

SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

Expert Analysis

Personal Jurisdiction Requirements In FLSA Collective Actions

The Fair Labor Standards Act (FLSA) provides a mechanism for similarly-situated employees to join together and pursue a nationwide collective action against their employer. If the court adjudicating such a collective action lacks general personal jurisdiction over the employer, however, there exists an unsettled issue: Does each employee have to establish that the court has specific personal jurisdiction over the employer with respect to that employee's FLSA claim? Some district courts have said yes, while others have said no. No circuit court has addressed the issue. As a practical matter, such a requirement would mean that employees who do not reside or work in the state where the collective action is pending could not be part of the collective action.

Southern District Magistrate Judge Barbara Moses recently addressed this open question in *Pettenato v. Beacon Health Options*, 2019 WL 5587335 (Oct. 25, 2019). Judge Moses found that



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because the court lacked general jurisdiction over the defendant employer, each plaintiff had to establish specific jurisdiction over the defendant as to his or her FLSA claim. As a result, the FLSA claims of all out-of-state plaintiffs were dismissed.

Background

The plaintiffs in *Pettenato* were 19 individuals who were employed as "care management employees" by three related entities, Beacon Health Options, Beacon Health Strategies, and ValueOptions Federal Services (collectively, Beacon Health). Five plaintiffs resided and/or worked for Beacon Health in New York, while the rest resided and worked for Beacon Health in other states. Beacon Health was neither incorporated nor headquartered in New York state.

Plaintiffs brought claims against Beacon Health under the FLSA (and related state laws) on behalf of themselves and other care management employees,

alleging that Beacon Health failed to pay them overtime in violation of the FLSA. Plaintiffs asserted that there were hundreds of other care management employees across the country who were similarly situated to them. Accordingly, plaintiffs moved Judge Moses for conditional certification of their FLSA claims as a nationwide

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collective action, pursuant to 29 U.S.C. §216(b).

Employees seeking to bring a collective action under the FLSA must first obtain conditional certification of their claims as a collective action by making a "modest factual showing" that there exist other employees who are similarly situated to them. *Pettenato*, 2019 WL 5587335, at *10-11. If they do, the other employees are given an opportunity to opt in to the collective action, and then, after discovery, the court conducts "a more stringent ... analysis upon a full record to decide whether the additional

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plaintiffs are [in fact] similarly situated to the original plaintiffs” and should be allowed to remain in the action. *Id.* at *11 (citations omitted).

On Oct. 25, 2019, Judge Moses declined to conditionally certify a nationwide collective action. *Id.* at *1. Instead, Judge Moses conditionally certified a collective action only as to those care management employees who resided or worked for Beacon Health in New York. *Id.* Judge Moses concluded that Beacon Health was not subject to general personal jurisdiction in New York, and, in light of the Supreme Court’s decision in *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773 (2017), she could “not exercise specific personal jurisdiction over the FLSA claims of out-of-state plaintiffs.” *Id.*

General Jurisdiction

Judge Moses began by observing that before a court can adjudicate a claim against a defendant, it must have either general or specific jurisdiction over the defendant. See *id.* at *3-4 & n.4. Judge Moses noted that a court has general jurisdiction, if the defendant’s “affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State.” *Id.* at *4 n.4 (citations omitted). Judge Moses found that plaintiffs “d[id] not (and could not)” allege a factual basis to support the court’s exercise of general jurisdiction over Beacon Health. *Id.* Accordingly, Judge Moses determined that for plaintiffs to pursue their FLSA claims, they had to establish specific jurisdiction over Beacon Health. See *id.* at *3-4.

Specific Jurisdiction

Because the FLSA does not provide for nationwide service of process,

Judge Moses concluded that for specific jurisdiction to exist, plaintiffs had to establish both that (1) the exercise of jurisdiction over Beacon Health was proper under the New York long-arm statute, N.Y. C.P.L.R. 302, and (2) the exercise of jurisdiction would “comport[] with [constitutional] due process.” *Id.* at *4. Judge Moses found that to make those required showings, plaintiffs had to establish that Beacon Health (1) “transacts ... business in New York” and (2) plaintiffs’ “cause[s] of action arise[] from such a business transaction.” *Id.* (citations omitted).

Judge Moses observed, however, that there was no “affiliation between [New York] and the underlying controversy” with respect to the claims of the out-of-state plaintiffs. *Id.* at *4-5. Judge Moses thus concluded that Beacon Health “would [not have been] subject to specific jurisdiction in New York ... with respect to [the out-of-state plaintiffs’ claims] had those plaintiffs brought suit individually.” *Id.* at *5. But the out-of-state plaintiffs had not filed suit individually. Accordingly, Judge Moses next considered whether the outcome of the specific jurisdiction analysis as to those plaintiffs’ claims should be different because this case was brought as a collective action under the FLSA. See *id.* at *5-10.

Application of ‘Bristol-Myers’ To Specific Jurisdiction Analysis

Judge Moses noted that in *Bristol-Myers*, the Supreme Court had considered an issue similar to the one she was facing under the FLSA: whether a state court could exercise specific jurisdiction over the mass tort claims of out-of-state plaintiffs against an out-of-state defendant. *Id.* at *5. In *Bristol-Myers*, the Supreme Court held that for a state court to exercise specific

jurisdiction, the plaintiffs’ claims had to “aris[e] out of or relat[e] to the defendant’s contacts with the forum.” *Id.* (citations omitted). Here, the FLSA claims of the out-of-state plaintiffs did not arise out of or relate to Beacon Health’s contacts with New York. Judge Moses found that that did not end the inquiry, however, because in *Bristol-Myers*, the Supreme Court “expressly left open the question whether the [Constitution] imposes the same restrictions on the exercise of [specific] jurisdiction *by a federal court*” as it does for a state court. *Id.* at *6 (citation omitted, emphasis added).

Judge Moses then observed that after *Bristol-Myers*, in the context of class actions brought pursuant to Federal Rule of Civil Procedure 23 (Rule 23), “federal district courts have split on the question of whether that decision prohibits their exercise of specific jurisdiction over out-of-state plaintiffs’ claims against out-of-state defendants.” *Id.* Many courts have held that *Bristol-Myers* does not apply in the Rule 23 context, concluding that “there is no constitutional unfairness in subjecting a defendant to the class claims of out-of-state plaintiffs in Rule 23 class actions, as long as a court has jurisdiction over the class representative’s claims.” *Id.* Other courts, however, have taken the opposite view. *Id.*

Judge Moses found that federal district courts “addressing the impact of *Bristol-Myers* on FLSA collective actions are equally divided.” *Id.* at *6. The courts that have held that “*Bristol-Myers* does not apply to divest courts of personal jurisdiction in FLSA collective actions”—including the only two courts in this Circuit to have addressed the issue—have reasoned that a contrary ruling would “trespass

on the expressed intent of Congress,” because “unlike the state-law tort claims at issue in *Bristol-Myers*, FLSA claims [are] federal claims created by Congress specifically to address employment practices nationwide.” *Id.* at *6-7 (collecting cases). These courts also have observed that applying *Bristol-Myers* to FLSA claims would mean that “each putative collective member not residing in either the state where the suit is brought, or a state where the defendant is domiciled, could not be part of a collective action,” which “would splinter most nationwide collective actions ... and greatly diminish the efficacy of FLSA collective actions.” *Id.* at *6 (citations omitted).

In contrast, the courts that have held that *Bristol-Myers* does apply to FLSA collective actions have reasoned that “because the FLSA does not authorize nationwide service of process, a court facing an FLSA collective action must look to state law and the Due Process Clause of the Fourteenth Amendment for the applicable limits on its exercise of personal jurisdiction.” *Id.* at *7 (citation omitted). So framed, these courts have found “no basis to distinguish out-of-state plaintiffs’ FLSA claims from the out-of-state plaintiffs’ mass tort claim[s] at issue in *Bristol-Myers*.” *Id.* Further, these courts have found the cases in which courts have declined to apply *Bristol-Myers* to preclude out-of-state plaintiffs from participating in Rule 23 class actions distinguishable, including because “Rule 23’s stringent class action certification standards provide greater due process protections than the FLSA’s relatively lenient standard for conditional collective certification.” *Id.* (citation and internal quotation marks omitted).

‘Bristol-Myers’ Precludes Specific Jurisdiction

Judge Moses agreed with the courts that have applied *Bristol-Myers* to FLSA collective actions “for substantially the reasons set forth in [their] opinions.” *Id.* at *9. “Because the FLSA does not provide for nationwide service of process, and because Beacon Health [did] not consent[] to th[e] Court’s jurisdiction over it with respect to the claims of the out-of-state plaintiffs,” Judge Moses “look[ed] to [the] New York [long-arm statute] and the Due Process Clause to determine whether there [was] a sufficient nexus between those employees’ claims—which [were] based on conduct which took place entirely outside New York—and [Beacon Health’s] activity in New York.” *Id.*

Judge Moses’s decision is a reminder of the rigor with which courts will enforce personal jurisdiction requirements.

Judge Moses found that the New York long-arm statute did not permit personal jurisdiction because the out-of-state plaintiffs’ claims “d[id] not arise from Beacon Health’s transaction of business in New York.” *Id.* (citation omitted). Although that finding alone was dispositive as to the specific jurisdiction inquiry, Judge Moses also found that “the exercise of personal jurisdiction [over the out-of-state plaintiffs’ claims] would violate [constitutional] due process,” because “there [was] a lack of connection between the forum and [those plaintiffs’ claims].” *Id.* (citation omitted).

While Judge Moses “recognize[d] the serious policy arguments raised by other courts” against applying *Bristol-*

Myers to preclude out-of-state plaintiffs’ FLSA claims, she cited three reasons why “[t]hose arguments [did] not alter [her] conclusion”: “[f]irst, [her] obligation to follow the law [would not] be overshadowed by even the most compelling policy arguments”; “[s]econd, [the] policy concerns [were] somewhat overstated,” because “a nationwide FLSA collective of plaintiffs” could “join[] together in a consolidated action in a state that has general jurisdiction over Beacon Health”; and “[f]inally, ... Congress remains free to authorize nationwide service of process under the FLSA.” *Id.* at *10 (citation omitted).

After declining to conditionally certify a collective action that included the out-of-state plaintiffs, Judge Moses conditionally certified a collective action for those employees who lived or worked for Beacon Health in New York state. Judge Moses concluded that conditional certification was proper as to the in-state employees because the in-state plaintiffs had submitted declarations that “satisfied their modest burden to show that there may be similarly situated employees to the named plaintiffs with respect to whether a FLSA violation has occurred.” *Id.* at *11-12 (citation omitted).

Conclusion

Although strong policy reasons existed to loosen the personal jurisdiction requirements for the employees in *Pettenato* seeking to pursue a nationwide collective action under the FLSA, Judge Moses’s decision is a reminder of the rigor with which courts will enforce personal jurisdiction requirements.