

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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ELAINE ROBINSON, et al.,

Plaintiffs-Appellees,

v.

PFIZER INC.,

Defendant-Appellant.

On Appeal from the United States District Court  
for the Eastern District of Missouri (Jackson, J.)

Case No. 4:16-cv-00439-CEJ

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BRIEF OF AMICUS CURIAE THE AMERICAN TORT REFORM  
ASSOCIATION

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, the American Tort Reform Association has no parent corporation and no publicly held corporation holds 10% or more of its membership or ownership interests.

## **STATEMENT OF CONSENT**

All parties to this appeal have consented to the filing of this brief pursuant to Federal Rule of Appellate Procedure 29(a).

This Brief is filed under the authority of the American Tort Reform Association, and no counsel for Pfizer Inc. or Elaine Robinson authored this Brief, in whole or in part, nor has either party or counsel for either party contributed money that was intended to fund the preparation or submission of this Brief. No person other than the American Tort Reform Association contributed money that was intended to fund the preparation and submission of this Brief.

**STATEMENT OF THE IDENTITY AND INTEREST**  
**OF THE *AMICUS CURIAE***

The American Tort Reform Association (ATRA), founded in 1986, is a broad-based coalition of more than 170 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote a civil justice system that ensures fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed *amicus curiae* briefs in cases before state and federal courts that have addressed important legal issues in tort actions across the country.

ATRA has significant interests in this litigation. The District Court's expansive interpretation of specific jurisdiction is contrary to fundamental principles of due process and denies corporate defendants predictability and efficiency in both conducting business and defending lawsuits. Further, the City of St. Louis is already a locus for mass tort filings. ATRA members will be directly disadvantaged if the District Court decision is allowed to stand. Specifically, its member businesses and corporations will be forced to litigate massive civil dockets comprised almost entirely of non-Missouri plaintiffs in a venue having no connection to their claims.

## ARGUMENT

### I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Circuit Court for the City of St. Louis is already a magnet for mass tort filings due to headline verdicts awarded by juries in the individual trials proceeding from multi-plaintiff actions.

Plaintiffs' lawyers strategically join large numbers of non-resident plaintiffs from across the country with a few Missouri residents in order to create "jurisdiction by joinder"—where jurisdiction exists over even one Missouri resident, jurisdiction also exists over all of the non-resident plaintiffs joined in the action. This strategy contravenes the personal jurisdiction jurisprudence of the United States Supreme Court and has been incorrectly endorsed by the District Court in this case. Because the District Court ruling allows a Missouri resident with similar claims to serve as basis for personal jurisdiction over hundreds and thousands of non-residents in multi-plaintiff actions filed in St. Louis, plaintiffs' counsel will be emboldened to increase their strategic forum shopping.

Generally, this Court would not have the opportunity to address a legal issue central to the remand decision of a District Court. However, the procedural posture of this case affords this Court the

chance to provide guidance on an important question of due process that will have a significant impact on businesses forced to litigate personal injury actions in a plaintiff-friendly venue based on nothing more than the joinder of claims similar to those of a Missouri resident. ATRA urges this Court to address and rectify the District Court's ruling permitting jurisdiction by joinder.

## II. THE DISTRICT COURT'S "JURISDICTION BY JOINDER" THEORY VIOLATES DUE PROCESS

The unlimited reach of the District Court's "jurisdiction by joinder" theory ignores the limits of the Due Process Clause imposed by the United States Supreme Court. When plaintiffs allege injuries in multiple fora, the Due Process Clause affords businesses much-needed predictability by foreclosing the prospect of litigation in far-flung, plaintiff-friendly jurisdictions with no connection to the dispute. The District Court's decision, however, is entirely inconsistent with such protection. It instead creates from whole cloth a framework allowing a finding of specific jurisdiction over any claims against an out-of-state defendant brought by any non-resident plaintiff who ingested a medicine and suffered injury anywhere as long as the claims are joined with: 1) at least one plaintiff who is a resident of Missouri; and 2) one



plaintiff who will destroy complete diversity by sharing a state of citizenship with the defendant. This decision places an undue burden on businesses and encourages non-resident plaintiffs' continued abuse of the Missouri court-system.

The Supreme Court reined in such forum shopping by narrowing the scope of general jurisdiction and reiterating the limited scope of specific jurisdiction. In *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), the Court held that a company is subject to general jurisdiction only when it is “essentially at home” in the forum state. *Id.* at 751. Meanwhile, specific jurisdiction is proper only when “the defendant’s *suit-related conduct* [] create[s] a *substantial connection* with the forum State.” *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014) (emphasis added). The *Daimler* decision reminded courts across the country of the separate and distinct standards to be employed in jurisdictional analysis.

In this case, however, the District Court ignored *Daimler* entirely and concluded, in a footnote, that the Circuit Court for the City of St. Louis had specific jurisdiction over Pfizer relating to claims by Plaintiffs from twenty-nine states merely because personal jurisdiction

existed for the claims of the six Missouri residents. The ruling abandons the guardrails reiterated by the Supreme Court in *Daimler* and endorses the notion that sophisticated plaintiffs' lawyers can pick and choose perceived favorable venues by mining their inventories for plaintiffs who fit the District Court's expansive framework for specific jurisdiction.

There is no argument that the Circuit Court for the City of St. Louis has general jurisdiction over Pfizer because it is neither headquartered nor incorporated in Missouri. The District Court's reach to find specific jurisdiction over the non-resident Plaintiffs is improper because: 1) Defendant's contact with the Missouri Plaintiffs—not each non-resident Plaintiff—cannot serve as the basis for specific jurisdiction; and 2) permissive joinder rules cannot be used to expand specific jurisdiction beyond the limits set forth by *Daimler*. First, it is well-established that specific jurisdiction *must* be analyzed on a claim by claim basis and that it *cannot* be based on defendant's general activities in the forum state unrelated to the claims of non-resident plaintiffs. Second, "jurisdiction by joinder" is contrary to due process as it would, in practice, subject Pfizer to general jurisdiction in Missouri

for claims brought by any non-resident Plaintiff who was prescribed a drug elsewhere, purchased a drug elsewhere, ingested a drug elsewhere, and was allegedly injured elsewhere so long as their claim was joined with that of at least one Missouri resident. Plaintiffs' counsel's joinder strategy, designed only to take advantage of perceived favorable fora like the Circuit Court for the City of St. Louis, is the very scenario that the Supreme Court sought to prevent in *Daimler* and is "unfair and contrary to the rationale underlying the minimum contacts doctrine." *See Liggins v. Abbvie Inc. (In re Testosterone Replacement Therapy Prods. Liab. Litig.)*, 2016 U.S. Dist. LEXIS 19929, at \*43 (N.D. Ill. Feb. 18, 2016).

The Supreme Court of California's recent decision in *Bristol-Myers Squibb Co. v. Superior Court*, 2016 Cal. LEXIS 7124 (Cal. Aug. 29, 2016)—the only appellate court decision in the country to endorse a similarly sweeping assertion of personal jurisdiction—is likewise incompatible with fundamental principles of due process and not binding on the federal courts. In *Bristol-Myers*, the court permitted the exercise of specific jurisdiction based on, *inter alia*, the "uncontested fact that all the plaintiffs' claims arise out of BMS's nationwide

marketing and distribution of Plavix,” despite “the requirement for specific jurisdiction that there be a substantial connection between the plaintiff’s claim and the defendant’s forum activities.” *Id.* at \*37, 58.

As the dissent aptly noted, the *Bristol-Myers* decision—and, in turn, the District Court’s decision here—“impairs important functions of reciprocity, predictability, and limited state sovereignty” that corporations depend upon when they choose to conduct business nationwide. *Id.* at 62. This “aggressive assertion of personal jurisdiction is inconsistent with the limits set by due process” and “the principles of interstate federalism embodied in the constitution.” *Id.* at \*109.

The District Court’s conclusion that personal jurisdiction exists as to claims of all Plaintiffs by virtue of their joinder in a single action with a handful of Missouri Plaintiffs is entirely inconsistent with the Supreme Court’s decision in *Daimler* and turns the well-established distinction between general and specific jurisdiction on its head. The application of this illogical premise would allow plaintiffs to bring suit against companies in virtually any state court as long as a multi-plaintiff action included one non-diverse plaintiff and one plaintiff from

the forum state. This result would not only be an unconstitutional violation of due process, but would also continue to encourage forum shopping and deprive companies that do business throughout the country of the notice and predictability safeguards accorded to them under decades of Supreme Court jurisprudence. This Court should use this opportunity to provide needed guidance on the limits of specific jurisdiction and hold that joinder of Missouri residents alone cannot confer personal jurisdiction over claims by non-resident plaintiffs.

### **III. THE DISTRICT COURT'S DECISION ENABLES CONTINUED STRATEGIC FORUM SHOPPING IN MISSOURI STATE COURT**

The City of St. Louis Circuit Court has become a hub of litigation tourism—attracting thousands of out-of-state plaintiffs seeking to take advantage of the perceived favorable mass tort litigation climate.<sup>1</sup> Significant trial verdicts,<sup>2</sup> a less stringent standard for expert

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<sup>1</sup> The U.S. Chamber of Commerce Institute for Legal Reform 2015 Lawsuit Climate Survey ranked Missouri tenth on the list of cities or counties with the least fair and reasonable litigation environment and as one of the five worst states for treatment of class actions and mass consolidated suits. U.S. Chamber of Commerce Institute for Legal Reform, 2015 Lawsuit Climate Survey, Ranking the States: A Survey of the Fairness and Reasonableness of State Liability Systems (September 2015). *See* American Tort Reform Foundation, Judicial Hellholes 2015-  
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testimony,<sup>3</sup> minimal limitations on punitive damages,<sup>4</sup> and a reputation for plaintiff-friendly procedures are the likely drivers of the gargantuan

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2016 (highlighting Missouri as the 4<sup>th</sup> worst “judicial hellhole” jurisdiction nationwide).

<sup>2</sup> On May 25, 2016, a St. Louis jury awarded a \$46.5 million verdict against Monsanto for three people claiming their non-Hodgkin’s lymphoma came from eating foods contaminated with polychlorinated biphenyls. Joel Currier, *St. Louis Jury Orders Monsanto to Pay \$46.5 Million in Latest PCB Lawsuit*, ST. LOUIS POST-DISPATCH (May 26, 2016), [http://www.stltoday.com/news/local/metro/st-louis-jury-orders-monsanto-to-pay-million-in-latest/article\\_08e25795-0d36-5155-999c-c6bd954a6c2e.html?utm\\_medium=social&utm\\_source=email&utm\\_campaign=user-share](http://www.stltoday.com/news/local/metro/st-louis-jury-orders-monsanto-to-pay-million-in-latest/article_08e25795-0d36-5155-999c-c6bd954a6c2e.html?utm_medium=social&utm_source=email&utm_campaign=user-share). On July 2, 2015, a St. Louis jury awarded a \$11.5 million verdict against Crane Co. in a personal injury case alleging injuries caused by exposure to asbestos. Sindhu Sundar, *Crane Co. Hit with \$11.5M Asbestos Verdict in Mo.*, LAW 360 (July 6, 2015, 4:19 PM), <http://www.law360.com/articles/675786/crane-co-hit-with-11-5m-asbestos-verdict-in-mo>. In May 2015, a St. Louis jury awarded a \$23 million verdict against Abbott Laboratories to a plaintiff claiming that Depakote caused her child’s birth defects. Samantha Liss, *Minnesota Girl Awarded \$23M in Punitive Damages in Depakote Suit*, ST. LOUIS POST-DISPATCH (May 27, 2015) [http://www.stltoday.com/business/local/minnesota-girl-awarded-m-in-punitive-damages-in-depakote-suit/article\\_c4dc7ab2-e0a6-5510-b857-2492b4c4f7be.html](http://www.stltoday.com/business/local/minnesota-girl-awarded-m-in-punitive-damages-in-depakote-suit/article_c4dc7ab2-e0a6-5510-b857-2492b4c4f7be.html).

<sup>3</sup> Missouri Governor Jay Nixon recently vetoed a bipartisan tort reform bill adopting the more stringent *Daubert* standard for admissibility of expert testimony which has been adopted by all federal courts and 40 other state court systems. *See* Hanna Nakano, *Legal Experts Differ on Missouri Governor’s Daubert Veto; Business Leader Says It Leaves Negative Mark on State*, MADISON-ST. CLAIR RECORD

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increase in filings in the City of St. Louis in recent years. Indeed, the statistics maintained by Missouri's Office of State Courts Administrator show a threefold increase in civil filings in Circuit 22 (St. Louis) from 2014 to 2015.<sup>5</sup> While these statistics do not specify the nature of the cases accounting for this increase, it is not unreasonable to conclude that the permissive environment for filing mass tort actions in St. Louis has played a role in this statistical trend.

The District Court's ruling that the joinder of one Missouri resident in a multi-plaintiff action confers personal jurisdiction over all claims of all non-resident plaintiffs will serve only to encourage

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(July 14, 2016, 6:36 am), <http://madisonrecord.com/stories/510958596-legal-experts-differ-on-mo-governor-s-daubert-veto-business-leader-says-it-leaves-negative-mark-on-state>.

<sup>4</sup> *See Missouri Supreme Court Invalidates Cap on Punitive Damages*, THE MISSOURI TIMES (Sept. 11, 2014), <http://themissouritimes.com/13110/missouri-supreme-court-invalidates-cap-punitive-damages/>.

<sup>5</sup> The volume of filings in St. Louis increased by over 300% (from approximately 3,000 to over 12,000 claimants) from 2014 to 2015. *See FY 2014 Profile-22<sup>nd</sup> Circuit*, MISSOURI COURTS, <http://www.courts.mo.gov/file.jsp?id=83194>; *FY 2015 Profile-22<sup>nd</sup> Circuit*, MISSOURI COURTS, <http://www.courts.mo.gov/file.jsp?id=96374>.

plaintiffs' counsel's strategic forum shopping. Businesses large and small, regardless of their principal place of business, will be forced to defend nearly all their products liability litigation in a notoriously unfavorable jurisdiction for one reason—a single Missouri resident is added to a case with hundreds or thousands of non-residents who have never set foot in the state. Exposure to this significant liability in a perceived plaintiff-friendly jurisdiction increases litigation costs and may necessitate the settlement of meritless claims. These unnecessary costs will be passed on to consumers in all forums. This Court's guidance on the parameters of specific jurisdiction could have a significant effect on constraining litigation tourism in Missouri state courts and protecting both businesses and consumers.

The recent deluge of multi-plaintiff lawsuits against Johnson & Johnson alleging that talcum powder use can cause ovarian cancer provides a stark example of the potential consequences of broader acceptance of the District Court's expansive interpretation of personal jurisdiction. Not surprisingly, the talcum powder cases filed in the City of St. Louis already represent a significant number of all of the talcum powder cases filed in the United States. Earlier this year, St. Louis



jurors found that talcum powder caused out-of-state plaintiffs to develop ovarian cancer and awarded them unprecedented trial verdicts of \$55 million dollars and \$72 million dollars.<sup>6</sup> These two plaintiffs were residents of South Dakota and Alabama who used the product and were treated for their alleged injuries in their respective states of residence. Neither the plaintiffs nor their claims had any connection to Missouri, yet the individuals were permitted to proceed to trial in St. Louis merely because the multi-plaintiff action included at least one Missouri plaintiff.

In contrast, a New Jersey state court recently held expert hearings and dismissed talcum powder claims similar to those tried on behalf of South Dakota and Alabama plaintiffs in St. Louis. The New Jersey court granted summary judgment and dismissed plaintiffs' claims because plaintiffs' experts' theories of causation (the very same theories that were advanced in the St. Louis trials) were "slanted away from objective science and towards advocacy" and failed to "demonstrate

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<sup>6</sup> Margaret Cronin Fisk, *J&J Faces 1,000 More Talc-Cancer Suits After Verdict Loss*, BLOOMBERG (May 2, 2016, 6:23 PM), <http://www.bloomberg.com/news/articles/2016-05-02/j-j-ordered-to-pay-55-million-over-cancer-linked-to-talc>.

that the data or information used were soundly and reliably generated.” *Carl v. Johnson & Johnson, et al.*, No. ATL-L-6546-14, at 33 (N.J. Super. Ct. Law. Div. Sept. 2, 2016) (internal quotations omitted) (unpublished) (*see* Addendum). This decision highlights just one area of the law that can have case dispositive implications for plaintiffs’ claims, depending on the jurisdiction.

The ruling in *Carl* could certainly cause plaintiffs’ counsel to search for different venues for clients with talcum powder claims. Under the District Court’s ruling, a New Jersey plaintiff could avoid this adverse decision by simply joining in a multi-plaintiff complaint filed in St. Louis that includes at least one Missouri resident, despite having no connection with the state of Missouri. This outcome defies the limits set by due process. *See World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 293 (1980) (“[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution.”). The U.S. Supreme Court has repeatedly recognized the importance of predictability in the law governing personal jurisdiction. *See Daimler*, 134 S. Ct. at 761-762 (Businesses

must be able “to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”) Forcing national corporations to defend personal injury suits in jurisdictions to which neither party has any connection—merely so plaintiffs can take advantage of favorable law—contradicts the “traditional notions of fair play and substantial justice” underlying personal jurisdiction jurisprudence. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Pharmaceutical and medical device manufacturers alone are currently facing thousands of personal injury claims in the City of St. Louis. None of these companies have their principle place of business in Missouri and the majority of claims have been brought by out-of-state residents. It is inevitable that the District Court’s ruling will reinforce the City of St. Louis Circuit Court’s status as a magnet for mass tort filings and augment defendants’ liability exposure and burden to defend these claims in this foreign (and unfavorable) jurisdiction. Guidance from this Court on the parameters of personal jurisdiction is needed to curb the strategic mass joinder of non-resident plaintiffs as a means to

obtain specific jurisdiction over a non-resident corporation and afford defendants appropriate due process protection.

**CONCLUSION**

ATRA respectfully urges this Court to find that the District Court erred in permitting joinder of a nominal number of Missouri residents to satisfy the constitutional standards for specific jurisdiction over Pfizer relating to the greater number of claims of Plaintiffs residing outside the state of Missouri.

Respectfully submitted,

Dated: September 14, 2016

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**CERTIFICATE OF COMPLIANCE WITH  
FED.R.APP.P. 32(a)(7)**

1. This brief contains 2970 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)-(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 points Century font for text and footnotes.

/s/ Andrew E. Kantra  
Andrew E. Kantra

## CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of September 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document via electronic mail to the following non-CM/ECF participants.

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