



COMMENTARY
NOVEMBER 2018

Out of State, Out of Luck: Federal Court Rejects Nationwide TCPA Class Action Claims

IN SHORT

The Situation: A federal court recently considered whether a plaintiff could maintain a nationwide Telephone Consumer Protection Act ("TCPA") class action brought on behalf of class members who did not reside in the state where the lawsuit was filed.

The Result: Citing the U.S. Supreme Court's decision in *Bristol-Myers Squibb*, the court granted the defendant's motion to strike the plaintiff's class definition, essentially narrowing the proposed nationwide class to a single state.

Looking Ahead: A defendant can challenge a nationwide class action in a jurisdiction where the defendant is not incorporated, but should consider all of the strategic issues raised by the potential for transfer and how to appropriately address those issues.

The Facts

In *Mussat v. IQVIA, Inc.*, the plaintiff, Florence Mussat, M.D., S.C., brought a putative class action in the United States District Court for the Northern District of Illinois against IQVIA, Inc., based on the allegation that IQVIA violated the TCPA by sending two unsolicited advertisements via fax. Mussat sought to represent a class that had no geographic restriction, including putative class members who did not reside in Illinois and who did not receive the faxes in that state.

The Law

A primary issue the court considered was whether the court could exercise personal jurisdiction over IQVIA with respect to the claims of putative class members who received the alleged facsimiles in states other than the forum state of Illinois. To answer that question, the court analyzed the Supreme Court's recent ruling in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773 (2017). According to the *Mussat* court, the *Bristol-Myers Squibb* case held that to exercise personal jurisdiction, "the suit must arise out of or relate to the defendant's contacts with the forum." The Court, however, "left open" whether that rationale "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."

The *Mussat* court found that it lacked "general" jurisdiction over IQVIA because IQVIA is a Delaware corporation and its principal place of business is in Pennsylvania. The court then determined that *Bristol-Myers Squibb* "requires a connection between the forum and the specific claims at issue" and explained that nationwide class actions are barred where the defendant is not subject to general jurisdiction. In so ruling, the court declared that it was:



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Join[ing] the litany of other courts in this District and elsewhere to hold that the Due Process Clause of the Fourteenth Amendment precludes the exercise of personal jurisdiction over a defendant in a putative class action where nonresident, absent members seek to aggregate their claims with an in-forum resident, even though the defendant allegedly injured the nonresidents outside of the forum.

Finally, the court declined to transfer the case to federal courts in Delaware or Pennsylvania because the court found that venue was appropriate in the federal court in Illinois.

TWO KEY TAKEAWAYS

1. The *Mussat* decision may assist a TCPA defendant who is sued in a nationwide class action in a jurisdiction where the defendant is not incorporated and does not maintain its principal place of business, and there is otherwise no general jurisdiction over the defendant in the forum where the plaintiff initially files.
2. A defendant that can challenge a nationwide class action on the grounds discussed in *Mussat* should consider all of the strategic issues raised by the potential for transfer and how to appropriately address those issues.



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