

February 13, 2014

Hon. Tani Cantil-Sakauye, Chief Justice
and Associate Justices
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102-3600

**Re: *Bristol-Myers Squibb Co. v.
Superior Ct. for the County of San Francisco***
California Supreme Court No. S-216098
Amici Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Under Rule 8.500(g) of the California Rules of Court, the California Chamber of Commerce, the Chambers of Commerce Alliance of Ventura and Santa Barbara Counties, the Fresno Chamber of Commerce, the Long Beach Area Chamber of Commerce, the Los Angeles Area Chamber of Commerce, the Orange County Business Council, the Sacramento Metro Chamber, the San Diego Regional Chamber of Commerce, the San Francisco Chamber of Commerce, the San Jose Silicon Valley Chamber of Commerce, the Valley Industry & Commerce Association, the Pharmaceutical Research and Manufacturers of America and the Chamber of Commerce of the United States of America (collectively “*amici*”) respectfully submit this letter in support of Bristol-Myers Squibb’s (“BMS”) Petition for Review.¹

The Petition for Review raises an issue of great statewide importance:

In light of the United States Supreme Court’s recent decisions in *Daimler AG v. Bauman*, 571 U.S. __ (2014), and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), and notwithstanding older contrary California decisions, does the federal Due Process Clause permit a California court to assert personal jurisdiction over an out-of-state company regarding the claims of 575 out-of-state plaintiffs based on events that took place entirely outside California?

¹ No party or counsel for any party, other than counsel for *amici*, has authored this letter in whole or in part. No party, no counsel for a party and no person or entity – other than *amici*, their members or their counsel – made a monetary contribution intended to fund the preparation or submission of this letter brief.

Review should be granted so that petitioner and *amici* can demonstrate why the federal Due Process Clause does not permit the exercise of general jurisdiction over non-resident companies for claims by non-resident plaintiffs based on events taking place wholly outside this State. Immediate review is necessary to prevent the otherwise inevitable flood of lawsuits in this State to the detriment of California's economy, its citizens and its courts.

INTEREST OF *AMICI CURIAE*

The California Chamber of Commerce ("CalChamber") is a nonprofit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the state. For over 100 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and employment climate by representing business on a broad range of legislative, regulatory, and legal issues. CalChamber participates as *amicus curiae* only in cases, like this one, that have a significant impact on California businesses.

The Chambers of Commerce Alliance of Ventura & Santa Barbara Counties serves as a useful resource and effective advocacy partner for regional chambers that are interested in strengthening our business climate through better policy making. The Alliance consists of 11 proactive chambers with memberships representative of the diverse economy in this unique region such as agriculture, manufacturing, tourism and goods movement. Each of these industries is regularly subject to litigation, much of which is frivolous but, nonetheless, requires legal action through a court system that is already overwhelmed with legitimate lawsuits involving employers in our counties. This organization's membership consists of the following chambers of commerce: Goleta Valley, Santa Barbara Regional, Carpinteria Valley, Ventura, Oxnard, Santa Paula, Ojai Valley, Port Hueneme, Simi Valley, Greater Conejo Valley and Moorpark.

The Fresno Chamber of Commerce is the largest business association in the Central Valley and one of the largest in the State of California with over 1,100 member businesses representing thousands of employees. Established in 1885, the Fresno Chamber is the voice of business and bridges the gap between employers, government and the community to help foster a thriving and prosperous region for all Central Valley residents.

The Long Beach Area Chamber of Commerce ("LBACC") is located in Southern California with over 1,000 member businesses representing 50,000 employees. The LBACC is the largest and most active business association in the region outside of Los Angeles, California. It is the platform for the business

community to provide leadership, education and advocacy so that the Long Beach area thrives in the 21st century.

The Los Angeles Area Chamber of Commerce is the largest business organization in America's second largest city. Its 1650 members employ 650,000 people in Los Angeles County.

The Orange County Business Council ("OCBC"), through its predecessor organizations, has for more than 120 years served as a non-partisan association of business members, working with government and academia, to enhance economic prosperity while maintaining a high quality of life for America's sixth largest county. OCBC's members employ over 250,000 people in the Southern California region, and over 2,000,000 people worldwide. OCBC focuses on four core initiatives: enhancing the state's infrastructure, preparing a workforce for employment, assuring housing is available for that workforce, and promoting economic development for California, including the attraction and retention of business and good-paying jobs in a high cost-of-living state. Members of OCBC are concerned that the California court system is already back-logged, underfunded and ranked as "not fair" in U.S. metropolitan areas from San Francisco to Los Angeles. Adding non-California plaintiffs to an overburdened California court system guarantees that California businesses and residents will be denied justice.

The Sacramento Metro Chamber is the region's leading business organization for promoting economic growth and serving as a unified voice of business throughout the six-county Sacramento region. At almost 2,000 members, it is one of the largest chambers in California.

The San Diego Regional Chamber of Commerce is the largest nonprofit advocate for the San Diego regional business community. With nearly 3,000 members representing 400,000 employees, the Chamber is actively involved in local government, regional economic development and providing valuable resources to its members.

The San Francisco Chamber of Commerce was founded in 1860 and is the oldest business association in California, representing approximately 1,500 businesses. These businesses employ over 200,000 persons in San Francisco, representing a third of the city's workforce.

The San Jose Silicon Valley Chamber of Commerce is a nonprofit business association representing nearly 1,500 employers and a quarter-million employees throughout the greater Silicon Valley. Its mission is to create a strong local economy, provide premier business connections and visibility, represent the interests of business to government, promote the community and initiate political and community action.

The Valley Industry & Commerce Association (“VICA”) is the largest business advocacy group representing the San Fernando Valley business community on the local, state and federal level. Its 370 members have created more than 100,000 jobs in the region.

The Pharmaceutical Research Manufacturers of America (“PhRMA”) is a voluntary, nonprofit association representing the nation’s leading research-based pharmaceutical and biotechnology companies. PhRMA’s member companies are dedicated to discovering medicines that enable patients to live longer, healthier lives. During 2012 alone, PhRMA members invested an estimated \$48.5 billion in efforts to research and develop new medicines. PhRMA has frequently filed *amicus curiae* briefs in cases raising matters of significance to its members.

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest federation of business, trade and professional organizations representing 300,000 direct members and indirectly representing the interests of more than three million businesses and corporations of every size, from every sector and in every geographic region of the country. The Chamber routinely advocates the interests of the business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of vital concern, including the above-referenced *Goodyear* and *Bauman* cases that are at the core of the Petition for Review. The Chamber has also appeared many times before this Court and the California Court of Appeal.

Amici have many members in California and many more who conduct substantial business in this State. Consequently, *amici* and their members have a significant, shared interest in the sound and equitable administration of personal jurisdiction rules in California.

WHY THIS COURT SHOULD GRANT REVIEW

I. The Decision Below Is Irreconcilable with the United States Supreme Court’s Decisions in *Goodyear* and *Bauman*.

This case concerns the constitutionality of applying California’s long-arm statute to exercise personal jurisdiction over a non-resident company to non-resident plaintiffs’ claims based upon conduct that occurred entirely outside this State. To uphold this exercise, the trial court relied on a theory of “general jurisdiction” – that is, jurisdiction unrelated to the defendant’s contacts with California. (Pet. Exh. 814). Citing a 1995 decision of the California Court of Appeal, *Hesse v. Best Western Int’l, Inc.*, 32 Cal. App. 4th 404, 408 (1995), the trial court held that a non-resident defendant’s “wide-ranging, systematic and continuous contacts with a forum state justify the exercise of general jurisdiction over that defendant.” (Pet. Exh. 813). Applying this legal standard, the trial court

trained on six facts – (a) the volume of BMS’s sales to California, (b) the value of BMS’s sales to California, (c) BMS’s registration with the California Secretary of State, (d) BMS’s designation of an agent to accept service of process, (e) BMS’s operation of five offices in California and (f) the presence of several hundred BMS employees and sales representatives in California. (Pet. Exh. 814)

The trial court applied the wrong constitutional test. The correct test for the exercise of general jurisdiction over a non-resident corporation is whether the corporation “is fairly regarded as at home” in the forum state. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014); *Goodyear Dunlop Tires Ops. v. Brown*, 131 S. Ct. 2846, 2853-54 (2011). *Goodyear* addressed a theory of general jurisdiction indistinguishable from the one employed by the trial court. It stemmed from a bus accident that occurred in France and, according to the complaint, was due to the manufacture of defective tires by several foreign subsidiaries of Goodyear USA. The plaintiffs brought suit in North Carolina and argued that personal jurisdiction could lie over the foreign defendants based upon the distribution of different types of tires in North Carolina. Rejecting the lower court’s exercise of personal jurisdiction, the United States Supreme Court held that while the flow of a manufacturer’s products into the forum state “may bolster an affiliation germane to *specific* jurisdiction” it did “not warrant a determination that, based on those ties, the forum has *general jurisdiction*.” 131 S. Ct. at 2855. It expressly rejected the lower court’s “sprawling view of general jurisdiction” under which “any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” *Id.* at 2856. Instead, the Court limited general jurisdiction to those forums where the nonresident corporation “is fairly regarded as at home,” *id.* at 2854. These forums included the state where the company is incorporated and, if different, the state where it maintains its principal place of business, *id.*

Last month’s decision in *Bauman* reaffirmed and elaborated on this principle. Like this case, *Bauman* involved application of California’s long arm statute and concerned an exercise of general jurisdiction over a non-resident company. In *Bauman*, the plaintiffs asserted general jurisdiction over a non-resident company based on its alleged relationship with a subsidiary that had extensive contacts with California. Those contacts included “multiple California-based facilities.” 134 S. Ct. at 752. Additionally, the subsidiary was the “largest supplier of luxury vehicles in the California market.” *Id.* Over 10% of all sales of new vehicles in the United States took place in California, and the subsidiary’s sales accounted for 2.4% of the defendant’s worldwide sales. Critically, the Court assumed that *even if* all of the subsidiaries’ California contacts could be attributed to the non-resident defendant, general jurisdiction would not lie because those contacts, coupled with defendant’s

own, would “hardly render it at home” in California. *Id.* at 760. Building on the test announced in *Goodyear*, the Court reaffirmed that the state of incorporation and state of the principal place of business represented the paradigmatic places where the corporation may be subject to general jurisdiction. *Id.* The Court “decline[d] to foreclose the possibility” that “in an exceptional case . . . a corporation’s operations” in another state “may be so substantial and of such a nature as to render it at home in that State.” *Id.* at 761 n.19. But it found that the defendant’s California activities “plainly d[id] not approach that level.” *Id.*

Goodyear and *Bauman* control this case. BMS cannot be subject to general jurisdiction in California because it is not “at home” in this State. BMS is not incorporated and does not maintain its principal place of business here. Moreover, this does not present the sort of “exceptional case” where the available forums for general jurisdiction might be extended. The sole example cited by the Supreme Court in *Bauman* was its prior decision in *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), where the nonresident corporation had relocated its entire headquarters and operations to Ohio during an ongoing war in its country of incorporation (the Philippines). *See Bauman*, 134 S. Ct. at 756 n.8. That certainly is not the case here. Nor are BMS’s alleged connections with California any more substantial than those of the non-resident defendant in *Bauman*, which the Court found to be “plainly” insufficient to render it at home. Thus, BMS is not subject to general jurisdiction in California.

II. Uncorrected Erroneous Decisions on General Jurisdiction Open The Floodgates To Suits Against Non-Resident Companies and Harm the California Economy.

In the wake of *Goodyear* and *Bauman* most states have substantially narrowed their general jurisdiction jurisprudence. Since *Goodyear*, no court in a reported opinion has exercised general jurisdiction over a non-resident defendant on the basis of its sales to or operations in the forum state. *See, e.g., Abelesz v. OTP Bank*, 692 F.3d 638, 653-59 (7th Cir. 2012) (granting mandamus and ordering dismissal for lack of personal jurisdiction).² Since *Bauman*, no reported opinion citing the decision has found general jurisdiction over a non-resident company.³

² For other exemplary precedents, *see, e.g., Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co.*, 646 F.3d 589, 597 (8th Cir. 2011) (“Our precedent and the Supreme Court’s decision in *Goodyear* make clear that even if a foreign corporation pours its products into a regional distributor with the expectation that the distributor will penetrate a discrete, multi-State trade area, this connection alone is so limited that it is an inadequate basis for the exercise of general jurisdiction.”) (citations and internal quotations omitted); *Yanmar Co. v. Slater*, 386 S.W.3d 439, 446 (Ark. 2012) (finding no personal jurisdiction and noting that another state’s earlier decision basing general jurisdiction on stream-of-commerce

Against this bulwark of sister-state and federal circuit jurisprudence, the *Hesse* decision, relied upon by the trial court, is out of step with the rest of the nation. Consequently, California's assertion of general jurisdiction over BMS based on its alleged operations in the State has deadly consequences for California's economy. Because general jurisdiction does not require any relationship between the plaintiffs' claims and the defendant's contacts with the forum state, a finding of general jurisdiction over a non-resident company means that a court can assert jurisdiction over any claim against the company for conduct taking place anywhere in the world. Moreover, following *Bauman*, general jurisdiction is no longer tempered by an analysis of whether a particular assertion of jurisdiction is reasonable, 134 S. Ct. at 762 n.20. So once a company is found subject to a court's general jurisdiction, its only option to stave off the risk of future suits is to reduce its operations in the state. For example, in this case, the trial court noted that BMS maintained five offices in California, mostly dedicated to medical research, that have nothing to do with Plavix. If that investment suffices to subject BMS to suit in California for any claim based on conduct anywhere in the world, BMS would have little choice but to reconsider it.

The impact is not limited to the putative defendant. Non-resident companies already operating within California must reexamine their operations and sales to ensure that such conduct does not subject them to general jurisdiction. Non-resident companies planning new investment in California must reconsider those plans in light of their jurisdictional implications.

Put simply, the trial court's exercise of general jurisdiction against BMS based on its operations and sales in California amounts to a declaration of "open season" on the company and other non-resident companies doing business in the state. Because California would stand alone in punishing non-resident companies for their operations in the state by subjecting them to personal jurisdiction for claims completely unrelated to the operations – contrary to the clear command of *Goodyear* and *Bauman* – the likeliest consequence would be capital flight from this State and the deterrence of new business investment in this State.

theory was incompatible with *Goodyear*); *Russell v. SNFA*, 987 N.E.2d 778, 787 (Ill. 2013) (finding general jurisdiction unavailable but relying on specific jurisdiction).

³ See *In re Roman Catholic Diocese of Albany, New York, Inc.*, No. 13-4736, 2014 WL 485948 (2d Cir. Feb. 7, 2014) (ordering dismissal for lack of personal jurisdiction); *Hertges v. Experian Info. Solutions, Inc.*, No. 13-2699, 2014 WL 346030 (D. Minn. Jan. 30, 2014) (dismissing for lack of personal jurisdiction); *Quarra Stone Co. v. Yale Univ.*, No. 13-CV-790, 2014 WL 320059 (D. Wis. Jan. 29, 2014) (seriously doubting that general jurisdiction would lie but relying on specific jurisdiction); *Breathwit Marine Contractors, Ltd. v. Deloach Marine Servs., LLC*, No. 3:13-CV-00169, 2014 WL 199026 (S.D. Tex. Jan. 16, 2014) (relying on specific jurisdiction without addressing general jurisdiction).

III. Exorbitant Assertions of General Jurisdiction Magnify California's Court Crisis.

Not only does the business community suffer from unconstitutional assertions of jurisdiction, California courts and citizens do too.

California currently faces a court-funding crisis of historic proportions. As the Chief Justice explained last year, “[t]o have your day in court, you need a courtroom,” but “what we once counted on—that courts would be open, and ready, and available to deliver prompt justice—is no longer true.” Tani G. Cantil-Sakauye, Chief Justice, Address to a Joint Session of the California Legislature, State of the Judiciary (Mar. 11, 2013) at 2-3.⁴ Because California’s judicial resources are so scarce, entertaining lawsuits having no connection to the state means that Californians must wait longer for their “day in court.” *Id.* at 3. Consequently, “[w]e could never know how many people due to closures and delays will not believe justice is for them.” *Id.* at 4.

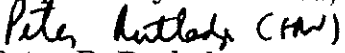
Yet despite the precarious access-to-justice crisis currently confronting California’s courts, the trial court’s ruling allows hundreds of non-resident plaintiffs to bring cases with no California connection here and invites countless more. For each case brought by one of these non-resident plaintiffs, California parties must wait longer in order to receive the court’s attention. The constitutional limits on personal jurisdiction hardly demand (much less allow) such an absurd result.

Allowing cases to proceed that lack any connection to this State distorts the civil justice system. At a minimum, it encourages forum shopping. Moreover, when such cases are allowed to proceed unchecked, the inevitable effect is the swelling of dockets of courts that are perceived as favorable to certain jurisdictional theories (even when the Supreme Court of the United States has squarely rejected those theories). When these swelling dockets overwhelm courts, they become less able to deliver justice—whether to plaintiffs with claims properly brought here or to defendants who never should have been sued here. This delay in the resolution of litigation also causes particular harm to California businesses with cases in the California courts, as it subjects those companies to prolonged uncertainty that poses difficult financial and management challenges.

⁴ Available at http://www.courts.ca.gov/documents/SOJ_2013.pdf.

CONCLUSION

Put simply, California's apparent rule on general jurisdiction requires California's taxpayers and courts to bear all the costs of lawsuits arising from conduct occurring outside the state while discouraging business investment in the State. To prevent this double-whammy to the California economy, and for the reasons expressed in this letter brief and the Petition for Review, this Court should grant review.

Respectfully submitted,

Peter B. Rutledge

Counsel for the California Chamber of Commerce, the Chambers of Commerce Alliance of Ventura and Santa Barbara Counties, the Fresno Chamber of Commerce, the Long Beach Area Chamber of Commerce, the Los Angeles Area Chamber of Commerce, the Orange County Business Council, the Sacramento Metro Chamber, the San Diego Regional Chamber of Commerce, the San Francisco Chamber of Commerce, the San Jose Silicon Valley Chamber of Commerce, the Valley Industry & Commerce Association, the Pharmaceutical Research Manufacturers Association and the Chamber of Commerce of the United States of America

PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 and am not a party to this action. My address is 215 Morton Avenue Athens, GA 30605.

On February 13, 2014, I served this letter brief on the interested parties in this action (*see below Service List*) as follows:

- BY MAIL** I placed such envelope with postage thereon prepaid in the United States Mail at 1215 K Street, Suite 1400, Sacramento, CA 95814.

- BY EMAIL** by transmitting a true and correct copy via email the document(s) listed above on this date to the person(s) at the email address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Athens, GA February 13, 2014.

Peter Rutledge (HW)

Peter B. Rutledge