IN THE
Supreme Court of Pennsylvania

No. 7 EAP 2019

PATRICIA L. HAMMONS,
Plaintiff-Appellee,
v.

ETHICON, INC., and JOHNSON & JOHNSON CO.,
Defendants-Appellants,
and

GYNCARE; SECANT MEDICAL; SECANT MEDICAL INC.;
PRODESCO, INC.; and SECANT MEDICAL LLC,
Defendants.

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Appeal from the Decision of the Superior Court, dated June 19, 2018, at 1526 EDA 2016 & Cross-Appeal at 1522 EDA 2016, Affirming the Judgment of the Court of Common Pleas of Philadelphia County, May Term 2013, No. 3913 (Hon. Michael Bernstein, J.), dated April 14, 2016

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INTEREST OF *AMICUS CURIAE*

The Washington Legal Foundation (WLF) is a public interest law and policy center headquartered in Washington, DC, with supporters in all 50 States, including many in Pennsylvania.[1] WLF promotes and defends free enterprise, individual rights, a limited and accountable government, and the rule of law.

WLF has frequently appeared as *amicus curiae* in this and other courts on important civil procedure issues. *See, e.g.*, *Walsh v. BASF Corp.*, Nos. 14 WAP 2019, *et seq.* (Pa., filed May 14, 2019). In particular, WLF has appeared frequently in cases raising personal jurisdiction, to support defendants seeking to avoid a court's coercive powers when exercising jurisdiction does not comply with traditional notions of fair play and substantial justice. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017).

In its seminal decision in *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the U.S. Supreme Court made clear that state courts lack personal jurisdiction over an out-of-state corporate defendant unless its activities within the forum State give rise to the claims being asserted or unless the corporation is "at home" in that State. *Daimler* further clarified that a corporation, even one that conducts substantial business in all 50 States, is "at home" in no more than one or two States.

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[1] Under Pa. R.A.P. 531(b)(2), WLF states that no person or entity other than WLF and its counsel paid for or authored this brief, in whole or in part.

WLF is concerned that the rationale of the Superior Court, unless overturned by this Court, would essentially negate *Daimler* as an effective check on state-court jurisdiction over out-of-state corporate defendants. WLF is also concerned that the decision below deprives businesses of adequate means to structure their conduct with some minimum assurances about where that conduct will and will not render them liable to suit.

QUESTION PRESENTED

The question accepted by this Court for review is:

> Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 Pa.C.S. § 5322(c) precludes Pennsylvania from asserting personal jurisdiction over two New Jersey companies in a case brought by an Indiana resident asserting claims under the Indiana Product Liability Act.

STATEMENT OF THE CASE

The facts of this case are set out fully in Petitioners' brief. WLF wishes to highlight several facts of particular relevance to the issues on which this brief focuses.

Like many corporations that sell products nationwide, Appellants Ethicon, Inc. and Johnson & Johnson Co. sell many products in Pennsylvania. In particular, large numbers of the category of medical devices at issue here, Ethicon's Prolift system, have been implanted by Pennsylvania physicians into their Pennsylvania patients.

Appellee Patricia Hammons, an Indiana citizen, was not among those patients.

Her Indiana physicians diagnosed her as suffering from a prolapsed bladder and treated her by implanting a Prolift device, made with Prolene mesh and designed expressly to treat prolapsed organs. The implantation and her subsequent alleged injury both occurred *in Indiana*, where she continues to live. Hammons contends that the Prolift device Appellants delivered to her in Indiana was defectively designed, and that the safety warnings Appellants provided to her and her physicians in Indiana were inadequate.

Hammons sued Ethicon and Johnson & Johnson in the Court of Common Pleas, Philadelphia County. Ethicon and Johnson & Johnson (collectively, "Ethicon") are not incorporated in Pennsylvania, nor do they maintain their principal places of business in the Commonwealth. Throughout the court proceedings, they asserted that Pennsylvania courts lacked personal jurisdiction over Hammons's claims against them. The trial court rejected those assertions and ultimately entered judgment against Ethicon for $12.9 million.

The Superior Court affirmed. *Hammons v. Ethicon, Inc.*, 190 A.3d 1248 (Pa. Super. 2018). The Superior Court concluded (contrary to Hammons's initial contentions in this case) that Pennsylvania courts lacked general jurisdiction over Ethicon because "no entity within Ethicon's corporate hierarchy is incorporated in Pennsylvania or has its principal place of business in Pennsylvania." *Id.* at 1261. But

it held that they could exercise specific jurisdiction over Hammons's claims because several Prolift-related activities occurred in Pennsylvania. These activities included: (1) Secant Medical, Inc., one of the companies in Ethicon's supply chain, used its Pennsylvania manufacturing facility to weave mesh that was ultimately used to make Prolift devices; and (2) Ethicon hired a Pennsylvania doctor, Vincent Lucente, to perform some Prolift-related work. *Id.* at 1263-64.

The Superior Court acknowledged that the U.S. Supreme Court's *Bristol-Myers* decision (issued after the trial court entered judgment against Ethicon in 2016) bars exercise of specific jurisdiction over nonresident defendants unless "the plaintiff's claim[s] ... 'arise out of or relate to' the defendant's activities in the forum state." *Id.* at 1262 (quoting *Bristol-Myers*, 137 S. Ct. at 1785). It stated that Hammons's claims satisfied that standard but failed to identify any of Ethicon's Pennsylvania activities related to Hammons's design-defect claim or failure-to-warn claim *in particular*. *Id.* at 1263-64. The Court thereby implied that Pennsylvania courts could exercise specific jurisdiction over virtually *any* Prolift-related claim filed against Ethicon, regardless where the alleged injury occurred. The Court said that *Bristol-Myers* was no impediment to specific jurisdiction over Prolift-related claims against Ethicon because "[t]he connection between Ethicon and Pennsylvania is considerably stronger than the connection between Bristol-Myers and California." *Id.* at 1263.

SUMMARY OF ARGUMENT

As the U.S. Supreme Court has repeatedly reminded, the Fourteenth Amendment's Due Process Clause imposes strict limits on the authority of a state court to exercise personal jurisdiction over out-of-state defendants. *See, e.g., J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."). Those limits serve both to protect litigants from inconvenient or distant litigation and to recognize limits on the sovereignty of each State with respect to affairs arising in other States. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 293 (1980). The decision below threatens to obliterate those limits by subjecting out-of-state defendants to the jurisdiction of Pennsylvania courts based on nonresidents' claims lacking any connection to Pennsylvania.

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). In holding that it could exercise specific jurisdiction over Hammons's claims against Ethicon, the trial court relied explicitly on the California Supreme Court's decision in *Bristol-Myers Squibb, Inc. v. Superior Court*, 1 Cal. 5th 783 (2016). But

the U.S. Supreme Court later reversed that decision, stating that the California court had defined "arise out of or relate to" far too expansively. *Bristol-Myers*, 137 S. Ct. at 1781-83. In particular, *Bristol-Myers* deemed irrelevant the defendant's massive business activity in California and its billions of dollars of annual California sales: "When there is no connection [between the forum and the underlying controversy], specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id*. at 1781.

Specific jurisdiction is lacking here because Hammons has not demonstrated that her claims "arise out of or relate to" Ethicon's activities in Pennsylvania. All of the essential elements of her claims arise out of and relate to Indiana. That is where Hammons resides, where she was treated by her physician, where she was supplied with an (allegedly) defective medical device, where she was provided (allegedly) inadequate safety warnings, and where she suffered injury. True, Hammons has pointed to several Prolift-related activities—*e.g.*, a part of the manufacturing process—that occurred in Pennsylvania. But Hammons's claims cannot be said to "arise out of or relate to" those activities. For example, Hammons does not assert that her injury arose from some defect in the Pennsylvania-based manufacturing process; she claims only that her device was defectively designed and that Ethicon provided an inadequate safety warning.

In upholding specific jurisdiction over Hammons's claims, the Superior Court said, "The connection between Ethicon and Pennsylvania is considerably stronger than the connection between Bristol-Myers and California." 190 A.3d at 1263. That assertion is doubtful, given the high level of Bristol-Myers's business activities in California, including the distribution and sale throughout California of the very drug (Plavix) that was basis for nonresident plaintiffs' claims against Bristol-Myers. But more importantly, Hammons has failed to demonstrate that the Pennsylvania-based Prolift-related activity on which she relies differs in kind from the California-based Plavix-related activity that the U.S. Supreme Court held inadequate to demonstrate that nonresident plaintiffs' claims "ar[o]se out of or relate[d] to" Bristol-Myers's activities in California. Many courts outside Pennsylvania have interpreted *Bristol-Myers* as barring exercise of personal jurisdiction in cases factually analogous to Hammons's.

Moreover, upholding personal jurisdiction because the Ethicon-Pennsylvania connections are "stronger"—as distinct from connections that directly relate to Hammons's cause of action—"resembles [the] loose and spurious form of general jurisdiction" disapproved by *Bristol-Myers*. 137 S. Ct. at 1781. *Daimler* held that subjecting a corporation to the general jurisdiction of a State's courts simply because it "engages in a substantial, continuous, and systematic course of business" within the

State violates due process because it offends traditional notions of fair play and substantial justice. 571 U.S. at 138. Subjecting that same corporation to personal jurisdiction does not cease to offend traditional notions of fair play and substantial justice simply because the state court has re-labeled its jurisdictional theory as "specific jurisdiction" and has pointed to an insignificant relationship between the defendant's in-state activities and the claims asserted. Unless *Daimler*'s limits on exercising personal jurisdiction over a corporation wherever it is "doing business" apply to both strands of personal jurisdiction, the important constitutional protections they afford to out-of-state corporate defendants will be meaningless.

Adopting the due-process requirement urged by Ethicon—a showing of a causal link between the defendant's forum contacts and the plaintiffs' claims—has the added virtue of simplicity. The U.S. Supreme Court has repeatedly advocated the adoption of clear jurisdictional rules that can be applied consistently. The Superior Court's ill-defined approach provides corporations with little if any guidance on when their activities within a State will subject them to the jurisdiction of that State's courts.

ARGUMENT

I. PENNSYLVANIA COURTS MAY NOT EXERCISE PERSONAL JURISDICTION OVER HAMMONS'S CLAIMS WITHOUT EVIDENCE THAT ETHICON'S PENNSYLVANIA-BASED ACTIVITIES INJURED HAMMONS

The Due Process Clause of the Fourteenth Amendment limits the authority of state courts to exercise personal jurisdiction over nonresident defendants that do not voluntarily consent to jurisdiction. A state court may exercise personal jurisdiction only if the plaintiff can demonstrate a relationship among the defendant, the forum state, *and* the litigation. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This requirement serves two important functions: it protects the defendant from being required to defend a lawsuit in an inconvenient forum, and it "acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

The U.S. Supreme Court has consistently held that a state court may not exercise personal jurisdiction over an out-of-state defendant simply because the defendant has engaged in continuous and systematic activities within the State. Rather, personal jurisdiction also requires a showing that the defendant's activities are sufficiently connected to the claim. *See, e.g., Daimler*, 571 U.S. at 132 ("a corporation's 'continuous activity of some sort within a state is not enough to support

the demand that the corporation be amenable to suits unrelated to that activity.'" (quoting *International Shoe*, 326 U.S. at 318)); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) ("the central concern of the inquiry into personal jurisdiction" is "the relationship among the defendant, the forum, *and the litigation*") (emphasis added). As *Daimler* explained, personal jurisdiction may not be exercised over nonresident defendants based on claims "having nothing to do with anything that occurred or had its principal impact in" the forum state. *Daimler*, 571 U.S. at 139.

A defendant is generally required to answer any and all claims asserted in its "home" jurisdiction, even if the claim bears no relationship to the jurisdiction. The Supreme Court refers to an assertion of personal jurisdiction where the defendant is "at home" as an exercise of "general jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). *Daimler* made plain, however, that—except in very unusual circumstances—an assertion of general jurisdiction over a corporation can be sustained in only two places: the State in which a corporation maintains its principal place of business and the State of incorporation. 571 U.S. at 137. In *Daimler*, the Court rejected the plaintiffs' request that it approve "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business," characterizing the plaintiffs' proposed formulation as "unacceptably grasping." *Id.* at 138. It is undisputed that neither

Ethicon nor Johnson & Johnson is subject to general jurisdiction in Pennsylvania.

A. *Bristol-Myers* Rejected Overly Broad Understandings of When Claims "Arise Out of or Relate to" a Nonresident's Forum Contacts

Daimler adopted a narrower understanding of general jurisdiction than had many prior lower courts, which often authorized general jurisdiction over large corporations in any State in which they had continuous and systematic contacts. In response, plaintiffs' lawyers searching for a means of filing claims against nonresident defendants in favored forums turned their attention to specific jurisdiction. They sought to justify assertions of specific jurisdiction by expanding understandings of when a plaintiff's claims "arise out of or relate to" the defendant's forum contacts.

Bristol-Myers rejected those efforts. The Respondents in *Bristol-Myers* (86 California residents and 592 nonresidents who sued Bristol-Myers based on claims that they were injured after using Plavix in their home States) pointed to numerous Bristol-Myers activities in California that allegedly related to their claims. The U.S. Supreme Court held that those forum contacts were insufficient to establish specific jurisdiction over the 592 nonresidents' claims against Bristol-Myers. Among the forum contacts deemed insufficient to establish specific jurisdiction:

- regular sales of Plavix in California;
- the similarity of the 575 claims to the claims of the 86 California plaintiffs, over which the California courts' specific jurisdiction was uncontested;

- research conducted by Bristol-Myers in California on matters unrelated to Plavix; and

- a contract between Bristol-Myers and McKesson, a California corporation, under which McKesson agreed to serve as the nationwide distributor for Plavix.

Bristol-Myers, 137 S. Ct. at 1781-83. In rejecting the relevance of the McKesson contract, the Court noted that "it is not alleged that BMS engaged in relevant acts with McKessen in California." *Id.* at 1783. The Court summarized its specific-jurisdiction ruling as follows:

> The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State. In addition, all the conduct giving rise to the nonresidents claims occurred elsewhere. It follows that the California courts cannot claim specific jurisdiction.

Id. at 1782.

The Superior Court sought to distinguish *Bristol-Myers* by asserting, "The connection between Ethicon and Pennsylvania is considerably stronger than the connection between Bristol-Myers and California." As noted above, that assertion is both factually questionable and irrelevant, given *Bristol-Myers*'s conclusion that "extensive forum contacts" has no role to play in the specific-jurisdiction analysis when those contacts are not directly related to the plaintiff's claims. *Id.* at 1781.

Hammons notes that *Bristol-Myers* did not explicitly reject, as a basis for asserting specific jurisdiction, the precise forum contacts relied on here by the

Superior Court. That may be true, but simply because *Bristol-Myers* did not directly address the relevance of those forum contacts does not suggest that their presence suffices to establish specific jurisdiction. The U.S. Supreme Court focused on Bristol-Myers's contacts with California to highlight the inadequacy of the plaintiffs' jurisdictional approach, not to suggest that the particular facts of that case represented exceptions to an otherwise broad understanding of when claims "arise out of or relate to" the defendants' forum contacts. The relevant inquiry here is whether Ethicon's forum contacts are different in kind from the forum contacts deemed insufficient in *Bristol-Myers* to establish specific jurisdiction.

B. *Bristol-Myers* and Other Relevant Supreme Court Case Law Confirm that Hammons's Claims Do Not "Arise Out of or Relate to" Ethicon's Contacts with Pennsylvania

Bristol-Myers's restrained understanding of when claims "arise out of or relate to" the defendant's forum contacts is fatal to Hammons's assertion of specific jurisdiction.

Particularly illustrative is the U.S. Supreme Court's consideration of Bristol-Myers's close relationship with McKesson, a San Francisco-based company. McKesson is the nation's largest pharmaceutical distribution company; it delivers (to hospitals and pharmacies) one-third of all medications used daily in the United States. When the case was before the Court, Bristol-Myers had contracted with McKesson

to distribute Plavix nationwide. *Bristol-Myers*, 137 S. Ct. at 1783. In light of that contract with a California company, the plaintiffs were justified in asserting that California-based activities played a major role in Bristol-Myers's distribution of Plavix to consumers across the country.

The Court nonetheless rejected the plaintiffs' argument that the McKesson contract sufficed to establish specific jurisdiction in California. *Ibid*. The Court explained that forum activity does not establish specific jurisdiction unless the plaintiff's *claims* arise out of or relate to that activity—forum activity that merely relates to the product in some non-claim-specific manner is insufficient. The Court held that the plaintiffs failed to establish the requisite relationship between the McKesson contract and their claims against Bristol-Myers:

> "[A] defendants's relationship with a ... third party, standing alone, is an insufficient basis for jurisdiction." In this case, it is not alleged that BMS engaged in relevant acts together with McKesson in California. Nor is it alleged that BMS is derivatively liable for McKesson's conduct in California.

Ibid (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

Hammons's evidence regarding Ethicon's contacts with Pennsylvania is similarly inadequate to establish specific jurisdiction. Hammons points principally to a contract between Ethicon and Secant Medical, a Pennsylvania-based company, under which Secant performed one step in the Prolift manufacturing process. But just

as the *Bristol-Myers* plaintiffs failed to establish claims-relatedness because they did not demonstrate that any McKesson activity could give rise to Bristol-Myers liability, Hammons has failed to demonstrate that Secant Medical's Pennsylvania-based activity suffices to establish specific jurisdiction over either of Hammons's two claims against Ethicon. *Bristol-Myers* makes clear that a plaintiff does not establish specific jurisdiction when, as here, she merely demonstrates some non-claim-specific relationship between an allegedly defective product and the forum. Rather, *Bristol-Myers* requires a causal relationship; a plaintiff's claims "arise out of or relate to" the forum if and only if the plaintiff's injuries were in some manner *caused* by the defendant's activities within the forum.[2]

The trial court entered judgment for Hammons on two claims: Prolift was defectively designed, and Ethicon failed to adequately warn of its dangers. Neither of those claims arises out of or relates to Secant Medical's manufacturing activity in Pennsylvania. Hammons does not assert a manufacturing-defect claim; that is, she does not assert that Secant Medical failed to weave mesh in accord with Ethicon's

[2] It is possible, of course, that some other nonresident Prolift patient might be able to establish specific jurisdiction over Ethicon in Pennsylvania based on some tortious manufacturing conduct by Secant Medical for which Ethicon is derivatively liable. But specific jurisdiction would be limited to that patient's manufacturing-defect claim. Specific jurisdiction is assessed "on a claim-by-claim basis." *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 n.3 (3d Cir. 2007).

design specifications.

Hammons has failed to demonstrate that either her design-defect claim or her failure-to-warn claim "arise[s] out of or relate[s] to" the manufacture of a portion of the Prolift device in Pennsylvania. Although Hammons asserts that Secant's activities relate to her design-defect claim, the Superior Court's description of those activities belie that assertion:

> Three high-level officials of Secant provided affidavits (R.R. 266b-278b) that *Ethicon provided all material specifications* for the weaving of mesh at Secant's Pennsylvania plant, including specifications concerning the mesh's elasticity, mass, and density, the specifications at the center of Hammons' claims. Ethicon delivered polypropylene filament to Secant in Pennsylvania. *Id.* Secant knitted the filament into large rolls of mesh in, and tested samples for, compliance with *Ethicon's specifications. Id.* Ethicon received the rolls of mesh from Pennsylvania and processed them further. *Id.* Emails between Ethicon and Secant officials demonstrate that Ethicon repeatedly communicated *its requirements for mesh design* and development, manufacturing, quality control, testing, and certification to Secant—all issues central to this litigation.

Hammons, 190 A.3d at 1263 (emphasis added). The court's description makes clear that Prolift's design, including "specifications" for the mesh, were Ethicon's sole responsibility. Secant Medical's role was confined to ensuring that the mesh it manufactured conformed to Ethicon's specifications, and Hammons does not allege that Secant Medical produced mesh that failed to conform to the specifications or that

some defect in the manufacturing process caused her injury.[3]

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984), also supports Ethicon's personal-jurisdiction argument. In that case, the U.S. Supreme Court determined that the defendant's numerous contacts with the forum State (Texas) were insufficient to permit Texas to exercise personal jurisdiction because those contacts did not arise out of or relate to the plaintiffs' claims (which involved injuries arising from a helicopter crash in Peru). Yet the decision almost surely would have come out the other way under the specific-jurisdiction standard adopted by the Superior Court.

Although the defendant did not provide its ill-fated helicopter services in Texas, it engaged in numerous helicopter-related activities within the State, including: (1) purchase of its helicopters and spare parts within Texas; (2) sending its pilots to Texas for flight training; (3) regularly sending employees to Texas to consult with the helicopter manufacturer; (4) sending its chief executive officer to Houston to negotiate the helicopter service contract with the plaintiffs' employer; and (5) accepting checks

[3] The Superior Court also relied on evidence regarding Ethicon's retention of a Pennsylvania gynecologist, Vincent Lucente, to assist in Prolift-related matters. *Id.* at 1263-64. WLF notes that this evidence was not part of the trial proceedings and that Ethicon disputes the Superior Court's characterization of Dr. Lucente's work. More importantly, Hammons has failed to demonstrate any causal relationship between Dr. Lucente's work and her injuries. For example, there is no evidence that Dr. Lucente's work affected the design specifications for Prolift.

written by the Texas-based employer and drawn on a Texas bank. 466 U.S. 410-11.

Overturning the Texas Supreme Court's assertion of personal jurisdiction, the Court said, "[M]ere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions." *Id.* at 418. In asserting that the plaintiffs' claims were "not related" to the defendant's helicopter purchases, the Court can only have meant that no *causal* relationship existed between the purchases and the injuries suffered in the subsequent helicopter crash.[4] By similar reasoning, Hammons's design-defect and failure-to-warn claims do not "arise out of or relate to" Ethicon's purchase of Secant Medical's manufacturing services in Pennsylvania because no *causal* relationship exists between those services and Hammons's injuries.

[4] There was, of course, *some* relationship between the purchase and the plaintiffs' claims, given that the plaintiffs' decedents died when the helicopter purchased by the defendant in Texas crashed in Peru.

C. Courts Outside Pennsylvania Have Interpreted *Bristol-Myers* as Barring Exercise of Personal Jurisdiction in Analogous Cases

The decision below is an outlier. Most courts that have addressed factually analogous situations in the post-*Bristol-Myers* era have determined that a nonresident defendant is not subject to specific jurisdiction in a state court when its forum contacts are not causally related to the plaintiff's injuries. WLF briefly describes several of the more well-reasoned decisions from other States.

The Arkansas Supreme Court recently rejected claims that a Louisiana merchant's contacts with Arkansas were sufficient to warrant its exercise of specific jurisdiction over a claim against the merchant filed by an Arkansas resident for injuries he suffered in the defendant's Louisiana store. *Lawson v. Simmons Sporting Goods, Inc.*, 2019 Ark. 84 (2019). The defendant advertised in Arkansas for the purpose of enticing Arkansas residents to come to Louisiana to shop in its store. Citing those promotional activities, the Arkansas courts ruled in 2017 that they could exercise specific jurisdiction over the claim. In October 2017, the U.S. Supreme Court vacated that ruling and remanded for reconsideration in light of its *Bristol-Myers* decision. 138 S. Ct. 237 (2017). On remand, the Arkansas Supreme Court concluded that *Bristol-Myers* required reversal of the earlier decision. The court recognized that the defendant had advertised extensively for the purpose of enticing

Arkansas residents to do precisely what the plaintiff did: travel to Arkansas to shop at the defendant's store. The court nonetheless ruled that due process barred the exercise of specific jurisdiction in the absence of a causal relationship between the defendant's forum contacts and the plaintiff's injuries. The court explained, "Here the controversy—[the plaintiff's] trip and fall—undisputably occurred in Louisiana. Any alleged negligence did not arise out of or relate to [the defendant's] contacts with Arkansas." *Lawson*, 2019 Ark. at 872.

Similarly, a Texas appellate court ruled that nonresident oil drilling companies lacked sufficient minimum contacts with Texas to warrant exercise of specific jurisdiction over a claim filed by an employee injured while working on an oil rig off the coast of Nigeria. *Megadrill Services Limited v. Brighouse*, 556 S.W.3d 490 (Tex. App. 2018). The worker alleged that the defendants had several contacts with Texas that related to his claim, including that the defendants docked the oil rig in Galveston, Texas for several months while it was being refurbished. The court held that these Texas contacts were insufficient to establish specific jurisdiction because the plaintiff's injuries were not causally related to the Galveston work. *Id.* at 499-500. The plaintiff's injury occurred on the fourth front level deck, which the plaintiff contended had not properly been repaired. But the fourth front level deck was not repaired in Galveston; those repairs occurred elsewhere. *Ibid.* The court held that the

oil rig's mere presence in Texas for repair work was insufficient to establish specific jurisdiction in Texas; the injury could not be deemed "to arise out of or relate to" the defendants' forum contacts in the absence of evidence that those forum contacts were "substantially connected to the alleged operative facts of the case." *Id.* at 500.

Waite v. All Acquisition Corp., 901 F.3d 1307 (11th Cir. 2018), is similar. The Eleventh Circuit ruled that Florida courts lacked specific jurisdiction over claims by a Massachusetts resident that he was injured when exposed to asbestos in Massachusetts. Although the defendant, Union Carbide, had extensive contacts with Florida, the court held that those contacts were insufficient to establish specific jurisdiction in Florida because they were not causally related to the plaintiff's injuries. 901 F.3d at 1315 (Union Carbide's asbestos-related activities in Florida "have nothing to do with the torts Union Carbide allegedly committed" that injured the plaintiff in Massachusetts).

Lawson, *Megadrill*, and *Waite* all support a finding that Pennsylvania courts lack specific jurisdiction over Hammons's claims. Ethicon's contacts with Pennsylvania included retaining a Pennsylvania manufacturer to perform one step in the Prolift manufacturing process. But in the absence of any allegation that the work of the Pennsylvania manufacturer was causally related to Hammons's injury, her claim does not "arise out of or relate to" Ethicon's forum contacts. As one leading

commentator has observed:

> The state is entitled to discourage harmful behavior that occurs within its territorial boundaries or that is directed at the state and causes harm within those boundaries. But it is completely irrational—and thus a violation of Due Process—to go about this by taking jurisdiction over cases where the purported local aspects in no way contributed to the dispute's occurrence. And while some states might conceivably have the desire to discourage harmful conduct which is wholly foreign—which occurred in other states and which caused no local injury—this is not a legitimate state interest.

Lea Brilmayer, *A General Look at Specific Jurisdiction*, 42 Yale J. Intl. L. Online 1, 15 (2017).

II. THE SUPERIOR COURT'S DECISION NEGATES *DAIMLER* AS AN EFFECTIVE CHECK ON STATE-COURT JURISDICTION OVER NONRESIDENT DEFENDANTS

When corporate defendants' affiliations with a State "are so continuous and systematic as to render them essentially at home" there, due process permits the courts of that State to assert "general jurisdiction" over the defendants—that is, "to hear any and all claims against them." *Goodyear*, 564 U.S. at 919. *Daimler* made clear, however, that a corporation is only "at home" in at most two jurisdictions: the State where it maintains its principal place of business and the State of incorporation. 571 U.S. at 137. Outside of those "home" States, a defendant is subject to personal jurisdiction only with respect to claims that are directly related to the defendant's activities within the forum State. *Daimler* rejected the plaintiffs' request that it approve "the exercise of general jurisdiction in every State in which a corporation

engages in a substantial, continuous, and systematic course of business," characterizing the plaintiff's proposed formulation as "unacceptably grasping." *Id.* at 138.

The decision below cannot be reconciled with *Daimler*. It essentially nullifies *Daimler*'s limitations on general jurisdiction by approving similarly grasping assertions of personal jurisdiction under the specific-jurisdiction rubric. The Superior Court authorized assertion of personal jurisdiction over Ethicon based on Ethicon's contacts with Pennsylvania, without requiring Hammons to demonstrate any sort of causal relationship between those contacts and Hammons's claims. *Hammons*, 190 A.3d at 1261-63. *All* of the essential elements of Hammons's claims arise out of and relate to Indiana. If Ethicon is nonetheless subject to specific jurisdiction in Pennsylvania on Hammons's claims, then it is subject to specific jurisdiction in Pennsylvania on virtually *every* Prolift product-liability claim nationwide. *Bristol-Myers* rejected such an expansive interpretation of specific jurisdiction, labeling it a "loose and spurious form of general jurisdiction." 137 S. Ct. at 1781.

Indeed, the Superior Court's specific-jurisdiction standard will require virtually all nationwide businesses to defend products-liability suits in Pennsylvania filed by consumers residing throughout the country. Nationwide sales efforts generally include work by numerous individuals and entities operating in many different States

(*e.g.*, those involved in design, product testing, manufacturing, sales, promotion, etc.). Given Pennsylvania's large population and its importance within the national economy, it is highly likely that at least some aspect of any nationwide sales effort will include work performed in Pennsylvania. If Pennsylvania courts are permitted to assert specific jurisdiction based on forum contacts of that nature without regard to whether the forum contacts are causally related to the plaintiffs' injury, then *Daimler* will be nullified and nationwide businesses will be required to answer claims in Pennsylvania filed by consumers throughout the country.

III. THE SUPERIOR COURT'S STANDARD LACKS PREDICTABILITY AND THUS FAILS TO PROVIDE BUSINESSES WITH GUIDANCE ON WHERE THEIR CONDUCT MAY RENDER THEM LIABLE TO SUIT

The Court explained in *Daimler* that it adopted its rule governing general jurisdiction over corporations in part because of its simplicity. Ascertaining a corporation's principal place of business and its place of incorporation—the attributes that *Daimler* held are determinative in assessing where a corporation is "at home"—is a relatively straightforward exercise:

> Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability."). These bases afford plaintiffs at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Daimler, 134 S. Ct. at 760.

Other Supreme Court decisions have also stressed the importance of adopting rules governing federal-court jurisdiction that are easy to administer. *See, e.g.*, *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 172-73 (2014) (Court adopts "straightforward, easy to administer rule" governing removal jurisdiction, stating that "when judges must decide jurisdictional matters, simplicity is a virtue.").

By upholding personal jurisdiction under its expansive definition of specific jurisdiction, the Superior Court has adopted a jurisdictional rule that is anything but simple. The court upheld specific jurisdiction over Hammons's claims based on Ethicon's contacts with Pennsylvania. It asserted, "The connection between Ethicon and Pennsylvania is considerably stronger than the connection between Bristol-Myers and California," 190 A.3d at 1263, but it provided no guidance regarding how much stronger the connection must be before specific jurisdiction is constitutionally permissible.

As a result, out-of-state corporations are left with little guidance regarding what activity in Pennsylvania will render them subject to the jurisdiction of Pennsylvania courts for claims arising outside the State. That result is inconsistent with *Daimler*'s goal of predictability and thus exacerbates due process concerns. As *Daimler* explained in rejecting the Ninth Circuit's expansive understanding of personal

jurisdiction over nonresident defendants based on claims arising outside the forum, "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Daimler*, 134 S. Ct. at 761-62 (quoting *Burger King*, 471 U.S. at 472).

The Court should establish a rule that provides clear guidance to the business community about which sorts of forum contacts will suffice to expose companies to the specific jurisdiction of Pennsylvania's courts. The due-process requirement urged by Ethicon—a showing of *a causal link* between the defendant's forum contacts and the plaintiffs' claims—is a rule that provides increased clarity to the business community, in addition to being consistent with this Court's due-process case law.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing brief complies with the word limit of Pennsylvania Rule of Appellate Procedure 531(b)(3). Specifically, it contains 5,614 words, based on the word count of WordPerfect X5, the word-processing system used to prepare the brief.

I further certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that on June 21, 2019, I caused two true and correct copies of the foregoing brief of the Washington Legal Foundation as *Amicus Curiae* in Support of Appellants to be served via U.S. mail upon the following counsel:

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