

No. 1190423

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IN THE SUPREME COURT OF ALABAMA

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EX PARTE PURDUE PHARMA LP, ET AL.

(IN RE:

DCH HEALTHCARE AUTHORITY, ET AL.

Respondents,

v.

PURDUE PHARMA LP, ET AL.

Petitioners.)

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On Petition for a Writ of Mandamus to  
the Circuit Court of Conecuh County (CV-2019-000007)  
(The Honorable Jack B. Weaver, Circuit Judge, Presiding)

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**AMICI CURIAE BRIEF OF THE INTERNATIONAL ASSOCIATION OF  
DEFENSE COUNSEL AND AMERICAN TORT REFORM ASSOCIATION  
IN SUPPORT OF PETITIONERS**

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## INTEREST OF AMICI CURIAE

Amici are organizations of defense counsel, individuals and entities that support the longstanding principle that each lawsuit must be heard in its proper venue. Amici are concerned that the Circuit Court's ruling, if not reversed, will harm their members and clients sued in the State by forcing them to defend themselves in venues preferred by plaintiffs, but unrelated or attenuated to the claims.

The International Association of Defense Counsel ("IADC") is an invitation-only, peer-reviewed membership organization of about 2,500 in-house and outside defense attorneys and insurance executives. IADC is dedicated to the just and efficient administration of civil justice and improvement of the civil justice system. IADC supports a justice system in which plaintiffs are fairly compensated for genuine injuries, responsible defendants are held liable for appropriate damages, and non-responsible defendants are exonerated without unreasonable cost.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote the goal of ensuring

fairness, balance, and predictability in civil litigation. ATRA has filed amicus curiae briefs in cases before state and federal courts that have addressed important liability issues, including forum selection.

#### **STATEMENT OF THE CASE**

This industry-wide lawsuit was filed by numerous Alabama hospital systems against a multitude of national manufacturers, distributors and retail pharmacies over alleged unreimbursed or under-reimbursed costs of treating patients with alleged opioid-related conditions. Plaintiffs are 17 corporate entities that own or operate 21 hospitals throughout Alabama. The vast majority of Defendants are out-of-state companies. Plaintiffs have filed this lawsuit in a remote venue, Conecuh County, where only one Plaintiff has a principal office, no Defendant resides, and only a small fraction of the events at issue allegedly occurred.

Under Ala. Code § 6-3-7, the general rule is that in any action against corporations, venue must be proper as to all plaintiffs. Accordingly, Defendants filed a Motion to Transfer Venue to transfer this suit to Jefferson County, which they suggest is the proper venue for all parties, unlike Conecuh County. The Circuit Court denied Defendants'

Motion, and Defendants filed this Petition. As Petitioners explain, mandamus is warranted when a Circuit Court exceeds its authority in failing to transfer venue.

#### **STATEMENT OF THE ISSUES**

1. Whether the Circuit Court failed to correctly apply Ala. Code § 6-3-7(c), the corporate venue statute.

2. Whether the Circuit Court abused its discretion in refusing to transfer this action to Jefferson County under Ala. Code § 6-3-21.1, the forum non conveniens statute.

#### **INTRODUCTION AND SUMMARY OF ARGUMENT**

For more than thirty years, the Alabama Legislature and this Court have enacted laws and issued rulings to stop the type of venue selection that has occurred here. Before the current forum non conveniens and venue statutes were enacted in 1987 and 1999 respectively, plaintiffs could file lawsuits wherever a corporate defendant did business. By joining several separate claims together, as Plaintiffs have done here, they could consolidate their claims into a single action and have it heard wherever venue was proper for any one of them. This practice allowed plaintiffs to shop for a favorable venue, but "earned the state a reputation among some business groups as a 'tort hell.'"

Bill Poovey, Legislature Gives Final Approval to Two of Three Tort Bills, Assoc. Press Newswires, May 25, 1999.

In 1999, the Legislature enacted Ala. Code § 6-3-7(c) to overcome this reputation. This statute ended this joinder-venue selection tactic by ensuring that each case must be heard only in its proper venue. It requires that "venue must be proper as to each and every named plaintiff joined in the action." Ala. Code § 6-3-7(c). If individuals or entities seek to join claims into a consolidated action, as Plaintiffs have done, they could no longer choose a county where venue is proper as to only one of them, like Conecuh County here. Instead, they must choose a venue where all of them have a right to bring a case. Joinder can no longer be used to circumvent venue laws.

Here, it is uncontroverted that 16 of the 17 Plaintiffs have no right to sue Defendants in Conecuh County on their own. These hospital systems do not reside in Conecuh County, and under the 1999 law, they cannot bring claims against Defendants in Conecuh County simply by attaching them to the claims of a hospital system that does. There are two choices: Plaintiffs must sue in a county where venue is proper for all 17 hospital systems, or Plaintiffs'



claims must be "severed and transferred to a court where venue is proper." Ala. Code § 6-3-7(c). Yet, the Circuit Court denied Defendants' motion to transfer the case to a proper venue, Jefferson County, without explanation.

This Court should grant the Petition and issue a Writ of Mandamus requiring this consolidated action to be transferred to Jefferson County. Doing so is the only way to maintain fairness and comply with Alabama's venue law. This case also presents the Court with an important opportunity to reaffirm the State's venue and forum non conveniens laws and emphasize that Circuit Courts must transfer cases to the proper venue as the law requires.

#### **ARGUMENT**

When businesses are sued in counties with little or no connection to the litigation, as has occurred here, it undermines the notions of fundamental fairness. There is a perception that plaintiffs must have chosen the venue to gain a litigation advantage, rather than have their cases decided on the merits. The local judges may be known to be plaintiff-friendly, the juries may be susceptible to awarding large verdicts, or large, out-of-state businesses may be targeted for local payouts.

Richard Scruggs, a well-known former plaintiffs' lawyer from Mississippi, explained how these dynamics can work:

What I call the "magic jurisdiction," [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're popul[ists]. . . . And, so it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places.

Asbestos for Lunch, Panel Discussion at the Prudential Securities Financial Research and Regulatory Conference (May 9, 2002), in Industry Commentary (Prudential Securities, Inc., New York, N.Y.), June 11, 2002, at 5 (quoting Richard Scruggs). Thus, when plaintiffs—here the 16 hospital systems with principal offices outside of Conecuh County—voluntarily sue in forums with little or no logical connection to their claims, it suggests they may be seeking to have these other factors influence their case.

These optics may be unfair to the judges and juries involved. In Conecuh County, there is only one judge who could be assigned the case because he bears sole responsibility for a two-county civil docket. This situation epitomizes the value of Ala. Code § 6-3-7(c). The statute provides clear, objective guidelines for where this case must be heard, which protects the judiciary from any

perception, or misperception, that in-state plaintiffs are trying to leverage the State's joinder and forum rules to find a specific, hospitable environment for their claims.

**I. The Court Should Grant the Petition to Enforce the Legislature's Venue Reforms and Protect the Judiciary from a Perception of Impropriety**

As evidenced by this case, some Circuit Courts are still struggling to follow Alabama's joinder, venue and forum non conveniens laws, all of which were intended to guard against this type of venue selection. This perception is fueled by the fact that in years past, some Alabama jurisdictions fell prey to widespread forum shopping. See generally Brannon J. Buck, Commentary, Forum Shopping and Venue Transfers in Alabama, 48 Ala. L. Rev. 671 (1997).

Alabama's prior venue statute provided plaintiffs with more flexibility in choosing the venue for their claims. "This opportunity, coupled with the reputation of certain counties as being havens for large verdicts, ha[d] led to a significant increase in the civil case loads of circuit courts in some predominantly rural counties." Id. at 674. For these reasons, Alabama counties have been listed on several occasions in the American Tort Reform Foundation's annual Judicial Hellholes reports. See Judicial Hellholes,

Am. Tort Reform Found., at  
<https://www.judicialhellholes.org/>.

In 1987, the Legislature had sought to address these dynamics by enacting a forum non conveniens statute. This law directed that courts "shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed." Ala. Code § 6-3-21.1. If plaintiffs selected a venue to gain an advantage, judges were to transfer the case to the proper county. See Robert D. Hunter, Alabama's 1987 Tort Reform Legislation, 18 Cumb. L. Rev. 281 (1988). Courts, though, did not embrace this new tool, and Alabama maintained its reputation "of rural Alabama juries that routinely slap big corporations with stunning punitive-damage verdicts." Mike Hudson, Alabama: Tort Capital or Whipping Boy?, A.B.A. J., June 1995, at 18.

This venue selection issue came to a head before this Court in Ex parte Gauntt, 677 So. 2d 204 (Ala. 1996). Chief Justice Hooper and Justice Maddox (joined by Justice Houston) wrote dissenting opinions sounding the alarm against forum shopping. Chief Justice Hooper wrote,

"Allowing [plaintiffs] to pick the forum on the basis of the expected outcome leads one to conclude that they are forum shopping," which he called "a horrendous abuse of the judicial system." Id. at 215, 218. Justice Maddox further stated that courts must follow the Legislature's enactments to "limit[] the right of the parties to pick the forums where their actions can be brought." Id. at 219.

The Legislature heeded this call by revising the venue statute in 1999 to provide objective standards for where corporations can be sued and defeat the tactic of choosing a favorable venue by joining claims. Under the reforms, venue against a corporation lies in the county where "a substantial part of the events or omissions giving rise to the claim occurred," the county of the corporation's "principal office" in the State, or the county in which the plaintiff resides so long as the corporation does business by agent in that county. See Ala. Code § 6-3-7(a)(1)-(3). If none of these provisions applies, only then can a lawsuit be brought in another county where the corporation was "doing business by agent" when the claim accrued. See id. § 6-3-7(a)(4). Alabama's reforms further mandated that venue must be proper as to each and every named plaintiff,

unless exceptions apply. See Ala. Code § 6-3-7(c). The application of the law to this case is clear: Conecuh County is an improper venue to hear this consolidated case.

Finally, this Court has required that when a case is filed in an improper venue, as here, the transfer must be executed "as expeditiously as possible." Ex parte Nationwide Agribusiness Ins. Co., 276 So. 3d 674, 678 (Ala. 2018) (calling venue a "threshold matter"). Other than transferring the case to the proper forum, Conecuh County has no authority over the out-of-county claims. See Ex parte Int'l Paper Co., 263 So. 3d 1035, 1041 (Ala. 2018) ("Here, the circuit court exceeded its discretion by failing to rule on" the motion to dismiss "while allowing discovery on the merits to proceed and setting deadlines for summary-judgment motions and setting the trial date.").

Therefore, the Court should grant the Petition and issue the Writ to transfer the case to Jefferson County, where the case can proceed if and as appropriate.

## **II. The Court Should Grant the Petition to Stay Within Mainstream American Jurisprudence**

The Court should also grant the Petition to ensure Alabama stays within mainstream jurisprudence. The U.S. Supreme Court and other states have taken similar steps in

the past two decades to rein in forum shopping so that lawsuits are heard only in their rightful places. See Philip S. Goldberg, et al., The U.S. Supreme Court's Personal Jurisdiction Paradigm Shift to End Litigation Tourism, 14 Duke J. Const. L. & Pub. Pol'y 51 (2019).

**A. The U.S. Supreme Court Has Taken Steps to Stop Forum Shopping and Prevent Joinder from Circumventing Forum Restrictions**

The U.S. Supreme Court recently issued four unanimous or near-unanimous rulings on jurisdiction—a subject it left largely unchanged for seventy years—directed at curbing forum shopping between states. See Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1777 (2017) (“BMS”); BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017); Daimler AG v. Bauman, 571 U.S. 117 (2014); Goodyear Dunlop Tires Op., S.A. v. Brown, 564 U.S. 915 (2011). The Court had long understood that plaintiffs may try to “forc[e] the trial at a most inconvenient place for an adversary.” Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947). It also had recognized the “burdens placed upon one who must defend oneself in a foreign legal system.” Asahi Metal Indus. Co. v. Sup. Ct. of Cal., 480 U.S. 102, 114 (1987). The Court’s jurisprudence identifies many themes at issue here.

First, the Supreme Court limited states' constitutional ability to hear cases when a corporate defendant had no connection to the state. It explained that when plaintiffs file their claims in places with even limited connections, there is "an inadequate basis" for hearing the case there. Goodyear, 564 U.S. at 927. In order to assert general jurisdiction over a business, the state must be where the business is incorporated or has its principal place of business, i.e., where the business is "at home." Id. at 919. The Court reinforced this ruling in Daimler: "a tribunal's jurisdiction over persons reaches no farther than the geographic bounds of [a] forum." 571 U.S. at 137. As the Court elaborated, these limits do not harm the plaintiffs' access to justice; they can seek recourse in "at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." Id.

Second, the Supreme Court restrained forum shopping for specific personal jurisdiction, holding that a court cannot exert jurisdiction over out-of-state claims merely because they were joined to claims filed by in-state plaintiffs. BMS, 1137 S. Ct. at 1777. A jurisdiction has a legitimate legal interest in a dispute only if the claim "aris[es] out



of or relat[es] to the defendant's contacts with the forum." Id. at 1780. As in the case at bar, joinder cannot overcome the lack of a local court's authority over a foreign claim. Plaintiffs alleging facts that occurred outside that forum cannot bring cases in the forum based on the "mere fact that other plaintiffs" could. Id. at 1781

As the Supreme Court explained, the purpose behind these rulings was to assure that the location of a lawsuit does not subvert "traditional notions of fair play and substantial justice." Daimler, 134 S. Ct. at 754. The permissive approach that had existed for personal jurisdiction, namely that a business could be sued wherever it had "minimum contacts," had become anachronistic and inconsistent with due process. The Supreme Court's rulings also addressed efforts by plaintiffs' lawyers to take advantage of some states' loose rules on joinder and venue and file claims in hand-picked jurisdictions.

**B. Other States Have Also Changed Their Venue Laws to Stop Forum Shopping Through Joinder**

Many other states have shared Alabama's experience with forum shopping. These states have found that forum shopping can distort the ability of courts to administer justice. They have further found that requiring cases to be heard in

the proper forums advances the local community's interests and allows tort litigation to be resolved more fairly.

The truth is that joining foreign claims into a local venue changes litigation dynamics. For example, a citizen's personal sacrifice to serve on a jury is supposed to be counterbalanced by the ability of jurors to address an alleged wrong in their communities. See Restatement (Second) of Conflict of Laws § 36, Comment (c) (1971). When a case has no connection to the community, these resources are wasted and jurors may resent jury service. Further, when jurors have no connection to the case, they may "use their verdicts to express biases against big businesses, particularly those without strong local presences." Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415, 432 (1994).

States with forum shopping histories similar to Alabama's have also reformed their venue laws to stop plaintiffs from using joinder as a vehicle for selecting a chosen forum. For example, Arkansas, Texas, Mississippi and West Virginia all have adopted reforms to require venue to be proper to each plaintiff in a multi-plaintiff case. See Ark. Code § 16-60-101; Tex. Civ. Prac. & Rem. Code § 15.003; Miss. Code § 11-11-3; W. Va. Code § 56-1-1.

Missouri was the most recent state to crack down on venue shopping, as plaintiffs from around the state sought to join their claims to cases in St. Louis, which had regularly appeared in the ATRF's Judicial Hellholes report. See Judicial Hellholes, Am. Tort Reform Found., at <https://www.judicialhellholes.org/>. In 2019, the Missouri Supreme Court held that permissive joinder of a personal injury claim is not permitted in a venue where the claim would not otherwise have been proper. See State ex rel. Johnson & Johnson v. Burlison, 567 S.W.3d 168 (Mo. 2019). The Missouri General Assembly adopted this holding and issued other requirements to clarify that courts cannot hear claims that belong elsewhere. See S.B. 7 (Mo. 2019).

The Court should stay within mainstream jurisprudence by enforcing Ala. Code §§ 6-3-7(c) and 6-3-21.1 here.

### **CONCLUSION**

For these reasons, the Court should grant the Petition and issue a Writ of Mandamus directing the Circuit Court of Conecuh County to transfer this case to Jefferson County.

Respectfully submitted,

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March 25, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that this filing has been served on this date via email and/or by mail pursuant to Alabama Rule of Appellate Procedure 57 on this 25<sup>th</sup> day of March, 2020, to the following:

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