentation, misleading advertising, and other alleged violations of California law.²² But significantly, the out-of-state plaintiffs did not allege that their injuries had taken place in California, that they had obtained Plavix in California, that the Plavix

16. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

17. *Id.*

18. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)) (internal brackets and quotation marks omitted).

19. See 571 U.S. 117 (2014); 564 U.S. 915 (2011); see also Judy M. Cornett & Michael H. Hoffheimer, *Good-Bye Significant Contacts: General Personal Jurisdiction After Daimler AG v. Bauman*, 76 OHIO ST. L.J. 101, 104-05 (2015) (emphasizing the Court’s departure from settled general jurisdiction doctrine, and the game-changing nature of *Bauman* in particular); Charles W. “Rocky” Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 UC DAVIS L. REV. 207, 214 (2014) (noting that *Bauman* “sharply curtailed the use of general jurisdiction,” departing from the familiar standard based on a defendant’s “continuous and systematic” contacts).

20. See, e.g., Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants’ Terms: Bristol-Myers Squibb and the Federalization of Mass Tort Litigation*, 59 B.C. L. REV. 1251, 1275 (2018) (“Prior to 2011 . . . Bristol-Myers would almost certainly have been subject to general jurisdiction in California.”).

21. 137 S. Ct. 1773, 1777-78 (2017).

22. *Id.*

they took had been manufactured in California, or any other obvious chain of events connecting their individual claims to the state.²³

Bristol-Myers Squibb contested the court's jurisdiction over the out-of-state plaintiffs' claims on that basis.²⁴ The California state courts upheld the exercise of personal jurisdiction, largely on the rationale that the company's marketing of Plavix in California meant that the nonresident plaintiffs' claims were "sufficiently related" to the company's in-state activity to justify specific jurisdiction.²⁵ But the U.S. Supreme Court reversed, holding that the California courts lacked personal jurisdiction over Bristol-Myers Squibb as to the claims of the nonresident plaintiffs.²⁶

The decision in *BMS* is not a model of clarity. As in *Bauman*, the Court purported to apply "settled principles," but did so in a way that ignored longstanding practice.²⁷ The Court emphasized that the plaintiffs "are not California residents and do not claim to have suffered harm in that State," and that "all the conduct giving rise to the nonresidents' claims occurred elsewhere."²⁸ It stated that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction," and concluded that it was inappropriate for nonresident plaintiffs to bring their claims in California based on "[t]he mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California."²⁹ It thus held that "California courts cannot claim specific jurisdiction," a conclusion that it said was based on a "straightforward application . . . of settled principles of personal jurisdiction."³⁰

BMS was a mass action, in which hundreds of plaintiffs joined together in court but maintained their identity as individual parties. After *BMS* was handed down, though, it was not long before commenters began discussing its potential application to class actions.³¹ Some asked whether *BMS* would spell "the end of

23. *Id.*

24. See *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 878 (Cal. 2016).

25. *Id.* at 887-91.

26. *BMS*, 137 S. Ct. at 1781.

27. *Id.*; see also Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499, 524-40 (2018) (discussing several "mysteries" left unanswered by the *BMS* opinion and pointing to potential inconsistencies between the Court's opinion and longstanding practice).

28. *BMS*, 137 S. Ct. at 1782.

29. *Id.* at 1781 (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

30. *Id.* at 1783.

31. See *supra* notes 9-14. As for whether the Court itself considered the application of *BMS* in the class context, the majority opinion is silent. The only mention of the issue is in a footnote in Justice Sotomayor's dissenting opinion, in which she notes that "[t]he Court today does not

an era” for nationwide class actions, speculating that future class actions might only be brought in defendants’ home states.³² Because *BMS* was a mass action, in which all plaintiffs appear as named individuals with distinct claims, there was also doubt about whether the unnamed members of a class action would be subject to the same strictures.³³ Further, the Court in *BMS* explicitly reserved the question of how its analysis would apply in federal courts, which are limited by the Due Process Clause of the Fifth Amendment rather than the Fourteenth Amendment.³⁴ Could *BMS* have a certain application to class actions in state courts and a different application in federal courts? Because of the significance of these questions, the last two years have seen a regular stream of reports, analyses, and prognostications, with new decisions in the lower courts frequently reviving the debate.³⁵

To date, however, efforts to analyze the general trend of lower-court decisions have been piecemeal and inconsistent. District courts analyzing the general lay of the land range from concluding that “most of” the cases permit the exercise of jurisdiction with respect to out-of-state unnamed class members, to seeing a “near even split” on the issue,³⁶ to reporting a “litany” of decisions against exercising jurisdiction.³⁷ Outside commentary, meanwhile, presents even more of a

confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there.” *BMS*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting).

32. Levick, *supra* note 2.

33. *Id.*

34. *BMS*, 137 S. Ct. at 1784.

35. See, e.g., Anne-Marie Dao & Joshua Briones, *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?*, NAT’L L. REV. (Mar. 22, 2019), <https://www.natlawreview.com/article/tcpa-class-action-update-whole-foods-seeks-guidance-us-court-appeals-dc-circuit-does> [https://perma.cc/9WPF-9K4S]; Michael H. Reed, ‘Bristol Myers’ and Product Liability Class Actions, One Year Later, N.J. L.J. (Dec. 5, 2018, 10:00 AM), <https://www.law.com/njlawjournal/2018/12/05/bristol-myers-and-product-liability-class-actions-one-year-later> [https://perma.cc/32XD-U2EF]; Christopher Murphy & Elizabeth Rowe, *Federal Courts Diverge on Bristol-Myers and Class Actions*, LAW360 (Sept. 26, 2018, 1:36 PM ET), <https://www.law360.com/articles/1086278/federal-courts-diverge-on-bristol-myers-and-class-actions> [https://perma.cc/6HKE-E2P3]; Allyson N. Ho & Steven A. Reed, *The Bristol-Myers Ruling and The Future of Class Actions*, NAT’L L. REV. (Sept. 13, 2017), <https://www.natlawreview.com/article/bristol-myers-ruling-and-future-class-actions> [https://perma.cc/5FNY-ZLC9].

36. Compare *Chernus v. Logitech, Inc.*, 2018 WL 1981481, at *7 (D.N.J. Apr. 27, 2018) (“[M]ost of the courts that have encountered this issue have found that *Bristol-Myers* does not apply in the federal class action context.”), with *Molock v. Whole Foods Mkt. Grp., Inc.*, 317 F. Supp. 3d 1, 5 (D.D.C. June 11, 2018) (“[T]here is a near even split on the question.”).

37. *Mussat v. IQVIA Inc.*, 2018 WL 5311903, at *3 (N.D. Ill. Oct. 26, 2018).

contrast, with one industry publication claiming that it “found the caselaw to stand at 12-2 in favor of applying *Bristol-Myers Squibb* . . . to curtail multi-jurisdictional class actions,”³⁸ and the ABA’s Section of Litigation publishing a commentary stating that federal courts “generally align” with decisions that apply *BMS* to render multistate class actions unconstitutional.³⁹

As Part III will describe, some of this inconsistency likely stems from the fact that the seemingly simple question “does *BMS* apply to class actions?” should really be thought of as several distinct questions, which courts and commenters do not always recognize or acknowledge. But regardless of the cause of these disagreements, the last two years have been defined both by the sense that *BMS* may be an important development for class actions and by inconsistent accounts as to just what *BMS* has actually meant so far. The following Part attempts to shine a light on the trends of the last two years by reporting the results of the first nationwide survey of federal district courts grappling with whether *BMS* applies to class actions.

II. A QUANTITATIVE SURVEY OF NATIONWIDE CLASS ACTIONS AFTER *BRISTOL-MYERS SQUIBB*

It has now been two years since the Supreme Court’s decision in *BMS*, and it is a particularly good time to take stock. Dozens of federal district courts have weighed in on the correct application of *BMS*, but the appellate courts have yet to begin standardizing the law. This Part reports the results of a nationwide survey of federal district court cases, with an eye toward seeing whether any trends emerge as to the legal issues that the courts have identified and the outcomes they have reached.⁴⁰

From June 2017 through September 2019, one hundred four rulings considered at least to some extent the possibility that *BMS* could affect the propriety of exercising personal jurisdiction over a defendant with respect to out-of-state

38. Beck, *supra* note 11.

39. Camagong, *supra* note 10.

40. Although *BMS* may have significant implications for state courts as well, this Essay examines only federal courts for two reasons. First, as discussed in Part III, *infra*, *BMS* may apply differently to state and federal courts; restricting the scope of the survey therefore allows for an apples-to-apples comparison. Second, after the Class Action Fairness Act of 2005, most sizeable class actions have been removable from state to federal courts. See Gilles & Friedman, *supra* note 7, at 660. As a result, a survey of federal class actions should catch a large portion of multistate-class-action activity.

unnamed class members.⁴¹ Of these, sixty-four reached a firm conclusion. The remaining forty declined to reach the issue for a variety of reasons. Some, for instance, held that the issue had been forfeited;⁴² others declined to address the issue at the motion-to-dismiss stage and decided instead to reach it at the class-certification stage.⁴³

The sixty-four rulings that did reach the question of *BMS*'s application to unnamed class members were issued by fifty-six judges across twenty-four districts. Of those rulings, fourteen (about twenty-two percent) held that the court could not exercise jurisdiction over the defendant with respect to the unnamed out-of-state class (or putative class) members.⁴⁴ The remaining fifty (about seventy-eight percent) held that such an exercise of jurisdiction was permissible.⁴⁵

That initial breakdown – close to four-fifths of the cases permitting jurisdiction and about one-fifth holding that jurisdiction is improper – corroborates the impression of some judges that a majority of courts to consider the issue have held that *BMS* does not render multistate class actions impermissible even where general jurisdiction is unavailable.⁴⁶ It runs contrary to the claims of some commentators that the weight of the case law opposes the exercise of jurisdiction.⁴⁷

Further analysis reinforces this conclusion. The fourteen “no jurisdiction” rulings are highly concentrated: eleven came from the Northern District of Illinois, and four were from the same judge, Judge Harry Leinenweber.⁴⁸ If the data are examined district by district, twenty of the twenty-four districts have only cases that permit the exercise of jurisdiction; one district has only cases that decline to exercise jurisdiction; and three districts have cases on both sides of the issue.⁴⁹ As for breaking down the data judge by judge, of the fifty-six federal district judges who have weighed in on the issue, forty-seven (roughly eighty-four percent) have upheld the exercise of jurisdiction with respect to out-of-state

41. The survey's methodology is discussed in Appendix A; the specific cases discussed in this Section are listed in Appendix B.

42. See, e.g., *Alvarez v. NBTY, Inc.*, 2017 WL 6059159, at *3 (S.D. Cal. Dec. 6, 2017).

43. See, e.g., *Robinson v. Unilever U.S., Inc.*, 2018 WL 6136139, at *3 (C.D. Cal. June 25, 2018).

44. See *infra* Appendix B (listing cases).

45. *Id.*

46. See, e.g., *Chernus v. Logitech, Inc.*, 2018 WL 1981481, at *7 (D.N.J. Apr. 27, 2018); *Knotts v. Nissan N. Am., Inc.*, 346 F.Supp. 3d 1310, 1331 (D. Minn. 2018).

47. See *Camagong*, *supra* note 10; *Beck*, *supra* note 11.

48. See Appendix B (listing cases). The Northern District of Illinois has had cases come out on both sides of the issue; if you remove the Northern District of Illinois's cases, there are three total “no jurisdiction” rulings and forty-eight “yes jurisdiction” rulings.

49. *Id.*

absent class members, and nine (roughly sixteen percent) have held the exercise of jurisdiction to be inappropriate.

In sum, thus far a strong supermajority of district court judges favor permitting the exercise of personal jurisdiction over defendants with respect to out-of-state unnamed class members. More than four out of every five judges to consider the issue have come out the same way. Still, the presence of a notable minority of disagreeing judges means that this supermajority rule cannot be termed a consensus. Uniformity will likely only be reached if the federal courts of appeals all choose the same path, or if the Supreme Court takes a new case to clarify *BMS*'s import.

Cases raising these issues have begun to reach the federal courts of appeals, but no circuit has decided the issue yet.⁵⁰ Arguments have been heard in the Fifth, Seventh, and D.C. Circuits this year, but opinions have yet to be issued.⁵¹ The case law will most likely continue to develop for at least a year, and quite possibly more, before a consensus emerges in the appellate courts or the Supreme Court resolves any splits that may occur. The following Part considers what courts, litigants, and commenters alike can learn in the meantime from the reasoning that judges on both sides have given for their decisions.

III. HOW *BRISTOL-MYERS SQUIBB* APPLIES TO CLASS ACTIONS—A QUESTION IN FOUR PARTS

In addition to the trend in case outcomes discussed above, several patterns emerged from examining the rulings covered by the survey.

To begin with, many cases organized their approach to *BMS*'s application by noting what *BMS* did not say or do.⁵² The *BMS* majority opinion explicitly left open “the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.”⁵³ And as Justice Sotomayor wrote in her dissent, *BMS* did not “confront the question whether [it]

50. See, e.g., Mark Robertson, *In 2019, Federal Appellate Courts Will Address SCOTUS Jurisdiction Ruling's Impact on Class Actions*, FORBES (Dec. 19, 2018), <https://www.forbes.com/sites/wlf/2018/12/19/in-2019-federal-appellate-courts-will-address-scotus-jurisdiction-rulings-impact-on-class-actions> [<https://perma.cc/7YT8-CS44>] (discussing several cases).

51. See Amanda Bronstad, *DC Circuit Might Punt on Whether Bristol-Myers Applies to Class Actions*, LAW (Sept. 25, 2019, 7:45 PM), <https://www.law.com/2019/09/25/dc-circuit-might-punt-on-whether-bristol-myers-applies-to-class-actions> [<https://perma.cc/SB37-5LWQ>].

52. See, e.g., *Knotts v. Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1329 (D. Minn. 2018).

53. *BMS*, 137 S. Ct. 1773, 1784 (2017).

would also apply to a class action.”⁵⁴ From the face of the opinion, then, *BMS* presented a federal court confronting a class action with two potential grounds for distinction: differences between class and mass actions, and differences between federal and state courts.

The survey revealed that judges were more likely to rest their holdings on the class/mass distinction than on the federal/state distinction. As detailed below, the main way that courts distinguished *BMS* was by differentiating the unnamed members in class actions from the named plaintiffs in *BMS*. Judges were less likely to rely on distinctions between state and federal courts, although the difference was noted in several cases.⁵⁵ The survey also revealed that these two categorical distinctions (class/mass and federal/state) yielded another set of potentially relevant dissimilarities: the difference between unnamed class members and named class representatives, and the difference between federal courts sitting in diversity and federal courts hearing federal questions. In other words, the question “does *BMS* apply to class actions in federal court?” can be treated as four distinct questions about the case’s significance for (1) unnamed class members; (2) named plaintiffs; (3) diversity jurisdiction; and (4) federal-question jurisdiction.

This Part discusses the lessons that can be learned from identifying and distinguishing each of these questions, which many individual cases have failed to do—resulting in misunderstandings and false generalizations. Examining the *BMS* case law as a whole thus helps diagnose where courts have gone wrong, understand which issues many courts have agreed on, and see which questions remain open for the future.

A. *The Class/Mass Distinction*

As noted above, the most common way courts in the survey distinguished *BMS* was by differentiating class actions from mass actions. Of the fifty cases permitting class actions to proceed, thirty-two distinguished *BMS* by relying at least in part on distinctions between named parties (like the plaintiffs in *BMS*) and unnamed class members. But class actions themselves also have both named and unnamed parties, and some courts did not reliably distinguish between the two.⁵⁶ This Section first discusses the distinction between unnamed class members and named parties in general, and then discusses the cases that have failed

54. *Id.* at 1789 n.4 (Sotomayor, J., dissenting).

55. See *infra* notes 88–94 and accompanying text.

56. See, e.g., *infra* note 80 (citing several cases that fail to distinguish between named and unnamed class members for purposes of applying *BMS*).

to distinguish between named parties and unnamed class members in the same class action.

1. *Unnamed Class Members Versus Named Parties*

Courts that drew a line between the named parties in *BMS* and unnamed parties in class actions invoked a variety of specific legal differences, both formal and functional, to justify this distinction. Many judges relied on the fact that named plaintiffs in mass-tort actions are real parties in interest, whereas unnamed class members' claims "are prosecuted through representatives."⁵⁷ Real parties, unlike unnamed class members, are "personally named and required to effect service" on a defendant.⁵⁸ Other cases stressed the "functional differences" between unnamed class members and named parties in a mass tort that result from Rule 23 of the Federal Rules of Civil Procedure.⁵⁹ As one court put it, Rule 23 means that a class-action defendant faces "a unitary, coherent claim to which it need respond only with a unitary, coherent defense."⁶⁰ In contrast, in a mass action there may be "significant variations" in the plaintiffs' claims, requiring different evidence, legal theories, and so on.⁶¹ Other cases drew parallels between the personal-jurisdiction context and other contexts in which the distinction between named and unnamed class members has arisen, emphasizing that absent class members, unlike named parties, are not relevant "for purposes of diversity of citizenship, amount in controversy, Article III standing, and venue."⁶²

Doctrinally, the relevance of these distinctions was most often grounded either in the Supreme Court's decision *Devlin v. Scardelletti*⁶³ or in constitutional due process. Courts regularly invoked *Devlin* for its statement that unnamed class members "may be parties for some purposes and not for others."⁶⁴

57. *Sanchez v. Launch Tech. Workforce Sols.*, 297 F. Supp. 3d 1360, 1365 (N.D. Ga. 2018).

58. *Id.*

59. *See, e.g., Allen v. ConAgra Foods*, No. 3:13-cv-012790-WHO, 2018 WL 6460451, at *7 (N.D. Cal. Dec. 10, 2018).

60. *See Morgan v. U.S. Xpress, Inc.*, No. 3:17-cv-00085, 2018 WL 3580775, at *5 (W.D. Va. July 25, 2018) (quoting *Sanchez*, 297 F. Supp. 3d at 1366).

61. *Id.*

62. *See Al Haj v. Pfizer, Inc.*, 338 F. Supp. 3d 815, 820 (N.D. Ill. 2018); *see also Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 311 (N.D. Ala. 2018).

63. 536 U.S. 1 (2002).

64. *See, e.g., Al Haj*, 338 F. Supp. 3d at 819 (quoting *Devlin*, 536 U.S. at 10); *Fitzhenry-Russell v. Dr. Pepper Snapple Group, Inc.*, No. 17-cv-00564, 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017) (same).

Although *Devlin* does not create a simple rule or test for determining when to treat absent class members as parties, the Supreme Court indicated that the question requires a context-dependent inquiry in which the choice is “justified by the goals of class action litigation.”⁶⁵ District courts have applied this reasoning in the *BMS* context; as one court has said, “[t]he efficient administration of class actions would be compromised by requiring [courts] to make personal jurisdiction determinations for every named and potential unnamed plaintiff.”⁶⁶ Courts have also observed an absence of precedent in favor of treating unnamed class members as parties for purposes of personal jurisdiction,⁶⁷ concluding that the historical understanding appears to have been that unnamed class members are not relevant to the personal-jurisdiction inquiry.⁶⁸

As for distinctions grounded in due process, courts generally invoked Rule 23 as providing due-process protections that render class actions materially different from mass actions. As one court put it, “the certification procedures set forth in Rule 23 not only protect absent class members’ due-process rights but also the rights of defendants.”⁶⁹ By presenting defendants with a unified case to defend against rather than with many varied claims, Rule 23 mitigates the burden placed on them—a primary concern of the personal-jurisdiction analysis.⁷⁰ In addition to the observation that, as a general matter, class actions require less varied defenses than mass actions, at least one court noted that the marginal burden of defending against additional class claims is particularly low where a defendant would already be in a given state defending against a statewide class action.⁷¹ In such a scenario, given the similarity that Rule 23 requires between claims within a given state and those outside the state, the court ruled that “there is little hardship, as a jurisdictional matter, for [a defendant] to also litigate the nationwide class claims.”⁷²

For the most part, the cases holding that *BMS* does apply with respect to absent class members do not directly respond to these reasons. Only one of the fourteen “no jurisdiction” cases, for instance, mentions or cites *Devlin v.*

65. *Devlin*, 536 U.S. at 10.

66. *Knotts v. Nissan North America, Inc.*, 346 F. Supp. 3d 1310, 1335 (D. Minn. 2018); see also *Al Haj*, 338 F. Supp. 3d at 822; *Fitzhenry-Russell*, 2017 WL 4224723, at *5.

67. See, e.g., *Jones*, 330 F.R.D. at 311; *Al Haj*, 338 F. Supp. 3d at 818-19.

68. *Al Haj*, 338 F. Supp. 3d at 818-19.

69. *Jones*, 330 F.R.D. at 312.

70. *Id.*

71. *Swinter Grp., Inc. v. Serv. of Process Agents, Inc.*, No. 4:17-CV-2759, 2019 WL 266299, at *2 (E.D. Mo. Jan. 18, 2019).

72. *Id.*

Scardelletti, distinguishing it on the basis that *Devlin* involved a certified class, unlike the putative class in the case at hand.⁷³

Instead, the discussion in the “no jurisdiction” cases has mostly centered around broad invocations of due process, with the most common reasoning being some version of the statement that “a defendant’s due process rights should remain constant regardless of the suit against him, be it an individual, mass, or class action.”⁷⁴ Some courts have grounded that reasoning in the Rules Enabling Act, “which instructs that the federal court rules of procedure shall not abridge, enlarge, or modify any substantive right.”⁷⁵ Under this reasoning, if a defendant’s due-process rights would preclude a claim from being brought by individuals without the class device, it would be a violation of the Rules Enabling Act for Rule 23 to change that outcome. This approach is bolstered by reading *BMS* to stand for a broad holding that “the Fourteenth Amendment’s due process clause precludes nonresident plaintiffs injured outside the forum from aggregating their claims with an in-forum resident.”⁷⁶ None of the “no jurisdiction” cases addresses the argument that Rule 23 provides safeguards for defendants by

73. See *Am.’s Health & Resource Ctr. Ltd. v. Alcon Labs., Inc.*, No. 14 C 4539, 2018 WL 5808475, at *3, *4 n.3 (N.D. Ill. Nov. 6, 2018).

74. *Leppert v. Champion Petfoods USA Inc.*, 2019 WL 216616, at *4 (N.D. Ill. Jan. 16, 2019) (citing *Mussat v. IQVIA, Inc.*, 2018 WL 5311903, at *5 (N.D. Ill. Oct. 26, 2018)); see also *Am.’s Health*, 2018 WL 3474444, at *2 (“The constitutional requirements of due process do[] not wax and wane when the complaint is individual or on behalf of a class.”) (quoting *In re Dental Supplies Antitrust Litig.*, 2017 WL 4217115, at *9 (E.D.N.Y. Sept. 20, 2017)). *In re Dental Supplies*, like *Greene*, is a case dealing with the application of *BMS* to a named plaintiff in a class action, not unnamed class members, although courts do not always draw that distinction. See *Am.’s Health*, 2018 WL 3474444, at *2.

75. *Practice Mgmt. Support Servs. v. Cirque Du Soleil, Inc.*, 301 F. Supp. 3d 840, 861 (N.D. Ill. 2018) (internal brackets and quotation marks omitted); *Mussat*, 2018 WL 5311903, at *5-6.

76. *Practice Mgmt. Support Servs.*, 301 F. Supp. 3d at 861 (citing *BMS*, 137 S. Ct. 1773, 1781 (2017)); see also *Garvey v. Am. Bankers Ins. Co. of Fla.*, 2019 WL 2076288, at *2 (N.D. Ill. May 10, 2019) (citing *Practice Mgmt. Support Servs.*, 301 F. Supp. 3d at 861). The *Practice Management* case does not go into detail regarding this reading of *BMS*, simply citing to “137 S. Ct. at 1781” without further comment. Such a reading may be based on *BMS*’s refusal to permit jurisdiction over out-of-state named plaintiffs based on “[t]he mere fact that *other* plaintiffs” were injured in California. 137 S. Ct. at 1781 (emphasis in original). Or it may be based on *BMS*’s invocation of *Walden v. Fiore*’s comment that “a defendant’s relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction.” *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)). But neither of these aspects of *BMS* is a clear statement either that the Constitution prohibits “aggregating” claims in any context or that the use of representational litigation such as a class action in particular is insufficient to justify the exercise of jurisdiction.

streamlining the claims against them and allowing for a single unitary response.⁷⁷

2. Named Class Representatives

In contrast to the disagreements about unnamed class members, there is a general consensus that the requirements of personal jurisdiction, including those articulated in *BMS*, apply to named plaintiffs wherever they bring their case.⁷⁸ There is no clear reason why they would not. One oft-cited decision on this point, *Greene v. Mizuho Bank*, is representative in its holding that the normal rules of personal jurisdiction apply to all named plaintiffs in a lawsuit “with equal force whether or not the plaintiff is a putative class representative.”⁷⁹

This consensus, however, has been misread by several courts as extending to the unnamed-class-member issue. *Greene*, for instance, has been favorably cited in at least four different cases for the broad statement that “*Bristol-Myers* extends to federal court class actions,” and then applied indiscriminately to exclude unnamed class members from litigation.⁸⁰ *Greene*, which addressed only a named plaintiff, does not support such a conclusion without the additional determination that unnamed class members and named plaintiffs should be treated alike. In fact, *Greene*’s presiding judge, Judge Feinerman of the Northern District of Illinois, came down against applying *BMS* to unnamed class members in *Al Haj v. Pfizer*, issued shortly after *Greene*.⁸¹ *Al Haj* invoked several of the reasons discussed in the previous section to reach its conclusion: the distinction between a mass and a class action is “critical,” Judge Feinerman wrote, because class actions contain absent class members—individuals who are not treated as parties for many doctrines that govern whether a court may hear a claim, such as determining diversity jurisdiction, Article III standing, and venue.⁸² Judge Feinerman concluded that personal jurisdiction was analogous to these contexts, and absent

77. One case, *DeBernardis v. NBTY, Inc.*, could be read as acknowledging the argument, but in any event does not respond to it. 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018).

78. See, e.g., *Chernus v. Logitech, Inc.*, 2018 WL 1981481, at *7 (D.N.J. 2018).

79. *Greene v. Mizuho Bank, Ltd.*, 289 F. Supp. 3d 870, 874 (N.D. Ill. 2017).

80. *Practice Mgmt. Support Servs.*, 301 F. Supp. 3d at 862; see also *In re Dicamba Herbicides Litig.*, 359 F. Supp. 3d 711, 723 (E.D. Mo. 2019) (citing *Greene* as a case supporting the proposition that “*BMS* applies with equal force in the class action context”); *Am.’s Health*, 2018 WL 3474444, at *2 (citing *Greene* as a case “finding *Bristol-Myers Squibb* applicable to class actions”); *Bakov v. Consol. World Travel, Inc.*, 2019 WL 1294659, at *13 (N.D. Ill. Mar. 21, 2019) (same).

81. See *Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 818-22 (N.D. Ill. 2018).

82. *Id.*

class members therefore should not be treated as parties for purposes of personal jurisdiction – particularly when any other decision would result in an “extraordinary sea change in class action practice,” in tension with *BMS*’s declaration that it applied only settled law.⁸³ *Al Haj*, which is one of the most thorough and most cited cases declining to apply *BMS* to unnamed class members, is thus entirely consistent with *Greene*, but not consistent with subsequent cases’ overbroad reading of *Greene* as applying to “class actions” in general as opposed to named plaintiffs in particular. This eliding of the distinction between named and unnamed plaintiffs has occurred in commentary discussing *BMS* as well.⁸⁴

It is worth noting, too, that even though there is consensus that *BMS*’s personal-jurisdiction holding applies to the named plaintiffs in a class action, there is still a fair degree of uncertainty in both federal and state courts as to what that application should look like. Some courts have taken the Supreme Court at face value when it said that *BMS* involved only the application of “settled principles” and did not change the law.⁸⁵ Others have held that *BMS* materially changed the standards governing personal jurisdiction, for instance by changing the weight to be given to specific factors when assessing whether personal jurisdiction is permissible,⁸⁶ or by rejecting a “stream of commerce” approach.⁸⁷ While these interpretations of *BMS* are not specific to class actions, they will nonetheless influence class litigation given the consensus that *BMS* applies to named class representatives.

B. The Federal/State Distinction

BMS, which was an appeal from California state court, explicitly left open “the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court.”⁸⁸ The *BMS* opinion itself was grounded in the Due Process Clause of the Fourteenth Amendment, and emphasized the “federalism interest” protected by that clause via personal-jurisdiction doctrine.⁸⁹ As *BMS* notes, personal-jurisdiction doctrine has historically been connected to horizontal federalism – the idea that in a system of coequal

83. *Id.*

84. See, e.g., Camagong, *supra* note 10 (collecting cases that “have applied *BMS* to class actions” without distinguishing between its application to named and unnamed plaintiffs).

85. See, e.g., Maeda v. Pinnacle Foods Inc., 390 F. Supp. 3d 1231, 1245 (D. Haw. 2019).

86. Lawson v. Simmons Sporting Goods, Inc., 569 S.W.3d 865, 871 (Ark. 2019).

87. Montgomery v. Airbus Helicopters, Inc., 414 P.3d 824, 831-34 (Okla. 2018).

88. 137 S. Ct. 1773, 1784 (2017).

89. *Id.* at 1780.

state sovereigns, “[t]he sovereignty of each State . . . implies a limitation on the sovereignty of all its sister States,” and requires some rules to referee which state courts may have power to adjudicate any given dispute.⁹⁰

Numerous decisions considering *BMS* have since held that these concerns do not apply to the same degree in multistate class actions being heard in federal court.⁹¹ As one court put it, *BMS* protected the “well-rooted principles” that prevent states from “reach[ing] out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.”⁹² But federal courts “represent the same federal sovereign,” with territorial authority that extends nationwide.⁹³ In other words, a federal court hearing a case in one location does not impinge on the sovereign authority of other federal courts in different locations, because all federal courts represent the same sovereign. *BMS*’s concerns therefore do not arise.

Nonetheless, as mentioned above, this basis for distinguishing *BMS* has been much less common than the named-party/unnamed-class-member distinction. That may be true for two reasons. First, where a court decides that unnamed class members do not need to be treated as parties for purposes of personal jurisdiction, it is unnecessary to reach the question of whether *BMS* applies differently to them in federal court than it would in state court.⁹⁴ Second, as discussed below, either federal common law or the Federal Rules of Civil Procedure may tie the exercise of jurisdiction in a federal court to the geographic limitations of the state in which it sits, making the distinction between state and federal courts less salient.

Among courts that have raised the state/federal distinction, there is no strict correlation between where courts come down on the unnamed-class-member issue and how they view the federal/state distinction; courts on both sides of the class-member issue have given different weight to the fact that *BMS* was a state-

90. *Id.* at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1979)) (internal brackets and quotation marks omitted).

91. *See, e.g.*, *Fabricant v. Fast Advance Funding, LLC*, No. 2:17-cv-05853-AB (JCx), 2018 WL 6920667, at *4 (N.D. Cal. Apr. 26, 2018) (quoting *Sloan v. Gen. Motors LLC*, 287 F. Supp. 3d 840, 859 (2018)); *see also* *Dennis v. IDT Corp.*, 343 F. Supp. 3d 1363, 1367 (N.D. Ga. 2018); *Sanchez v. Launch Tech. Workforce Sols., LLC*, 297 F. Supp. 3d 1360, 1366-69 (N.D. Ga. 2018).

92. *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 09-2047, 2017 WL 5971622, at *20 (E.D. La. Nov. 30, 2017).

93. *Fabricant*, 2018 WL 6920667, at *4 (quoting *Sloan*, 287 F. Supp. 3d, at 859).

94. *See, e.g.*, *Cabrera v. Bayer Healthcare, LLC*, No. LA CV17-08525 JAK (JPRx), 2019 WL 1146828, at *4-7 (C.D. Cal. Mar. 6, 2019) (declining to decide the question whether *BMS* has different application in federal or state courts and instead distinguishing *BMS* as not applying to absent class members).

court case grounded in the Fourteenth Amendment. Several courts have, however, suggested that the correct application of *BMS* in federal court may turn at least in part on yet another distinction: whether the court is sitting in diversity or exercising federal-question jurisdiction.⁹⁵ The following Section explores that distinction.

1. Diversity Cases

The rationale generally offered by courts emphasizing that they are sitting in diversity is the broad principle that “in diversity jurisdiction cases . . . personal jurisdiction is governed by the law of the forum state.”⁹⁶ This relatively simple statement is often not elaborated on, but comparing the authorities cited by the various cases that address the federal/state issue demonstrates two distinct rationales on offer for the application of state-court limitations to federal courts in diversity: one common-law rationale and one rationale based on Rule 4 of the Federal Rules of Civil Procedure. Teasing out these two different rationales shows that there are potentially important considerations that have been generally overlooked in the case law so far.

The common-law rationale relies on a longstanding rule of federal common law, with historical antecedents going back to the early nineteenth century, that “a federal district court will not assert jurisdiction over a foreign corporation in an ordinary diversity case unless that would be done by the state court . . . in the state where the court sits.”⁹⁷ The Rule 4 rationale, in contrast, relies on authority that is ultimately grounded in Federal Rule of Civil Procedure 4(k)(1)(A).⁹⁸ That

95. See, e.g., *Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 309-12 (N.D. Ala. 2018); *Santos v. CarMax Business Services, LLC*, 2018 WL 7916823, at *5; *Leppert v. Champion Petfoods USA Inc.*, No. 18 C 4347, 2019 WL 216616, at *4 (N.D. Ill. Jan. 16, 2019).

96. *Leppert*, 2019 WL 216616, at *4.

97. The foundational articulation of this doctrine in the modern era is *Arrowsmith v. United Press Int'l.*, 320 F.2d 219, 222 (2d Cir. 1963); see also Note, *Jurisdiction of Federal District Courts Over Foreign Corporations*, 69 HARV. L. REV. 508, 509 (1956) (discussing the historical antecedents to this doctrine). Cases still invoke this principle and cite back to common-law-based authority, often without discussion. For instance, *Jones v. Depuy Synthes Products* cites to *Meier v. Sun International Hotels*, 288 F.3d 1264, 1269 (11th Cir. 2002), which in turn cites to *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988), which cites *Attwell v. LaSalle National Bank*, 607 F.2d 1157, 1159 (5th Cir. 1979), which ultimately rests on *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) and another Fifth Circuit case, *Mack Trucks*, which cites both *Erie* and *Arrowsmith*. See *Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. at 309-12; *Mack Trucks, Inc. v. Arrow Aluminum Castings Co.*, 510 F.2d 1029, 1031 (5th Cir. 1975).

98. See, e.g., *Leppert*, 2019 WL 216616, at *4 (citing *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 491 (7th Cir. 2014) (citing FED. R. CIV. P. 4(k)(1)(A))).

rule provides that “[s]erving a summons . . . establishes personal jurisdiction over a defendant . . . who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.”⁹⁹ As the broadest of Rule 4(k)’s options for serving a summons, this provision is often invoked as the basis for personal jurisdiction in federal-question and diversity cases alike.¹⁰⁰

These different rationales raise a few considerations that may be relevant to the proper scope of *BMS*’s application. First, as long as there is no nationwide service-of-process provision, Rule 4(k)(1)(A) applies in both federal-question cases and diversity cases.¹⁰¹ If that rule is the basis for incorporating *BMS*’s limitations in the federal class-action context, then, it’s not clear why courts would emphasize the fact that they are sitting in diversity.

But, more importantly, it is also not clear exactly how Rule 4’s provisions for service of process incorporate *BMS*’s limitations in the class-action context to begin with. Class-action jurisprudence has never required a defendant to be served by unnamed class members, whether before or after certification. And although service-of-process restrictions do apply to named plaintiffs, when those plaintiffs serve a defendant, they do not yet represent out-of-state class members, as there has been no class certification. No case discussing *BMS* to date has explained the specific mechanism by which Rule 4 would incorporate *BMS* with respect to absent class members. The trend, instead, has been to rely on broad statements in cases citing Rule 4, without explaining the underlying reasoning.¹⁰²

99. FED. R. CIV. P. 4(k)(1)(A). For a thorough discussion and critique of this provision, see A. Benjamin Spencer, *Nationwide Personal Jurisdiction for our Federal Courts*, 87 DENVER U. L. REV. 325 (2010); A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 FLA. L. REV. 979 (2019).

100. See, e.g., *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (federal question); *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1065 (10th Cir. 2007) (diversity).

101. See FED. R. CIV. P. 4.

102. See, e.g., *Leppert v. Champion Petfoods USA Inc.*, No. 18 C 4347, 2019 WL 216616, at *4 (N.D. Ill. Jan. 16, 2019) (citing *N. Grain Mktg. LLC*, 743 F.3d at 491; *Brook v. McCormley*, 873 F.3d 549, 552 (7th Cir. 2017)); *LDGP, LLC v. Cynosure, Inc.*, No. 15 C 50148, 2018 WL 439122, at *2 (N.D. Ill. Jan. 16, 2018) (citing *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010)).

In a recent essay, A. Benjamin Spencer considers in detail how Rule 4 applies post-*BMS* in the context of a multistate class action in federal court. See A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction over Claims of Absent Class Members*, 39 REV. LITIG. (forthcoming 2019), <https://ssrn.com/abstract=3461113> [<https://perma.cc/7AFP-46PF>]. Spencer argues that the geographic limits of Rule 4(k)(1)(A) apply to absent class members, analogizing those class members’ claims to new claims or parties added via amended complaint or joinder and noting that the limits of Rule 4(k) apply in those contexts. *Id.* (manuscript at 10-11). Spencer does not, however, cite any case that has adopted such an analogy and held that

The rationale relying on federal common law is similarly underdeveloped. As one foundational case discussing this doctrine notes, “Congress or its rule-making delegate” can always override the federal common law.¹⁰³ Federal courts depart from the common-law rule in other contexts when doing so is permitted by rule—for instance, when the 100-mile bulge provision of Rule 4(k)(1)(B) extends across state boundaries¹⁰⁴—or when a federal statute provides a basis for nationwide service of process.¹⁰⁵ As a result, it is not obvious that the rule restricting federal-court jurisdiction applies where a defendant is validly served under Rule 4 and a class is appropriately certified under Rule 23. And, finally, it may be possible to read the common-law rule as simply being codified in Rule 4(k)(1)(A), which would suggest that there would be little meaningful difference between citing case law that invokes the common-law rule as opposed to the Federal Rules of Civil Procedure.¹⁰⁶

The application of *BMS* to federal courts sitting in diversity is thus more complicated than the courts to address the issue so far have acknowledged; and there are at least some reasons to think that neither rationale clearly resolves the question whether *BMS* should restrict federal courts’ ability to exercise personal jurisdiction over defendants with respect to unnamed class members in multi-state or nationwide class actions.

federal courts seeking to certify a class must ensure that absent class members are located within the boundaries set by Rule 4(k)(1)(A).

103. *Arrowsmith v. United Press Int’l*, 320 F.2d 219, 226 (2d Cir. 1963).

104. *See, e.g., Quinones v. Penn. Gen. Ins. Co.*, 804 F.2d 1167, 1174-76 (10th Cir. 1986).

105. *See, e.g., Waeltz v. Delta Pilots Ret. Plan*, 301 F.3d 804, 807 n.3 (7th Cir. 2002).

106. *See, e.g., Patrick J. Borchers, Extending Federal Rule of Civil Procedure 4(K)(2): A Way to (Partially) Clean Up the Personal Jurisdiction Mess*, 67 AM. U. L. REV. 413, 439 & n.195 (2017), (describing Rule 4(k)(1)(A) as “contain[ing]” the rule, previously attributable to common-law authorities like *Arrowsmith*, that federal courts’ territorial reach is often restricted to that of their state-court counterparts). To the extent that Rule 4(k) replaces the common-law rule as a restriction on federal courts’ jurisdiction, however, there is an argument that it violates the Rules Enabling Act because that Act does not authorize rules that expand or contract the jurisdiction of the federal courts. *See* A. Benjamin Spencer, *Substance, Procedure, and the Rules Enabling Act*, U.C.L.A. L. REV. 654, 667-79, 711-17 (2019); *see also* A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 FLA. L. REV. 979, 982-85 (2019).

2. Federal-Question Cases

There is even less discussion as to whether *BMS* applies in some distinct way to federal-question cases.¹⁰⁷ The cases that emphasize the significance of diversity jurisdiction may raise the inference that *BMS* could have a different application where federal district courts are hearing cases that arise from federal questions. It is not always clear, however, what (if any) inference is intended. In one case, for instance, Judge Leinenweber of the Northern District of Illinois said that *BMS* was “clearly limited . . . to state court jurisdiction,” but that limitation was “no barrier . . . where this Court sits in diversity jurisdiction and accordingly looks to Illinois state law.”¹⁰⁸ Such language might suggest that the outcome may be different in a federal-question case. But in another case, Judge Leinenweber concluded that *BMS* “applies to federal courts, *especially* where . . . the court sits in diversity jurisdiction,” suggesting that *BMS* might also apply even outside of diversity jurisdiction.¹⁰⁹

The open questions just discussed as to diversity cases may have implications for federal-question cases as well. If *BMS*’s limitations apply via Rule 4, for instance, rather than a diversity-specific common-law rule, they would apply in federal question and diversity cases alike. Ultimately, then, it may be that focusing on the differences between diversity and federal-question cases is largely a red herring, particularly when compared with the more important distinctions between named and unnamed class members or the Constitution’s limits on state versus federal courts.

CONCLUSION

Two years after *BMS*, federal courts have considered on more than sixty occasions whether the decision applies to federal class actions. Examining these decisions illustrates that the question “does *BMS* apply to class actions?” should really be reframed as “*how* does *BMS* apply to class actions?” There are multiple decision points when it comes to applying *BMS* in multistate class actions in federal court, including whether to treat absent class members the same as named parties and whether to treat litigation in federal court the same as litigation in state court.

107. See, e.g., *In re Packaged Seafood Prod. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1172 (S.D. Cal. Sept. 5, 2018); *Fabricant v. Fast Advance Funding, LLC*, No. 2:17-CV-05753-AB (JCx), 2018 WL 6920667, at *4 (C.D. Cal. Apr. 26, 2018).

108. *Am’s Health & Res. Ctr. Ltd. v. Promologics, Inc.*, No. 16-C-9281, 2018 WL 3474444, at *2 (N.D. Ill. July 19, 2018).

109. *Bakov v. Consol. World Travel, Inc.*, No. 15 C 2980, 2019 WL 1294659, at *13 (N.D. Ill. Mar. 21, 2019) (emphasis added).

Examining the decisions applying *BMS* to date also suggests that there are better and worse ways to approach these questions. Although some cases have addressed these various questions distinctly, others have failed to recognize them, made false generalizations, or misapplied other cases dealing with the issue. Many judges have failed to respond to the best arguments on the other side of the issue or failed to explain their own reasoning in depth.

As a general matter, there is a consensus that *BMS* applies to named plaintiffs, as the rules of personal jurisdiction apply generally to named parties in litigation. As for unnamed class members, four out of every five federal district court judges to rule on the question have concluded that *BMS* does not prohibit a class action from proceeding on a theory of specific jurisdiction, even if it contains unnamed members who reside outside the forum state. Judges reaching that conclusion have most often relied on analogies to other contexts in which unnamed class members are not treated as parties, such as evaluating diversity of citizenship, establishing the monetary threshold for amount in controversy, determining Article III standing, and establishing venue. The minority of judges who have held otherwise, meanwhile, have tended not to engage with this line of argument, and have instead emphasized defendants' due-process rights, saying that the form that litigation takes should not change whether a court may exercise jurisdiction over a defendant with respect to particular claims.

Taking a look at the last two years of *BMS* case law as a whole thus tells us where we are in this potentially significant moment in class-action law. Despite some reports to the contrary, a strong supermajority of the federal district judges who have considered the issue have ruled in favor of letting class actions proceed largely as they did before *BMS*. As federal appellate courts begin to weigh in, we will see whether this clear pattern will continue or whether *BMS* will be read to curtail multistate and nationwide class actions on grounds of personal jurisdiction. Either way, the interpretation of *BMS* is likely to have significant consequences for class litigation. How courts read *BMS* will influence where many class actions get filed in the years to come, and whether some potential class actions get filed at all.

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APPENDIX A. METHODOLOGY

To conduct the survey, I began with Westlaw’s “citing references” tool and identified all federal court rulings citing *BMS*. I then conducted an intentionally overbroad search within those rulings to identify all cases containing any of the phrases “class action,” “class members,” or “class certification.” This resulted in 190 rulings when Westlaw was searched on May 19, 2019.

I then examined each ruling for relevance. Rulings were deemed relevant if they were (1) a certified class action or a putative class action and (2) considered the possibility that *BMS* could affect the propriety of exercising personal jurisdiction over a defendant with respect to unnamed class members. Rulings were not deemed relevant if they merely referenced other proceedings in the same case in which the Court had considered the issue,¹¹⁰ or if they flagged *BMS* as a potential issue to be considered in the future but did not discuss it in the ruling at hand.¹¹¹ Rulings involving collective actions under the Fair Labor Standards Act, as opposed to Rule 23 class actions, were also excluded, as some of the case law addressing *BMS*’s application to FLSA actions relies on distinctions between the FLSA’s collective-action mechanism and Rule 23.¹¹²

Rulings were considered relevant even if the court ultimately deemed the *BMS* issue to be forfeit, untimely, or otherwise inappropriate to reach. These cases were included because of the possibility that courts would give multiple alternative holdings—for instance holding both that *BMS* did not deprive the court of personal jurisdiction and also that, in any event, the defendant’s personal-jurisdiction argument had been waived.¹¹³ Doubts were resolved in favor of being maximally inclusive at this stage.

After sorting through the 190 rulings for relevance, eighty-four rulings remained. These eighty-four rulings are listed in Appendix B. These rulings were

110. See, e.g., *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 09-2047, 2018 WL 279629, at *10 (E.D. La. Jan. 2, 2018) (“The Court has already held that *BMS* does not apply to this MDL, and now incorporates that prior ruling herein.”); *Am.’s Health & Res. Ctr. Ltd. v. Alcon Labs., Inc.*, No. 16 C 4539, 2018 WL 5808475, at *2-3 (N.D. Ill. Nov. 6, 2018) (denying motion to reconsider).

111. See, e.g., *Jackson v. Bayer Healthcare Pharm., Inc.*, No. 4:17-cv-01413-JAR, 2017 WL 2691413, at *6 (E.D. Mo. June 22, 2017) (remanding to state court and noting that “the parties will have a full and fair opportunity to present their arguments on the issue of whether Missouri courts can exercise personal jurisdiction over the out-of-state Plaintiffs to the state court” (citing *BMS*)).

112. See, e.g., *Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 59-60 (D. Mass. 2018) (concluding that “the opt-in plaintiffs in an FLSA collective action are more analogous to the individual plaintiffs who were joined as parties in *Bristol-Myers* and the named plaintiffs in putative class actions than to members of a Rule 23 certified class”).

113. See, e.g., *Braver v. Northstar Alarm Servs., LLC*, 329 F.R.D. 320, 326-27 (W.D. Okla. 2018).

read and coded along a variety of axes, including whether they did or did not uphold the exercise of personal jurisdiction with respect to unnamed, out-of-state class members, as well as which among various common rationales were relied on in support of their holdings. Of the eighty-four rulings, fifty-four issued a holding on the question of whether *BMS* requires courts to apply the standards of specific jurisdiction to out-of-state unnamed class members in a class action. The main text goes into further detail regarding those cases.

This process was repeated on July 18, 2019. The new search resulted in nineteen new federal district court rulings citing *BMS* and containing any of the phrases “class action,” “class members,” or “class certification.” Of these nineteen rulings, six were relevant and thirteen not relevant. Of the relevant rulings, five reached a holding on the question of *BMS*’s application to unnamed out-of-state class members, and were coded and added to the original database.

This process was repeated a final time on October 8, 2019. The new search resulted in twenty-three new federal district court rulings citing *BMS* and containing any of the phrases “class action,” “class members,” or “class certification.” Of these twenty-three rulings, fourteen were relevant and nine not relevant. Of the relevant rulings, five reached a holding on the question of *BMS*’s application to unnamed out-of-state class members, and were coded and added to the original database.

Appendix B contains the rulings from the May 19, July 18, and October 8 searches. Altogether, there were 104 relevant rulings; sixty-four rulings reached a holding; and, of the rulings that reached a holding, fifty permitted the exercise of jurisdiction and fourteen did not.

APPENDIX B. CASES

This Appendix contains the rulings that were generated using the methodology described in Appendix A. All of these cases discuss the application of *Bristol-Myers Squibb* to unnamed out-of-state members of a certified or putative class action. They are sorted into three categories: rulings holding that *BMS* does not prohibit the exercise of personal jurisdiction over defendants with respect to unnamed out-of-state class members; rulings holding that *BMS* does prohibit the exercise of jurisdiction with respect to unnamed out-of-state class members; and rulings that do not reach a holding on the issue.

TABLE B1
RULINGS PERMITTING THE EXERCISE OF JURISDICTION

Case Caption	District	Judge	Citation
Feller v. Transamerica Life Insurance Co.	C.D. Cal.	Christina A. Snyder	No. 2:16-cv-01378-CAS-AJW, 2017 WL 6496803, at *16-17 (Dec. 11, 2017)
Day v. Air Methods Corp.	E.D. Ky.	Danny C. Reeves	No. 5:17-183-DCR, 2017 WL 4781863, at *2 (Oct. 23, 2017)
In re Chinese-Manufactured Drywall Products Liability Litigation	E.D. La.	Eldon E. Fallon	No. 09-2047, 2017 WL 5971622, at *8-11 (Nov. 30, 2017)
Fitzhenry-Russell v. Dr. Pepper Snapple Group, Inc.	N.D. Cal.	Nathanael M. Cousins	No. 17-cv-00564 NC, 2017 WL 4224723, at *3-4 (Sept. 22, 2017)
Fabricant v. Fast Advance Funding, LLC	C.D. Cal.	André Birotte, Jr.	No. 2:17-cv-05753-AB (JCx), 2018 WL 6920667, at *3-4 (Apr. 26, 2018)
Thompson v. Transamerica Life Insurance Co.	C.D. Cal.	Christina A. Snyder	No. 2:18-cv-05422-CAS-GJSx, 2018 WL 6790561, at *6 (Dec. 26, 2018)
Ochoa v. Church & Dwight Co.	C.D. Cal.	Otis D. Wright, II	No. 5:17-cv-02019-ODW (SP), 2018 WL 4998293, at *9-10 (Jan. 30, 2018)

Casso's Wellness Store & Gym, L.L.C. v. Spectrum Laboratory Products, Inc.	E.D. La.	Kurt D. Engelhardt	No. 17-2161, 2018 WL 1377608, at *3-6 (Mar. 19, 2018)
Richmond v. National Gypsum Services Co.	E.D. La.	Martin L. C. Feldman	No. 18-7453, 2018 WL 5016221, at *3-6 (Oct. 16, 2018)
Brotz v. Simm Associates, Inc.	M.D. Fla.	Paul G. Byron	No. 6:17-cv-1603-Orl-40TBS, 2018 WL 4963692, at *1-3 (Oct. 15, 2018)
Peters v. Wells Fargo Bank, N.A.	N.D. Cal.	Jon S. Tigar	No. 17-cv-04367-JST, 2018 WL 398238, at *2-3 (Jan. 12, 2018)
Santos v. CarMax Business Services, LLC	N.D. Cal.	Richard Seeborg	No. 17-cv-02447-RS, 2018 WL 7916823, at *4-6 (May 8, 2018)
Patterson v. RW Direct, Inc.	N.D. Cal.	Vince Chhabria	No. 18-cv-00055-VC, 2018 WL 6106379, at *1 (Nov. 21, 2018)
Allen v. ConAgra Foods, Inc.	N.D. Cal.	William H. Orrick	No. 3:13-cv-01279-WHO, 2018 WL 6460451, at *3-6 (Dec. 10, 2018)
In re Morning Song Bird Food Litigation	S.D. Cal.	John A. Houston	No. 12cv01592 JAH-AGS, 2018 WL 1382746, *1-3 (Mar. 19, 2018)
Goodman v. Sun Tan City, LLC.	S.D. Fla.	Bruce Reinhart, USMJ	No. 18-81281-CIV-ROSENBERG/REINHART, 2018 WL 6978695, at *2-5 (Dec. 14, 2018)
Lee v. Branch Banking & Trust Co.	S.D. Fla.	Robert N. Scola, Jr.	No. 18-21876-Civ-Scola, 2018 WL 5633995, at *4-8 (Oct. 31, 2018)
Feldman v. BRP US, Inc.	S.D. Fla.	William P. Dimitrouleas	No. 17-CIV-61150-DIMITROULEAS/SNOW, 2018 WL 8300534, at *4-6 (Mar. 28, 2018)

DID BRISTOL-MYERS SQUIBB KILL THE NATIONWIDE CLASS ACTION?

Harrison v. General Motors Co.	W.D. Mo.	Stephen R. Bough	No. 17-3128-CV-S-SRB, 2018 WL 6706697, at *6-7 (Dec. 20, 2018)
Morgan v. U.S. Xpress, Inc.	W.D. Va.	Norman K. Moon	No. 3:17-cv-00085, 2018 WL 3580775, at *3-6 (July 25, 2018)
Molock v. Whole Foods Market, Inc.	D.D.C.	Amit Mehta	297 F. Supp. 3d 114, 126 (2018)
Knotts v. Nissan North America, Inc.	D. Minn.	Susan Richard Nelson	346 F. Supp. 3d 1310, 1331-35 (2018)
Tickling Keys, Inc. v. Transamerica Financial Advisors, Inc.	M.D. Fla.	Roy Dalton	305 F. Supp. 3d 1342, 1350-51 (2018)
Hospital Authority of Metropolitan Government of Nashville v. Momenta Pharmaceuticals, Inc.	M.D. Tenn.	Waverly Crenshaw	353 F. Supp. 3d 678, 689-90 (2018)
Jones v. Depuy Synthes Products, Inc.	N.D. Ala.	L. Scott Coogler	330 F.R.D. 298, 309-12 (2018)
Sanchez v. Launch Technical Workforce Solutions, LLC	N.D. Ga.	Eleanor Ross, adopting opinion of Magistrate Judge Alan Baverman	297 F. Supp. 3d 1360, 1363-69 (2018)
Dennis v. IDT Corp.	N.D. Ga.	Leigh Martin May	343 F. Supp. 3d 1363, 1364-67 (2018)
Al Haj v. Pfizer Inc.	N.D. Ill.	Gary Feinerman	338 F. Supp. 3d 815, 818-22 (2018)
In re Packaged Seafood Products Antitrust Litigation	S.D. Cal.	Janis Sammartino	338 F. Supp. 3d 1118, 1171-73 (2018)
Becker v. HBN Media, Inc.	S.D. Fla.	Cecilia M. Altonaga	314 F. Supp. 3d 1342, 1344-45 (2018)
Braver v. Northstar Alarm Services, LLC	W.D. Okla.	Stephen Friot	329 F.R.D. 320, 326-27 (2018)
Sotomayor v. Bank of America, N.A.	C.D. Cal.	Cormac Carney	377 F. Supp. 3d 1034, 1036-39 (2019)

Cabrera v. Bayer Healthcare, LLC	C.D. Cal.	John A. Kronstadt	No. LA cv17-08525 JAK (JPRx), 2019 WL 1146828, at *4-12 (Mar. 6, 2019)
Swinter Group, Inc. v. Service of Process Agents, Inc.	E.D. Mo.	Ronnie L. White	No. 4:17-cv-2759 RLW, 2019 WL 266299, at *2-3 (Jan. 18, 2019)
Hicks v. Houston Baptist University	E.D. N.C.	Louise W. Flanagan	No. 5:17-cv-629-FL, 2019 WL 96219, at *5-7 (Jan. 3, 2019)
Burke v. Credit One Bank, N.A.	M.D. Fla.	Elizabeth A. Kovachevich	No. 8:18-cv-00728-EAK-TGW, 2019 WL 1468536, at *5-6 (Feb. 5, 2019)
Curran v. Bayer Healthcare LLC	N.D. Ill.	Jorge L. Alonso	No. 17 C 7930, 2019 WL 398685, at *3-4 (Jan. 31, 2019)
Branca v. Bai Brands, LLC	S.D. Cal.	Roger T. Benitez	No. 3:18-cv-00757-BEN-KSC, 2019 WL 1082562, at *13-15 (Mar. 7, 2019)
Ross v. Huron Law Group West Virginia, PLLC	S.D. W.Va.	Robert C. Chambers	No. 3:18-0036, 2019 WL 637717, at *3 (Feb. 14, 2019)
LaVigne v. First Community Bancshares, Inc.	D.N.M.	William P. Johnson	215 F. Supp. 3d 1138, 1147-48 (2016)
Lyngaas v. Curaden AG	E.D. Mich.	Mark A. Goldsmith	No. 17-cv-10910, 2019 WL 2231217, at *16-17 (May 23, 2019)
Dolan v. JetBlue Airways Corp.	S.D. Fla.	Robert N. Scola, Jr.	385 F. Supp. 3d 1338, 1355 (2019)
In re Takata Airbag Products Liability Litigation	S.D. Fla.	Federico A. Moreno	396 F. Supp. 3d 1101, 2019 WL 2570616, at *15-19 (2019)
Gress v. Freedom Mortgage Corp.	M.D. Pa.	John E. Jones III	386 F. Supp. 3d 455, 462-65 (2019)
McCurley v. Royal Seas Cruises, Inc.	S.D. Cal.	Cynthia Bashant	No. 17-cv-00986-BAS-AGS, 2019 WL 3006469, at *7-8 (July 10, 2019)

DID BRISTOL-MYERS SQUIBB KILL THE NATIONWIDE CLASS ACTION?

Edwards v. Conn’s, Inc.	D. Nev.	Andrew P. Gordon	No. 2:18-cv-01998-APG-BNW, 2019 WL 4731942, at *3 n.2 (Sept. 27, 2019)
Moore v. Compass Group USA, Inc.	E.D. Mo.	Ronnie L. White	No. 4:18CV1962 RLW, 2019 WL 4723077, at *7-9 (Sept. 26, 2019)
Choi v. Kimberly-Clark Worldwide, Inc	C.D. Cal.	David O. Carter	No. SA CV 19-0468-DOC (ADSx), 2019 WL 4894120, at *4-6 (Aug. 28, 2019)
Pascal v. Concentra, Inc.	N.D. Cal.	Joseph C. Spero	No. 19-cv-02559-JCS, 2019 WL 3934936, at *4-6 (Aug. 20, 2019)
Zuehlsdorf v. FCA US LLC	C.D. Cal.	Jesus G. Bernal	No. EDCV-18-1877 JGB (KKx), 2019 WL 4422673, at *5-6 (Aug. 7, 2019)

TABLE B2
RULINGS HOLDING THAT JURISDICTION IS NOT PERMITTED

Case Caption	District	Judge	Citation
McDonnell v. Nature’s Way Products, LLC	N.D. Ill.	Sara L. Ellis	No. 16 C 5011, 2017 WL 4864910, at *4 (Oct. 26, 2017)
Wenokur v. AXA Equitable Life Insurance Co.	D. Ariz.	Douglas L. Rayes	No. CV-17-00165-PHX-DLR, 2017 WL 4357916, at *4 (Oct. 2, 2017)
America’s Health & Resource Center Ltd. v. Alcon Laboratories, Inc.	N.D. Ill.	Thomas M. Durkin	No. 16 C 4539, 2018 WL 5808475, at *2 (Nov. 6, 2018)
Chavez v. Church & Dwight Co., Inc.	N.D. Ill.	John J. Tharp, Jr.	No. 17 C 1948, 2018 WL 2238191, at *9-11 (May 16, 2018)
DeBernardis v. NBTY, Inc.	N.D. Ill.	Harry D. Leinenweber	No. 17 C 6125, 2018 WL 461228, at *1-2 (Jan. 18, 2018)

Anderson v. Logitech, Inc.	N.D. Ill.	Harry D. Leinenweber	No. 17 C 6104, 2018 WL 1184729, at *1 (Mar. 7, 2018)
America's Health & Resource Center, Ltd. v. Promologics, Inc.	N.D. Ill.	Harry D. Leinenweber	No. 16 C 9281, 2018 WL 3474444, at *1 (July 19, 2018)
Mussat v. IQVIA Inc.	N.D. Ill.	Virginia M. Kendall	No. 17 C 8841, 2018 WL 5311903, at *1 (Oct. 26, 2018)
Practice Management Support Services, Inc. v. Cirque du Soleil, Inc.	N.D. Ill.	Thomas M. Durkin	301 F. Supp. 3d 840, 846 (2018)
In re Dicamba Herbicides Litigation	E.D. Mo.	Stephen N. Limbaugh, Jr.	359 F. Supp. 3d 711, 722 (2019)
Zuehlsdorf v. FCA US LLC	C.D. Cal.	Jesus G. Bernal	No. EDCV 18-1877 JGB (KKx), 2019 WL 2098352, at *14 (Apr. 30, 2019)
Leppert v. Champion Petfoods USA Inc.	N.D. Ill.	Virginia M. Kendall	No. 18 C 4347, 2019 WL 216616, at *3 (Jan. 16, 2019)
Bakov v. Consolidated World Travel, Inc.	N.D. Ill.	Harry D. Leinenweber	No. 15 C 2980, 2019 WL 1294659, at *13 (Mar. 21, 2019)
Garvey v. American Bankers Insurance Co. of Florida	N.D. Ill.	Sharon Johnson Coleman	No. 17-CV-986, 2019 WL 2076288, at *1 (May 10, 2019)

TABLE B3
RULINGS THAT DO NOT REACH A HOLDING

Case Caption	District	Judge	Citation
Broomfield v. Craft Brew Alliance, Inc.	N.D. Cal.	Beth Labson Freeman	No. 17-cv-01027-BLF, 2017 WL 3838453, at *15 (Sept. 1, 2017)

DID BRISTOL-MYERS SQUIBB KILL THE NATIONWIDE CLASS ACTION?

In re Dental Supplies Antitrust Litigation	E.D.N.Y.	Brian M. Cogan	No. 16 Civ. 696 (BMC)(GRB), 2017 WL 4217115, at *1 (Sept. 20, 2017)
Thomas v. Kellogg Co.	W.D. Wash.	Ronald B. Leighton	No. C13-5136RBL, 2017 WL 5256634, at *1 (Oct. 17, 2017)
Alvarez v. NBTY, Inc.	S.D. Cal.	Cynthia Bashant	No. 17-cv-00567-BAS-BGS, 2017 WL 6059159, at *3 (Dec. 6, 2017)
Greene v. Mizuho Bank, Ltd.	N.D. Ill.	Gary Feinerman	289 F. Supp. 3d 870, 871, (2017)
Branch v. Government Employees Insurance Co.	E.D. Va.	Robert E. Payne	323 F.R.D. 539, 553 (2018)
Sloan v. General Motors LLC	N.D. Cal.	Edward M. Chen	287 F.Supp.3d 840, 853 (2018)
In re Nexus 6P Products Liability Litigation	N.D. Cal.	Beth Labson Freeman	No. 17-cv-02185-BLF, 2018 WL 827958, at *3, *6 (Feb. 12, 2018)
Blitz v. Monsanto Co.	W.D. Wis.	William M. Conley	317 F. Supp. 3d 1042, 1047-48 (2018)
Weisheit v. Rosenberg & Associates, LLC	D. Md.	James K. Bredar	No. JKB-17-0823, 2018 WL 1942196, at *4, *5 (Apr. 25, 2018)
Webb v. Dr Pepper Snapple Group, Inc.	W.D. Mo.	Roseann A. Ketchmark	No. 4:17-00624-CV-RK, 2018 WL 1990509, *3, *4 (Apr. 26, 2018)
Chernus v. Logitech, Inc.	D. N.J.	Freda L. Wolfson	No.: 17-673(FLW), 2018 WL 1981481, at *6, *7 (Apr. 27, 2018)
Sobol v. Imprimis Pharmaceuticals	E.D. Mich.	Elizabeth Stafford	No. 16-14339, 2018 WL 2424009, at *1, *2 (May 29, 2018)
Molock v. Whole Foods Market Group, Inc.	D.D.C.	Amit P. Mehta	317 F. Supp. 3d 1, 3 (2018).

Robinson v. Unilever United States, Inc.	C.D. Cal.	Dolly M. Gee	No. CV173010DMGAJWX, 2018 WL 6136139, at *3 (June 25, 2018)
Campbell v. Freshbev LLC	E.D.N.Y.	Frederic Block	322 F. Supp. 3d 330, 336 (2018)
Charvat v. National Holdings Corp.	S.D. Ohio	Elizabeth A. Preston Deavers	No. 2:14-cv-2205, 2018 WL 6732887, at *1-3 (July 26, 2018)
Gaines v. General Motors, LLC	S.D. Cal.	Larry Alan Burns	No. 17cv1351-LAB (JLB), 2018 WL 3752336, at *1-2 (Aug. 7, 2018)
Gasser v. Kiss My Face, LLC	N.D. Cal.	Jacqueline Scott Corley, USMJ	No. 17-cv-01675-JSC, 2018 WL 4538729, at *2 (Sept. 21, 2018)
Gonzalez v. Costco Wholesale Corp.	E.D.N.Y.	Nicholas G. Garaufis	16-CV-2590 (NGG) (JO), 2018 WL 4783962, at *6 (Sept. 29, 2018)
Dzielak v. Whirlpool Corp.	D.N.J.	James B. Clark, III	No. 12-89 (KM), 2018 WL 6985013, at *2-3 (Dec. 21, 2018)
Mussat v. Enclarity, Inc.	N.D. Ill.	John J. Tharp, Jr.	362 F. Supp. 3d 468, 471-77 (2019)
Suarez v. California Natural Living, Inc.	S.D.N.Y.	Vincent L. Briccetti	No. 17 CV 9847 (VB), 2019 WL 1046662, at *6 (Mar. 5, 2019)
Weiss v. Grand Campus Living, Inc.	S.D. Ind.	James R. Sweeney II	No. 1:18-cv-00434-JR-TAB, 2019 WL 1261405, at *2 (Mar. 19, 2019)
Miszczyszyn v. JPMorgan Chase Bank, N.A.	N.D. Ill.	Robert M. Dow, Jr.	No. 18-cv-3633, 2019 WL 1254912, at *3 (Mar. 19, 2019)
Solomon v. American Web Loan	E.D. Va.	Henry Coke Morgan, Jr.	No. 4:17cv145, 2019 WL 1320790, at *18 (Mar. 22, 2019)
Bank v. CreditGuard of America	E.D.N.Y.	Pamela K. Chen	No. 18-CV-1311 (PKC) (RLM), 2019 WL 1316966, at *12 (Mar. 22, 2019)

DID BRISTOL-MYERS SQUIBB KILL THE NATIONWIDE CLASS ACTION?

McCurley v. Royal Seas Cruises, Inc.	S.D. Cal.	Cynthia Bashant	331 F.R.D. 142, 161 (2019)
Parks v. Ainsworth Pet Nutrition, LLC	S.D.N.Y.	Louis L. Stanton	377 F. Supp. 3d 241, 249-50 (2019)
Maeda v. Pinnacle Foods Inc.	D. Haw.	Jill A. Otake	390 F. Supp. 3d. 1231, 1244 (2019)
<i>In re</i> Welspun Litigation	S.D.N.Y.	Vincent L. Briccetti	No. 16 CV 6792 (VB), 2019 WL 2174089, at *11 (May 20, 2019)
Tirado v. Bank of America, National Ass'n	N.D. Ill.	Robert M. Dow, Jr.	No. 18-cv-5677, 2019 WL 4694990, at *4 (Sept. 26, 2019)
Feliciano v. CoreLogic Rental Property Solutions, LLC	S.D.N.Y.	Alvin K. Hellerstein	No. 17 Civ. 5507 (AKH), 2019 WL 3406593, at *6 (July 29, 2019)
Cummings v. FCA US LLC	N.D.N.Y.	Glenn T. Suddaby	No. 5:17-CV-1072 (GTS/TWD), 2019 WL 3494733, at *20 (Aug. 1, 2019)
Moser v. Health Insurance Innovations, Inc.	S.D. Cal.	William Q. Hayes	No. 17-cv-1127-WQH-KSC, 2019 WL 3719889, at *5 (Aug. 7, 2019)
Andrade-Heymsfield v. Danone US, Inc.	S.D. Cal.	Cathy Ann Bencivengo	No. 19-cv-589-CAB-WVG, 2019 WL 3817948 (Aug. 14, 2019)
Simon v. Ultimate Fitness Group, LLC	S.D.N.Y.	Colleen McMahon	No 19 Civ. 890 (CM), 2019 WL 4382204, at *4 (Aug. 19, 2019)
Pearlstone v. Costco Wholesale Corporation	E.D. Mo.	Stephen R. Clark	No. 4:18CV630 SRC, 2019 WL 3997316, at *2 (Aug. 23, 2019)
Montoya v. CRST Expedited, Inc.	D. Mass.	Patti B. Saris	No. 16-10095-PBS, 2019 WL 4230892, at *20 (Sept. 6, 2019)
Jackson v. General Mills, Inc.	S.D. Cal.	Larry Alan Burns	No. 18cv2634-LAB (BGS), 2019 WL 4599845, at *3 (Sept. 20, 2019).