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October 3, 2014

BY COURIER

Hon. Chief Justice and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: *Bristol-Myers Squibb Co. v. Superior Court*, S221038

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The Chamber of Commerce of the United States of America ("U.S. Chamber") and the Pharmaceutical Research and Manufacturers of America ("PhRMA") submit this letter as *amici curiae* in support of Bristol-Myers Squibb Company's petition for review. The petition should be granted because it presents an issue of exceptional importance to the business community and to the general administration of justice in California:

> Whether California courts may assert personal jurisdiction over nonresident defendants to adjudicate product liability claims by nonresidents asserting out-of-state injury and challenging out-of-state conduct, where the sole basis for jurisdiction is the assertion by California residents of similar claims arising from California sales of the same product.

Interests of the *Amici Curiae*

The U.S. Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million businesses, state and local chambers of commerce, and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of thousands of California businesses. For that reason, the Chamber and its members have a significant interest in the administration of civil justice in the California courts. The Chamber routinely advocates the interests of the national business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of national concern to American business. In fulfilling that role, the Chamber has appeared many times before this Court, both at the petition stage and on the merits.

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 lead longer, healthier, and more productive lives. During 2013 alone, PhRMA members invested an estimated $51.1 billion in efforts to research and develop new medicines. PhRMA's mission is to advocate public policies that encourage the discovery of life-saving and life-enhancing medicines. PhRMA closely monitors legal issues that impact the pharmaceutical industry and frequently participates as amicus in cases raising matters of significance to its members.

The *amici* and their members have a strong interest in further review because the decision below distorts the jurisprudence of specific jurisdiction in a way that significantly erodes the limits on general jurisdiction that the Supreme Court of the United States reaffirmed in *Daimler Corp. v. Bauman* (2014) 134 S. Ct. 746. Moreover, as a practical matter the decision below compels California trial courts to assert jurisdiction over thousands of factually complex claims with no ties to this state apart from the existence of other similar claims that do involve parties or conduct in California. The exacerbated delay that inevitably will result from this influx of claims into already-congested courts will injure all of *amici*'s members who rely on the California courts to resolve disputes that are there legitimately—not only those members who are forced to adjudicate claims in California that lack any factual nexus to the State

Reasons Why Review Should Be Granted

Under the Court of Appeal's holding—which for the moment binds every trial court in California—every lawsuit alleging injury anywhere in the country from a defective product that was obtained or used anywhere in the country may be brought in the California state courts so long as it is associated with an action by California plaintiffs. That result—giving California the power to decide disputes where every relevant contact points to other states—violates Due Process limits on the power of courts and flouts the most basic principles of federalism. As explained below, the doctrinal importance of the case mirrors its practical significance, reinforcing the need for prompt review.

A. The Decision Below Seriously Undermines Established Limits of Specific Jurisdiction.

The U.S. Supreme Court not long ago took an appellate court in another state to task for "[c]onfusing or blending general and specific jurisdictional inquiries" in order to hold a defendant to answer in local courts. (*Goodyear Dunlop Tires Operations SA v. Brown* (2011) 131 S. Ct. 2846, 2851.) That is what happened here. In departing from this Court's

specific-jurisdiction precedents, and carrying some selected aspects of their analysis to an insupportable conclusion (see Petition 8-16), the decision below deputized specific-jurisdiction principles to create a substitute form of general jurisdiction over any company that does business in California.

Subjecting all claims against a company to the jurisdiction of the California courts, so long as some residents bring legally similar claims, would make California the effective "home" of every company that does significant business here, in flat contradiction with the U.S. Supreme Court's decision in *Daimler Corp. v. Bauman* (2014) 134 S. Ct. 746 and with the Due Process limits that *Bauman* enforces. *Bauman* reflects a view that, while it is fair to subject a nonresident company to jurisdiction over actions that are related to its in-forum activities, it is fundamentally unfair to treat business activities in the forum as sufficient to support jurisdiction over out-of-state claims that are based on the defendant's out-of-state conduct.

Bauman imposed much stricter limits on general personal jurisdiction than many courts in California and elsewhere had formerly assumed. As illustrated by the decision below, which properly held that California lacked general jurisdiction over Bristol-Myers Squibb, the holding in *Bauman* has increased the practical significance of specific jurisdiction principles.

The holding below underscores the substantial urgency attending the proper delineation of specific jurisdiction doctrine in light of the Due Process Clause. The Court of Appeal apparently believed that, by resting jurisdiction on a defendant's in-state conduct that was similar to the conduct at issue in a case, specific jurisdiction could expand into a substitute for the "exorbitant exercises of all-purpose jurisdiction" that *Bauman* rejected. (134 S.Ct. at 761.) But that is not so. A state may adjudicate "causes of action arising from dealings entirely distinct from [the defendant's in-state] activities" only if an assertion of general jurisdiction is justified. (*Bauman*, 134 S.Ct. at 745 [quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 318].)

Even before *Bauman*, the U.S. Supreme Court had made clear that Due Process permits the exercise of judicial power over a nonresident under principles of specific jurisdiction only "to the extent that power is exercised in connection with the defendant's activities touching on the State." (*J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 131 S.Ct. 2780, 2788 [plurality opn. of Kennedy, J.].) The pivotal question is whether the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum." (*Vons Companies v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446 [quoting *Helicopteros Nacionales de Colombia, S.A.v. Hall* (1984) 466 U.S. 408, 414].) This Court has rephrased the "related"

element to require a "substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Id.* at 456.) Far from a substantial connection between the claims of the out-of-state plaintiffs here and Bristol-Myers Squibb's sale of pharmaceuticals to other individuals in California, the Court of Appeal strained (and failed) to identify any *nexus* at all. At best the court relied on *parallels* between the sale of a product to other people in other states and the sale of the same product here. If parallels were enough, however, any state with some resident plaintiffs could constitutionally exercise nationwide jurisdiction over all product liability cases involving the same product. But a parallel is not a nexus, and parallels are not enough.

Nor can the assertion of specific jurisdiction be justified based on the application of this Court's statements that, "for the purpose of establishing jurisdiction[,] the intensity of forum contacts and the connection of the claim to those contacts are inversely related." (Pet. App. 33 [quoting *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1068 [in turn quoting *Vons*, 14 Cal.4th at 452]].) Even if this Court is correct that specific jurisdiction may be analyzed on a sliding scale, the analysis below slides the connection factor all the way off the scale.

It is unclear whether, after *Bauman*, a court can use the supposed intensity of a defendant's business contacts with a state in order to assert jurisdiction over litigation bearing only an attenuated relation to those contacts. But it is crystal clear after *Bauman* that contacts that are insufficient to support general jurisdiction are equally insufficient to support specific jurisdiction over a claim that has no nexus or connection to the forum contacts—not even the indirect ties held sufficient in *Vons*. Due Process permits a state to assert specific jurisdiction over a nonresident only "to the extent that [jurisdiction] is exercised in connection with the defendant's activities touching on the State." (*Nicastro*, 131 S.Ct. at 2788 [plurality opn. of Kennedy, J.].) Indeed, in *Snowney* this Court merely recognized that a defendant's in-state conduct could subject it to specific jurisdiction if that conduct "caused an injury *to a California resident*" (35 Cal.4th at 1069 [emphasis added]). Nothing in *Snowney* suggests that specific jurisdiction may rest on a nonresident's in-state conduct when the litigation addresses *out*-of-state conduct alleged to have caused injury to an *out*-of-state resident.

The decision below is especially significant as a matter of constitutional doctrine—and therefore warrants review—because the Due Process limits in play here reflect "the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends." (*State Farm Mutual Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 421 [quoting *New York Life Ins. Co. v. Head* (1914) 234 U.S. 149, 161].)

Those barriers constrain "the power of a sovereign to resolve disputes through judicial process" just as much as "the power of a sovereign to prescribe rules of conduct for those within its sphere." (*Nicastro*, 131 S.Ct. at 2787-2788 [plurality opn. of Kennedy, J.].) Just as basic principles of federalism limit the authority of state legislatures to regulate extraterritorial conduct, those principles likewise constrain the authority of state courts limited to adjudicate entirely extraterritorial disputes.

B. Review Should Be Granted To Prevent Out-of-State Actions From Flooding The California Courts.

Although Real Parties insist that the decision below will have no significant practical effects (Ans. 6), they do not say how or why that could be so. On the contrary, for California courts to welcome cases that lack any connection to this State distorts and impairs the civil justice system. At a minimum, that practice encourages open and nearly limitless forum-shopping. And when the influx of out-of-state plaintiffs with out-of-state cases overwhelms the California courts, they will become still 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 specifically harms California businesses with cases in the California courts, as it subjects those companies to prolonged uncertainty that poses difficult financial and management challenges.

In her State of the Judiciary address earlier this year, the Chief Justice acknowledged the already "harmful and astonishing delays in civil redress" that have resulted from California's court-funding crisis. (Chief Justice Tani G. Cantil-Sakauye, Address to a Joint Session of the California Legislature, *State of the Judiciary* (Mar. 17, 2014) available at http://www.courts.ca.gov/25437.htm.) "The [funding] reductions of the past have fallen hardest on civil cases because, as you know, the Constitution and statutes guarantee the precedence of criminal cases. As a result, the only place to absorb the reductions is in the processing of civil cases." (*Ibid.*) And as the Chief Justice explained last year, "To 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 in California." (Chief Justice Tani G. Cantil-Sakauye, Address to a Joint Session of the California Legislature, *State of the Judiciary* (Mar. 11, 2013) available at http://www.courts.ca.gov/21268.htm.) Inviting product-liability plaintiffs throughout the United States to bring their cases to California civil courts for individualized and burdensome resolution will only exacerbate the situation.

As the direct result of the decision below, 575 cases involving out-of-state plaintiffs complaining about out-of-state harms based on out-of-state sales will displace and delay 575 other disputes involving California parties or California events. That is the tip of the iceberg. This is not the only case using a relatively small contingent of California plaintiffs as a wedge to pry open California courthouse doors to let in a far greater number of out-of-state plaintiffs whose claims have no connection to this State. Similar cases in Los Angeles Superior Court alone include the *Paxil II Cases*, JCCP No. 4786; *Avandia Drug Cases*, JCCP No. 4578; *Crestor Product Liability Cases*, JCCP No. 4713; *In re Lipitor Cases*, JCCP No. 4761; *Actos Product Liability Cases*, JCCP No. 4696; and the *Nexium Cases* (*Brown v. AstraZeneca*, No. BC485295; *DePauw v. AstraZeneca*, No. BC485366; *Standberry v. AstraZeneca*, No. BC485367; *Velasco v. AstraZeneca*, No. BC485296; *Henning v. AstraZeneca*, No. BC510554). (See also *GlaxoSmithKline LLC v. Superior Court*, review denied Sept. 18, 2013, S212493.) If the decision below remains in place as precedent, that technique of manipulating personal jurisdiction will become still more common.

If the existence of some California plaintiffs is all it takes to assert specific jurisdiction over all tort cases nationwide that involve the same product or conduct, every plaintiff in the country claiming injury from asbestos could flock to the California courts. Most, if not all, the defendants in those cases marketed and sold their products in California, and there certainly are some asbestos plaintiffs who live or were injured here. Under the rationale of the decision below, plaintiffs who now bring their cases in their home jurisdictions could now bring their cases in the California courts. The same goes for all manner of product-liability plaintiffs, whether the challenged product is a foodstuff, a drug, or an automobile.

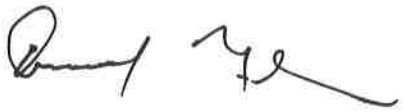
And the decision below channels the most burdensome cases to the California courts. Those cases with many plaintiffs whose claims may be resolved through predominantly common proof will be brought as class actions and will be filed in (or removed to) federal court under the Class Action Fairness Act of 2005, Pub. L. No. 109–2 (codified in 28 U.S.C. §§ 1132(d), 1453, 1711-1715). Remaining in state court will be those cases that must undergo discovery and other pretrial processes—and perhaps trial as well—one by one because of intensely individualized issues (such as personal injuries with individual issues of exposure, causation, and medical, economic, and noneconomic damages). That is, the increased case volume is not offset by efficiencies in litigation. The decision below volunteers the California courts to adjudicate individualized product liability cases for the entire nation. California would receive the most burdensome cases with the least connections to this State.

For each case brought by one of these nonresident plaintiffs, California plaintiffs and defendants alike must wait longer to receive a court's attention. That consequence underscores the importance of correctly resolving the jurisdictional issues presented here.

Conclusion

Put simply, the erroneous jurisdictional rule reflected in the decision below requires California's taxpayers and courts to bear all the costs of lawsuits arising from conduct occurring outside the state. Properly enforced, the constitutional limits on personal jurisdiction foreclose that result. The petition should be granted and the decision below reversed.

Respectfully submitted,



Donald M. Falk

CERTIFICATE OF SERVICE

I, Kristine Neale, declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is: Two Palo Alto Square, Suite 300, 3000 El Camino Real, Palo Alto, California 94306-2112. On October 3, 2014, I served the foregoing document(s) described as:

AMICUS CURIAE LETTER

☐ By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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☐ By placing the document(s) listed above in a sealed overnight service envelope and affixing a pre-paid air bill, and causing the envelope, addressed as set forth below, to be delivered to an overnight service agent for delivery.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2014, at Palo Alto, California.

Kristine Neale

Kristine Neale