No. 16-2524

In the

United States Court of Appeals

for the

Eighth Circuit

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, Case No. 4:16-cv-439, Hon. Carol E. Jackson

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA (PHRMA) AS *AMICI CURIAE* SUPPORTING DEFENDANT-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a non-profit corporation organized under the laws of the District of Columbia. It has no parent company and has issued no stock.

Pharmaceutical Research and Manufacturers of America has no parent corporation and no publicly traded company owns 10% of more of its stock. However, its membership includes companies that have issued stock or debt securities to the public. A list of PhRMA's members is available at http://www.phrma.org/about/member-companies.

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INTERESTS OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country.[1] The Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community, including cases addressing the constitutional limits on courts' exercise of personal jurisdiction.[2]

Pharmaceutical Research and Manufacturers of America ("PhRMA") is a voluntary, nonprofit association representing leading research-based pharmaceutical and biotechnology companies. PhRMA's members are the

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[1] In accordance with Fed. R. App. P. 29(c)(5), *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief.

[2] The Supreme Court cases presenting issues regarding the limits on the scope of personal jurisdiction in which the Chamber has filed *amicus* briefs include *Walden v. Fiore*, 134 S. Ct. 1115 (2014); *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). The Chamber's most recent briefs in personal jurisdiction cases, including in appellate courts around the country, are available at http://www.chamberlitigation.com/cases/issue/jurisdiction-procedure/personal-jurisdiction. PhRMA has also filed briefs in several personal-jurisdiction cases, including *Acorda Therapeutics Inc. v. Mylan Pharm. Inc.*, 817 F.3d 755 (Fed. Cir. 2016).

primary source of the many new drugs and biologics introduced each year. These new medicines have played a key role in extending longevity and improving the quality of human life.

Many Chamber and PhRMA members conduct business in States other than their State of incorporation and State of principal place of business (the forums in which they are subject to general personal jurisdiction, *see Daimler*, 134 S. Ct. at 760). They therefore have a substantial interest in the rules governing the extent to which a State can subject nonresident corporations to specific personal jurisdiction.

Using the procedural device of joinder to subject corporations to specific jurisdiction for claims that have nothing to do with the forum State would eviscerate the constitutional due process limits on personal jurisdiction recognized by the Supreme Court in numerous cases dating back to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)—and could well expose corporations that do business nationwide to what amounts to general personal jurisdiction in all fifty States. *Amici* file this brief to explain why that result is irreconcilable with the Supreme Court's personal jurisdiction decisions and would impose unfair burdens on businesses, permit forum-shopping that undermines the integrity of the judicial system, and contradict the principles of American federalism.

INTRODUCTION AND SUMMARY OF ARGUMENT

Though it was filed in Missouri, this product-liability action (brought by 64 individuals who allege that they were injured by Pfizer's drug Lipitor) has virtually nothing to do with that State. Sixty of the 64 plaintiffs reside in other States, purchased the drug in other States, and suffered their claimed injuries in those States; and Pfizer has shown that the design, manufacturing, and labeling of the drug took place outside Missouri. *See* R-90.

Yet the district court held in a short footnote that it could exercise specific personal jurisdiction not only over the claims of the four Missouri plaintiffs, but over the claims of the remaining ***sixty*** out-of-State plaintiffs.

The district court was flat wrong. Although specific jurisdiction may be proper with respect to the claims of the four Missouri plaintiffs, the district court did not acquire specific jurisdiction with respect to the out-of-State plaintiffs' claims merely because those claims were joined to the in-State plaintiffs' claims.

The Supreme Court has repeatedly held that specific jurisdiction is available to the extent—and ***only*** to the extent—that the claim at issue arises out of the defendant's conduct in or directed to the forum State.

Plaintiffs therefore cannot use the presence of in-State plaintiffs to bootstrap personal jurisdiction with respect to the claims of out-of-State plaintiffs—as numerous courts have recognized in rejecting the legal theory endorsed by the court below. This Court should adopt the clear majority view and reject the district court's exercise of jurisdiction-by-joinder.

Reversal is the right result not only as a matter of law, but as a matter of policy. The district court's expansive notion of specific personal jurisdiction would do serious harm to the business community by disrupting the predictability of jurisdictional rules and making it impossible for companies to predict where they might face large product-liability suits such as this one. It would also burden the court system, because it would give plaintiffs' lawyers free rein to consolidate the claims of any number of plaintiffs in *any* forum, so long as just one plaintiff resides or was injured there.

And it would interfere with the workings of the federal system, by empowering Missouri (and every other State) to adjudicate claims even when nearly all of the relevant events took place in a different jurisdiction. These deleterious consequences provide a further reason to reject the district court's untenable holding.

ARGUMENT

The district court fundamentally erred by blending the "two categories of personal jurisdiction." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). Specific personal jurisdiction empowers courts to adjudicate claims relating to the defendant's in-forum conduct and exists when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Id.* at 749 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

General personal jurisdiction, by contrast, permits courts to adjudicate claims against a defendant arising out of actions occurring anywhere in the world (subject, of course, to any limits specific to a particular cause of action). It exists when an out-of-forum corporation's "'continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)). As a practical matter, the only States in which this test is satisfied will be a corporation's "place of incorporation and principal place of business." *See id.* at 760.

The Supreme Court has admonished lower courts not to "elide[] the essential difference between case-specific and all-purpose (general) juris-

diction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011). But the district court's opinion commits that very error, invoking a specific jurisdiction theory to subject Pfizer to suit in Missouri for claims that have nothing to do with Missouri. That holding conflicts with Supreme Court precedent and will have dire consequences for courts and civil defendants. It should be reversed.

A. The District Court's Personal-Jurisdiction-By-Joinder Theory Violates Due Process.

1. Due process imposes clear limits on specific jurisdiction. The due process limits on a State's authority to exercise specific personal jurisdiction require that "the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). By emphasizing that specific jurisdiction depends on whether the defendant's contact with the forum State is "suit-related," the Supreme Court "emphatically underscored the requirement that the claim against the defendant have a suit-related nexus with the forum state before specific jurisdiction can attach." *See, e.g.*, *Hinrichs v. Gen. Motors of Canada, Ltd.*, 2016 WL 3461177, at *26 (Ala. June 24, 2016) (describing *Walden*).

Walden is not the first Supreme Court decision to acknowledge this principle: The Court invoked the same rationale more than seventy years

ago in *International Shoe*, which defined the approach to specific jurisdiction that is still used today. Explaining why specific jurisdiction comports with due process, the Court observed that when "a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." *Int'l Shoe*, 326 U.S. at 319. "The exercise of that privilege," the Court reasoned, "may give rise to obligations; and, ***so far as those obligations arise out of or are connected with the activities within the state***, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.* (emphasis added).

The Court went on to conclude that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the State and "[t]he obligation which is here sued upon arose out of ***those very activities***," making it "reasonable and just * * * to permit the state to enforce the obligations which [the defendant] ha[d] incurred there." *Id.* at 320 (emphasis added).

The *International Shoe* framework thus rests on the principle that, when a defendant engages in activity in the forum State, due process permits it to be haled into court there under specific jurisdiction only "so far as" the claims sued upon relate to the in-State activity. That principle nec-

essarily bars the invocation of specific jurisdiction with respect to claims ***not*** based upon in-State activity.

The Supreme Court has repeatedly reaffirmed that precise limitation on specific jurisdiction. In *J. McIntyre Machinery, Ltd. v. Nicastro*, the plurality opinion explained that specific jurisdiction involves a "more limited form of submission to a State's authority," whereby the defendant subjects itself "to the judicial power of an otherwise foreign sovereign ***to the extent that power is exercised in connection with the defendant's activities touching on the State.***" 564 U.S. 873, 881 (2011) (plurality opinion) (emphasis added). Then, in *Goodyear*, the majority explained that under specific jurisdiction, "the commission of certain 'single or occasional acts" in a State may be sufficient to render a corporation answerable in that State with respect to those acts, ***though not with respect to matters unrelated to the forum connections.***" *Goodyear*, 564 U.S. at 923 (emphasis added) (quoting *Int'l Shoe*, 326 U.S. at 318).

And in *Daimler*, the Court reaffirmed that specific jurisdiction is available only where the defendant's in-State activities "g[i]ve rise to the liabilities sued on," or where the suit "relat[es] to that in-state activity." *Daimler*, 134 S. Ct. at 754 (internal quotation marks omitted).

These repeated statements underscore that specific jurisdiction is available ***only*** for claims relating to a defendant's in-State activities. A State cannot exercise specific jurisdiction with respect to claims that have nothing to do with the forum State.

2. Specific jurisdiction must be established separately for each claim asserted. The district court never determined—or even suggested—that the out-of-State plaintiffs' claims here were based on Pfizer's activities in Missouri. Rather, it concluded that because the sixty out-of-State plaintiffs' claims had been joined with those of four in-State plaintiffs (for which personal jurisdiction was not disputed), the district court could "properly exercise personal jurisdiction over [Pfizer] with respect to this cause of action as a whole." R-211 n.1.

That conclusion was wrong. As the Supreme Court's opinions make clear, specific jurisdiction exists ***only*** to the extent that a lawsuit arises out of a defendant's in-State activities.

For that reason, as three courts of appeals have held, specific jurisdiction must be analyzed separately for each of a plaintiff's claims. "Permitting the legitimate exercise of specific jurisdiction over one claim to justify the exercise of specific jurisdiction over a different claim that does not arise out of or relate to the defendant's forum contacts would violate the

Due Process Clause." *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 (5th Cir. 2006); *see also Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001) (same); *Phillips Exeter Acad. v. Howard Phillips Fund*, 196 F.3d 284, 289 (1st Cir. 1999) (same).

By the same logic, when a case involves multiple plaintiffs, specific jurisdiction must be analyzed separately for each plaintiff. *See In re Testosterone Replacement Therapy Prod. Liab. Litig. Coordinated Pretrial Proceedings*, 2016 WL 640520, at *5 (N.D. Ill. Feb. 18, 2016) ("[T]he Court sees no reason—and plaintiffs have provided none—why the principle underlying [*Seiferth*, *Remick*, and *Phillips Exeter*] would not also apply to claims brought by separate plaintiffs."). Accordingly, out-of-State plaintiffs whose claims have nothing to do with a defendant's forum activities cannot invoke specific jurisdiction—even if their claims happen to be joined to in-State plaintiffs' claims that *are* based on the defendants' forum activities. *See Level 3 Commc'ns, LLC v. Ill. Bell Tel. Co.*, 2014 WL 50856, at *3 (E.D. Mo. Jan. 7, 2014), *vacated in part on other grounds*, 2014 WL 1347531 (E.D. Mo. Apr. 4, 2014) ("It is well-established that the requirement for personal jurisdiction cannot be bypassed by proving proper joinder.").

To hold otherwise would violate the Rules Enabling Act, which provides that procedural rules for federal courts "shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2072(b). If the out-of-State plaintiffs here had filed their own lawsuit, they plainly could not have invoked specific jurisdiction in Missouri. The procedural rules permitting those plaintiffs to join their claims with Missouri plaintiffs cannot "enlarge" the out-of-State plaintiffs' ability to sue in Missouri—nor to "abridge" Pfizer's due process right "to litigate its * * * defense[]" that it cannot be haled into a foreign State's courts on claims that have nothing to do with its actions in the State. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011) (citing 28 U.S.C. § 2072(b)); *cf. Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1048 (2016) (noting that "giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action" would "violate[] the Rules Enabling Act").

The district court's approach also conflicts with the Supreme Court's decision in *Daimler*. There, the Court held that corporations should ordinarily be subject to general, all-purpose jurisdiction ***only*** in the "paradigm" forums of their State of incorporation and principal place of business. *Daimler*, 134 S. Ct. at 760 (quoting *Goodyear*, 564 U.S. at 924). In-

deed, the Court stated that general jurisdiction would exist outside those forums only "in an exceptional case." *Id.* at 761 n.19.

Under the district court's reasoning, however, product manufacturers would effectively be subject to general jurisdiction in every State in which they sell their products. As long as one plaintiff in a State purchased the defendant's product, plaintiffs from every other State could join a lawsuit there. That would "reintroduce general jurisdiction by another name"—and thus violate the principles set forth in *Daimler*. *See* Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

One federal district court has for that reason rejected this expansive theory of personal jurisdiction on similar facts, explaining:

> Under the theory plaintiffs propose, the alleged sale and promotion of AndroGel within Missouri, which allegedly caused a Missouri plaintiff's injury, would subject defendants to ***general personal jurisdiction in Missouri*** for claims brought by ***any plaintiff*** who allegedly suffered injury by purchasing and using AndroGel ***anywhere in the country***. Such a result would be ***plainly contrary to traditional notions of fair play and substantial justice***.

Testosterone, 2016 WL 640520, at *6 (emphasis added; internal quotation marks omitted).

3. A defendant's forum contacts unrelated to the plaintiff's claims cannot support specific jurisdiction. The district court also relied on the principle that specific jurisdiction looks to the defendant's contacts with the forum State, not the plaintiffs' contacts. *See* R-211 n.1 (citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977); *Walden*, 134 S. Ct. at 1126; and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (1984)). But the problem with exercising specific jurisdiction here is not the out-of-State plaintiffs' lack of contacts with Missouri; rather, it is that the out-of-State plaintiffs' ***claims*** are not based on any events in Missouri. The four Missouri plaintiffs may have purchased the products in Missouri, or suffered injuries in Missouri.[3] But that is not true for the sixty non-Missouri plaintiffs. *See* R-100. Accordingly, *Shaffer*, *Walden*, and *Keeton* offer no support for the decision below.

In short, the district court's decision cannot be squared with the numerous Supreme Court decisions holding that specific jurisdiction is a limited form of personal jurisdiction that can rest only on contacts that involve a defendant's suit-related activities in the forum State.

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[3] As Pfizer noted below, only one of the four Missouri plaintiffs expressly alleges that she suffered injuries in Missouri. *See* R-88.

4. Other courts have rejected the approach endorsed by the court below. The district court's decision also cannot be reconciled with the many decisions of other courts properly recognizing that out-of-State plaintiffs cannot evade limitations on personal jurisdiction by joining their claims to those of in-State plaintiffs.[4]

One such decision, issued in the *Testosterone Replacement Therapy* MDL, is particularly instructive. There, as here, a group of unrelated

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[4] *See Testosterone*, 2016 WL 640520, at *6 (holding it would be unfair to "allow [out-of-State] plaintiffs to use the Missouri plaintiff's claims as a hook to reel defendants into * * *a distant and inconvenient forum to try issues unrelated to their conduct within the forum"); *Tulsa Cancer Inst., PLLC v. Genentech Inc.*, 2016 WL 141859, at *4 (N.D. Okla. Jan. 12, 2016) (noting "Plaintiffs' obligation to establish jurisdiction based on the relationship between Defendant, the forum, and *each* Plaintiff's claims") (emphasis added); *Torres v. Johnson & Johnson*, 2015 WL 4888749, at *5 n.5 (S.D. W. Va. Aug. 17, 2015) ("The finding of specific jurisdiction over the claims of the four New Mexico plaintiffs * * * does not support a finding of personal jurisdiction over the claims of the out-of-state defendants, whose claims have no nexus to the forum."); *Level 3*, 2014 WL 50856, at *2 (rejecting "the proposition that a second plaintiff can essentially 'piggyback' onto the first plaintiff's properly established personal jurisdiction"); *Shafik v. Curran*, 2010 WL 2510194, at *4 (M.D. Pa. June 17, 2010) ("[T]he Court will independently assess * * * whether specific jurisdiction exists as to the claims raised by each Plaintiff."); *Executone of Columbus, Inc. v. Inter Tel., Inc.*, 2006 WL 3043115, at *6 (S.D. Ohio Oct. 4, 2006) ("If the law as were [sic] the Plaintiffs state, then for a defendant to be subject to specific jurisdiction on one claim by one plaintiff would suddenly make him vulnerable to general jurisdiction as to all other parties who arguably have claims arising out of the same transaction or occurrence with common questions of fact or law. This would unfairly allow Plaintiffs to bypass the requirements of personal jurisdiction."); *Capital Equip., Inc., v. CNH Am., LLC*, 394 F. Supp. 2d 1054, 1057 (E.D. Ark. 2005) ("[P]ersonal jurisdiction must be established for the claims of each Plaintiff against [defendant]."); *Arnold v. Goldstar Fin. Sys., Inc.*, 2002 WL 1941546, at *3 (N.D. Ill. Aug. 22, 2002) ("[E]ach plaintiff must show that his or her claim arises out of or is related to [defendant's] contacts with Illinois.").

plaintiffs sued pharmaceutical manufacturers jointly in Missouri. 2016 WL 640520, at *1. The case was removed and eventually transferred to an MDL proceeding in the Northern District of Illinois, which dismissed the claims of an Illinois plaintiff within the transferred Missouri case for lack of personal jurisdiction.[5]

The MDL court observed that "nothing in *Walden* indicates that a court may exercise personal jurisdiction over a claim against defendants unrelated to their conduct within the forum state." *Id.* at *5. In fact, *Walden* barred the exercise of specific jurisdiction: the claims of the Illinois plaintiff did not "relate to" the defendants' Missouri contacts, as required by *Walden*, because "all of the factual allegations necessary to establish his claims [were] based on defendants' conduct outside Missouri." *Id.* The court also rejected the notion of a "kind of 'pendent' or 'supplemental' theory of specific personal jurisdiction" that would allow it to adjudicate the out-of-State plaintiff's claims with an in-State plaintiff's claims, citing the numerous courts that had held that "personal jurisdiction over the defend-

[5] The court reserved decision on whether there was personal jurisdiction over the other out-of-State plaintiffs' claims.

ant must be established ***as to each claim asserted***." *Id.* (emphasis added).[6]

Testosterone's logic is fully applicable here. The fact that claims of the out-of-State plaintiffs and the Missouri plaintiffs' claims involve the same drug does not relieve each of the out-of-State plaintiffs of their burden of separately establishing specific personal jurisdiction in Missouri for the claims arising out of their own alleged injuries. They cannot, and this Court should accordingly reverse the decision below.[7]

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[6] The court in *Testosterone* also properly rejected the argument that all of the plaintiffs' injuries arose out of the same "transaction"—explaining that it makes little sense to say that the same "transaction" is at issue when the claims in a suit "involve different consumers in different states suffering different injuries after receiving prescriptions from different doctors for a drug used for varying time periods." *Testosterone*, 2016 WL 640520, at *6. Indeed, the "transaction" argument, if accepted, could mean that a product manufacturer could be subject to suit in every State by everyone in the country claiming injury from that product. That result is directly contrary to the principles set forth in *Daimler*.

[7] In *Bristol-Myers Squibb Co. v. Superior Court*, --- P. 3d ---, 2016 WL 4506107 (Cal. Aug. 29, 2016), a bare majority of the California Supreme Court recently approved of an exercise of specific jurisdiction over out-of-State plaintiffs' claims on facts similar to those here. The court there reasoned that the out-of-State plaintiffs' claims had a "substantial connection" to the in-State plaintiffs' claims because all of the claims related to "the same allegedly defective product and the assertedly misleading marketing and promotion of that product, which allegedly caused injuries in and outside the state." *Id.* at *12. But tellingly, the court there could not point to authority from ***any*** other court agreeing with its holding that out-of-State plaintiffs' claims qualify for specific jurisdiction simply because they involve the same product. That is unsurprising, because as noted above (at 14 & n.4), courts have uniformly rejected that proposition. *Bristol-Myers Squibb*'s reasoning is therefore unpersuasive.

B. Allowing The Non-Missouri Plaintiffs To Obtain Specific Jurisdiction Through Joinder Would Harm Businesses And Courts, And Violate Basic Principles Of Federalism.

The district court's decision not only violates settled due process principles: if upheld, it will inflict severe new burdens on the business community, the courts, and the federal system.

1. Jurisdiction-by-joinder would impose greater uncertainty on businesses. The Supreme Court has long recognized that the concept of specific jurisdiction "gives a degree of predictability to the legal system that allows potential defendants to 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 Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Companies know that they generally have a "due process right not to be subjected to judgment in [the] courts" of a State other than their home State, unless they have affirmatively established contacts with the State itself that make them subject to specific jurisdiction there. *Nicastro*, 564 U.S. at 881; *see also Walden*, 134 S. Ct. at 1123. This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

The district court's decision would dramatically reduce companies' ability to control or predict where they are subject to specific jurisdiction.

If plaintiffs can bring suit in any State as long as they join their claims to those of ***one*** plaintiff in that State, a company that sells products nationwide will have no way of avoiding being trapped in mass actions in any forum in the country—no matter how "distant or inconvenient." *See World-Wide Volkswagen*, 444 U.S. at 292.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to product manufacturers and irreconcilable with the Due Process Clause. *See Nicastro*, 564 U.S. at 885 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible"); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 n.17 (1985) (explaining that due process is violated when a defendant "has had no 'clear notice that it is subject to suit' in the forum and thus no opportunity to 'alleviate the risk of burdensome litigation' there" (quoting *World-Wide Volkswagen*, 444 U.S. at 297)).

2. Jurisdiction-by-joinder would expand plaintiffs' ability to engage in forum-shopping. The jurisdiction-by-joinder approach also would impose new burdens on courts by enabling plaintiffs—and plaintiffs' lawyers—to shop aggressively for plaintiff-friendly forums and bring as many claims as possible there. In pharmaceutical litigation, plaintiffs' counsel often seek to aggregate claims from plaintiffs across the country in

particular "magnet jurisdictions" that are viewed as especially plaintiff-friendly. Before *Daimler*, plaintiffs seeking to bring suit in such "magnet jurisdictions" would rely on expansive theories of general jurisdiction, arguing that the defendant companies did a high volume of business there.

Daimler forecloses that approach, but the district court's decision would open a new forum-shopping avenue by allowing plaintiffs to find one plaintiff in the desired forum and then use joinder to bring in a limitless number of other, out-of-State plaintiffs. This Court should not authorize such blatant gamesmanship.

3. Jurisdiction-by-joinder is inconsistent with federalism. Finally, the district court's approach violates basic principles of federalism. As the Supreme Court has recognized, the minimum-contacts requirement for exercising specific jurisdiction does not just protect defendants' due process rights—it also "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. By expanding the scope of Missouri's authority to exercise specific jurisdiction beyond permissible bounds, the district court's jurisdiction-by-joinder theory "infringe[s] directly on [other states'] sovereign prerogative to determine what liabilities [defendants] should bear for ac-

tions in [their] borders." *Bristol-Myers Squibb*, 2016 WL 4506107, at *33 (Werdegar, J., dissenting).

No interest of Missouri's is furthered by this expansion of jurisdiction: the State already has the ability to adjudicate claims brought by its own residents based on defendants' in-State activities. *See id.* at *34 ("Where the conduct sued upon did not occur in California, was not directed at individuals or entities in California, and caused no injuries in California or to California residents, neither our state's interest in regulating conduct within its borders nor its interest in providing a forum for its residents to seek redress for their injuries is implicated.") (citations omitted). This Court should therefore reject the district court's approach and leave the adjudication of out-of-State plaintiffs' claims where it belongs—in those other States' courts or where Pfizer is subject to general jurisdiction.[8]

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[8] *Amici* agree with Pfizer that, because the district court sanctioned Pfizer for having removed the case, this Court has appellate jurisdiction to review not only the sanctions decision but the merits of the district court's remand order. *See, e.g.*, *Hart v. Wal-Mart Stores, Inc. Assocs.' Health & Welfare Plan*, 360 F.3d 674, 677 (7th Cir. 2004); *Roxbury Condo. Ass'n, Inc. v. Anthony S. Cupo Agency,* 316 F.3d 224, 227 (3d Cir. 2003); *Miranti v. Lee,* 3 F.3d 925, 927–28 (5th Cir. 1993); *Moore v. Permanente Med. Group*, 981 F.2d 443, 447 (9th Cir. 1992); *cf. Convent Corp. v. City of N. Little Rock, Ark.*, 784 F.3d 479, 483 (8th Cir. 2015) ("[T]he court must consider the objective merits of removal at the time of removal.") (internal quotation marks omitted). That is so even though plaintiffs have disclaimed any monetary interest in the fee award authorized by the district court. As this

CONCLUSION

The district court's decision should be reversed, and the case should be remanded with instructions to dismiss the out-of-State plaintiffs' claims for lack of personal jurisdiction.

Court has previously held, the Court retains appellate jurisdiction to review a fee award even if the plaintiff agrees not to collect the fees. *See Perkins v. Gen. Motors Corp.*, 965 F.2d 597, 599-600 (8th Cir. 1992).

Respectfully submitted,

/s/ *Donald M. Falk*

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Dated: September 15, 2016

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned counsel for the Chamber of Commerce of the United States of America certifies that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 4,683 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: September 15, 2016 /s/ *Donald M. Falk*

CERTIFICATE OF SERVICE

I hereby certify that that on September 15, 2016, I electronically filed the foregoing brief using the CM/ECF system, which will send notification of the filing to the attorneys on that system.

Dated: September 15, 2016 /s/ *Donald M. Falk*