IN THE SUPREME COURT OF MISSOURI

GAIL L. INGHAM, et al.,	)	
Plaintiffs-Respondents,	)	No. SC98674
	)	
v.	)	On Application for Transfer from
	)	the Missouri Court of Appeals for
JOHNSON & JOHNSON and	)	the Eastern District, Division Two
JOHNSON & JOHNSON CONSUMER INC.,	)	No. ED107476
Defendants-Appellants.	)	
	)	

SUGGESTIONS OF *AMICUS CURIAE*
WASHINGTON LEGAL FOUNDATION IN SUPPORT OF
THE APPELLANTS' APPLICATION FOR TRANSFER

The appellants' Application for Transfer offers the Court several cogent and compelling reasons to take this appeal. We focus here on only one: When a nonresident plaintiff suffers an out-of-state injury and sues a nonresident defendant for alleged defects in a product designed outside Missouri, it is critical that the plaintiff and the defendant alike know with certainty if a Missouri court can, consistent with due process, adjudicate that claim.

The Fourteenth Amendment limits a Missouri court's ability to render a valid personal judgment against a nonresident defendant. *Bryant v. Smith Interior Design Grp.*, 310 S.W.3d 227, 231 (Mo. Banc 2010). The Eastern District sidestepped those due-process limits here. The Court of Appeals allowed the trial court to exercise specific jurisdiction over the claims of 17 out-of-state plaintiffs based merely on the appellants' third-party business contacts in Missouri—even though all corporate decision-making about the appellants' talc product occurred in New Jersey. That holding not only flouts the appellants' due-process rights and contravenes the U.S. Supreme Court's holding in

Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773 (2017), but it will have far-reaching, unintended repercussions on nationwide firms doing business in Missouri. For those reasons alone, this case warrants transfer.

I. INTEREST OF *AMICUS CURIAE*.

Founded in 1977, Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide, including many in Missouri. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an *amicus curiae*, in state courts across the country, to defend these values. *See, e.g.*, *Frlekin v. Apple*, 457 P.3d 526 (Cal. 2020); *Burningham v. Wright Med. Grp.*, 448 P.3d 1283 (Utah 2019); *Delisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018). WLF has also participated in key cases before the U.S. Supreme Court, to stress the Due Process Clause's crucial limits on a state court's exercise of personal jurisdiction. *See, e.g.*, *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915 (2011).

II. THE EASTERN DISTRICT'S HOLDING OBLITERATES THE DISTINCTION BETWEEN SPECIFIC AND GENERAL JURISDICTION.

Missouri law recognizes two types of personal jurisdiction: general and specific. *Bryant*, 310 S.W.3d at 232. The former applies only when the defendant's contacts with the forum State are so "constant and pervasive" as to render it "at home" there. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). The latter is confined only "to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at 919 (internal quotation marks and citation omitted). The

respondents here do not dispute that the appellants, two New Jersey corporations headquartered in New Jersey, are not subject to "all-purpose" general jurisdiction in Missouri.

For a Missouri court to assert specific jurisdiction over a nonresident defendant, "[t]he *suit* must arise out of or relate to the defendant's contacts with the *forum*." *Bristol-Myers*, 137 S. Ct. at 1780 (internal quotation marks, citation, and alterations omitted). Under *Bristol-Myers*, specific jurisdiction "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* at 1780 (internal quotation marks and citation omitted). Without that strong connection, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id*. at 1781.

This is just as true of corporate defendants like the appellants as it is of anyone else. Even a "corporation's continuous activity of some sorts within a state," the U.S. Supreme Court has stressed, "is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Goodyear*, 564 U.S. at 927. Above all, a "defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781. And the "bare fact" here that the appellants contracted with a Missouri entity "is not enough to establish personal jurisdiction" in Missouri. *Id.* at 1783.

The Eastern District's holding upends these principles. It vastly expands specific jurisdiction to allow suit virtually anywhere a company engages a third party as part of the manufacturing or distribution process. But that is too grasping and impractical a rule in the

modern global economy, in which manufacturing and distribution chains run across state and national borders. When, as here, the defendant's ties to the forum are too attenuated and all relevant decisions are made elsewhere, "specific jurisdiction is lacking." *Bristol-Myers*, 137 S. Ct. at 1781.

Indeed, injuries from an alleged design defect in a product are perhaps the textbook example of the kind of "effects" that "are not connected to the forum State in a way that makes those effects a proper basis for jurisdiction." *Walden v. Fiore*, 571 U.S. 277, 290 (2014). Put differently, the respondents here would have "experienced this same [injury] . . . wherever else they might have" been. *Id.* Such injuries are never dependent on the defendant's third-party contacts in the forum state under cases like *Walden* and *Bristol-Myers*.

By permitting a Missouri court to exercise specific jurisdiction on these facts, the Eastern District has improperly blurred the distinction between general and specific jurisdiction. Unless this Court intervenes, specific jurisdiction in Missouri will become "a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781. That would be a calamity.

III. THE EASTERN DISTRICT'S HOLDING DEPRIVES NATIONWIDE LITIGANTS AND BUSINESSES OF MUCH-NEEDED CERTAINTY.

"[W]hen judges must decide jurisdictional matters, simplicity is a virtue." *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 172–73 (2014). Complex jurisdictional tests "complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz*

Corp, 559 U.S. at 94. By upholding an "excessively grasping" exercise of specific jurisdiction based on the appellants' generic business contacts with Missouri, *Daimler*, 571 U.S. at 138, the Court of Appeals has embraced a jurisdictional rule that is anything but simple. Businesses, on the other hand, crave certainty. And predictable jurisdictional rules promote fairness and the "orderly administration of the laws," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)—to the benefit of plaintiffs and defendants alike.

When specific jurisdiction is limited to cases in which the defendant's own forum activity actually caused the plaintiff's injury, "potential defendants [can] structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980) (quoting *Int'l Shoe*, 326 U.S. at 319). Just as important, individuals and entities can take full account of the unique laws of each State in which they choose to operate and "act to alleviate the risk[s] of burdensome litigation" and potential liability. *Id.* Businesses can manage those risks "by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id.*

But if far-flung plaintiffs from all over the country may now sue in Missouri based on no more than the appellants' doing business with a Missouri company, then nationwide firms may be forced to rethink not only locating in Missouri, but doing business with any company in Missouri.

CONCLUSION

The Eastern District's minimum-contacts analysis is a relic of a bygone era and warrants this Court's review. The Court should transfer the case.

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Respectfully submitted,

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