New Court Decision will Increase Employee Claims Brought in the First Circuit

PS&H partner Alicia Samolis recently was consulted by *Rhode Island Lawyers Weekly* to analyze the 1st Circuit case *Waters v. Day & Zimmermann NPS, Inc.*, 20-1997.

Background

In the case, Defendant Day & Zimmerman ("D&Z") is a Delaware company with a principal place of business in Pennsylvania. D&Z was sued in the federal Massachusetts District Court by Waters, an employee working in Massachusetts, for alleged wage and hour violations under the FLSA. Waters properly served D&Z and in the months after service, many out-of-state employees with no connection to Massachusetts opted into the suit by making the appropriate filings to join as plaintiffs in a collective FLSA action. D&Z moved to dismiss the out-of-state plaintiffs' claims in the Massachusetts District Court, relying in part on the United States Supreme Court decision *Bristol-Myers Squibb Co.* ("BSM"). In BSM, the Supreme Court held that a state court has no jurisdiction over out-of-state mass tort plaintiffs' claims in a forum without general jurisdiction over the defendant pursuant to the fourteenth amendment. The Massachusetts District Court disagreed and denied the motion to dismiss the out-of-state defendants. D&Z filed a petition for permission to file an interlocutory appeal of the denial of the motion to dismiss, which the 1st Circuit granted, and the case was thereafter stayed in the District Court pending the 1st Circuit decision.

1st Circuit Decision

In the recent decision, the 1st Circuit granted the motion to hear the interlocutory appeal of the denial of the dismissal and upheld the Massachusetts District Court's decision not to dismiss the out-of-state plaintiffs.

This decision was a surprise on two levels. First and foremost, the decision to hear the interlocutory appeal appeared unnecessary given the case was not even certified as a collective action and the motion to dismiss was **denied** as to the additional plaintiffs (not granted). Given the early stage of the litigation, the out-of-state defendants could have been dismissed for other reasons if the 1st Circuit did not hear the matter, which would have resolved the present controversy. Judge Barron in his dissent thought the majority should have refrained from making a controversial ruling on the issue (and creating a circuit split) at this early stage of the litigation.

Secondly, as explained by Alicia Samolis to *Rhode Island Lawyers Weekly*, the 1st Circuit made a very broad ruling which will be read to apply in situations beyond FLSA collective actions. In the decision, the 1st Circuit focused on Rule 4. Rule 4 mandates that in a federal action, a plaintiff must have jurisdiction over the defendant according to state personal jurisdiction rules in order for service of the complaint to be proper. For out-of-state defendants, this means that under the state long arm statute, and by extension the fourteenth amendment, the state where the federal court sits would have to have general personal jurisdiction over the defendant based upon the defendant's overall contact with the state (such as when the defendant is incorporated in the state or has a principal office in the state) or there is specific personal jurisdiction over the defendant based upon the defendant's actions in the state relating to the dispute at hand.

The 1st Circuit broadly opined that in a federal action, if there was proper jurisdiction over the initial claims in the complaint properly served upon the defendant, Rule 4 and the fourteenth amendment provide no further restriction over the federal court's jurisdiction over any subsequent claims or plaintiffs added after the initial service. Here, Waters properly served D&Z with the action given Waters worked in Massachusetts, thus giving the federal court specific jurisdiction over D&Z under the Massachusetts' long arm statute. In the 1st Circuit's opinion, the jurisdictional analysis ended there.

The narrow reading of Rule 4 with respect to jurisdictional protections after service of a complaint departs from

view that the jurisdictional limits of Rule 4 apply to additional claims or plaintiffs added at a later time. The 1st Circuit also departed from two decisions out of the 6th Circuit and 8th Circuit in 2021 regarding the issue. Both of those circuits held that Rule 4 still limits a federal court's exercise of personal jurisdiction over opt-in FLSA plaintiffs when the court would not otherwise have personal jurisdiction over the defendant with respect to the claims of an individual plaintiff.

Impact of Decision

As Alicia Samolis explained to *Lawyers Weekly*:

This decision allows clever plaintiffs' attorneys to throw due process out the window and find **only one** plaintiff in an employee-favorable state or an inconvenient state for the defendant and bring an entire national collective action [there]. The state chosen may have little legitimate interest in the outcome of the decision, but under the 1st Circuit holding, would have jurisdiction to hear a dispute with thousands of out-of-state plaintiffs.

According to Alicia, this result is particularly unfair because the FLSA could have included a nationwide service of process provision – but did not – and because a decision to the contrary would not have limited plaintiffs' ability to bring a collective action. Alicia notes they just would have had to pick a state that had general personal jurisdiction over the defendant employer.

Alicia stated "while many employers and their corporate counsel may view this decision as a boring procedural matter relevant only to complex litigators, it is particularly relevant given the labor circumstances today." According to Alicia, employers more than ever are allowing employees to work from home, even if home is outside the states where the employer operates. Part of the trend is because during COVID, companies built the technological and operational capacity to make sure employees could work anywhere. The other part of the trend is that because the labor market is so tight right now, employees have more bargaining power than ever before. Many more companies are forced to bear the costs of compliance with different employment laws, paying taxes to a different state and registering to do business in a state because there is simply no one else they can find to hire to do the work other than the employee who wants to work from home out of state. Prior to this decision, in many jurisdictions allowing such work and related compliance actions did not necessarily give courts general personal jurisdiction over the employer in the state, meaning that employers would face the risk of having to litigate with the employee or employees working in that state but not litigation brought by **all** of their employees. This decision provides for an additional downside of allowing employees to work out of state, even remotely. It also makes implementing mandatory arbitration agreements with employees choosing local arbitration forums and individual arbitration even more important.

The full article as published in *Rhode Island Lawyers Weekly*, can be viewed here. (Subscription required)

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