No. SC98674

IN THE SUPREME COURT OF MISSOURI

GAIL L. INGHAM, ROBERT INGHAM, LAINE GOLDMAN, CAROLE WILLIAMS, MONICA SWEAT, GREGORY SWEAT, ROBERT PACKARD, ANDREA SCHWARTZ-THOMAS, JANIS OXFORD, WILLIAM OXFORD, STEPHANIE MARTIN, KEN MARTIN, SHEILA BROOKS, MARTIN MAILLARD, KRYSTAL KIM, ANNETTE KOMAN, ALLAN KOMAN, TONI ROBERTS, MARCIA OWENS, MITZI ZSCHIESCHE, TRACEE BAXTER, CECILIA MARTINEZ, OLGA SALAZAR, KAREN HAWK, MARK HAWK, PAMELA SCARPINO, JACKIE HERBERT NORTH, MARVIN WALKER, TALMADGE WILLIAMS,

Plaintiffs - Appellees,

v.

JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER INC. F/K/A JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Defendants - Appellants.

On Appeal from the Circuit Court of the City of St. Louis,
The Honorable Rex M. Burlison

SUGGESTION OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN TORT REFORM ASSOCIATION, AND THE MISSOURI CHAMBER OF COMMERCE AND INDUSTRY IN SUPPORT OF TRANSFER

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SUGGESTION IN SUPPORT OF TRANSFER

Three of the issues that the Court of Appeals resolved in this appeal are recurring and of great importance to the business community in Missouri and across the country: (i) What are the constitutional limits on the jurisdictional power of state courts over the claims of out-of-state plaintiffs against out-of-state defendants?; (ii) Under what circumstances can the claims of multiple plaintiffs be fairly tried together without unacceptable prejudice to the defendant?; and (iii) What are the due process limitations on civil monetary awards intended to punish a defendant rather than compensate a plaintiff? Given the high-profile nature of this case and the importance of these issues for businesses that are considering whether to enter into or maintain contacts with Missouri, the highest court of the State should have the final say in these matters. Transfer to this Court is warranted.

1. The Court of Appeals correctly held that the trial court lacked personal jurisdiction over the claims of two out-of-state plaintiffs because their claims involved the out-of-state purchase and use of an out-of-state defendant's product, allegedly causing injury in another state. Nevertheless, it held that 15 other plaintiffs could bring some of their claims in a Missouri court even though they too are from other states, are suing defendants from other states, purchased and used defendants' products in other states, and

allege that they were injured in other states. The Court of Appeals found a nexus to Missouri sufficient to create specific personal jurisdiction because one of the defendants contracted with a Missouri entity to manufacture one of the products that plaintiffs used. That is far too thin a thread to satisfy the Fourteenth Amendment due process limitations on personal jurisdiction established by the U.S. Supreme Court. The conduct that Plaintiffs claim harmed them has nothing to do with the contract between one of the defendants and the Missouri entity.

The Court of Appeals' ruling will cause companies considering whether to do business in Missouri or enter into relationships with Missouri companies to fear that they may subject the entire scope of their operations to the jurisdiction of Missouri courts simply by putting a toe in the water. The highest court of the State should determine whether that is consistent with due process limitations on the exercise of jurisdiction by Missouri courts and, even if so, whether it is a wise course for the courts of this State to follow when plaintiffs like these have other jurisdictional alternatives.

2. The Court of Appeals affirmed the trial court's decision to hold a trial in which 22 different plaintiffs claimed that they had been injured by the defendants' products. In a case in which the issue of general causation was hotly contested, the sheer repetition of the same allegation by plaintiff after plaintiff undoubtedly tainted the jury's ability to objectively weigh the

evidence about whether use of defendants' products really can cause this type of injury. Moreover, while trying the common issues in this case together created efficiencies, those came at the cost of defendants' ability to obtain full and fair consideration of the individual issues and defenses in each plaintiff's case. In rejecting this concern, the Court of Appeals emphasized that the trial court read jury instructions for each plaintiff "in over 140 pages of trial transcript." Op. 14. But the fact that such lengthy instructions were necessary only confirms the prejudice that defendants suffered. Finally, contrary to the Court of Appeals' conclusion, it is not plausible that each of the individual plaintiff's injuries is worth precisely the same amount. It is self-evident that the jury failed to analyze each plaintiff's claim individually, but instead resolved and valued the claims in the aggregate.

This procedure was unfair to these defendants, inconsistent with the routine practice of other courts (which was described in *amici*'s brief on the merits), and contrary to due process. Allowing plaintiffs to stack the deck like this, and to obtain billion-plus-dollar verdicts as their winnings, will inevitably influence corporate decision-making and drive business away from the State. This Court should determine whether this type of trial is consistent with due process and will be allowed in future cases.

3. Although each plaintiff received an enormous (and identical) compensatory award and the jury imposed one of the highest punitive

exactions in American legal history, the Court of Appeals rejected U.S. Supreme Court authority suggesting that, whenever the compensatory damages are "substantial," the highest constitutionally permissible punitive award is equal to or less than the compensatory damages. While the Court of Appeals correctly noted that the Supreme Court has not established a "mathematical bright line" for excessiveness (Op. 77), that does not diminish the importance of the due process limitations the Supreme Court has imposed or authorize a hands-off deference to jury verdicts that are as shockingly large as the ones in this case. And while other courts have affirmed ratios above 1:1 (Op. 78-79), the compensatory and punitive awards at issue in those cases were dramatically lower and the ratios approved are thus not applicable to this situation. *See, e.g.*, *Gibson v. Moskowitz*, 523 F.3d 657, 665 (6th Cir. 2008) (affirming $3,000,000 punitive award in wrongful-death case where plaintiff received $1,500,000 in compensatory damages). As discussed in *amici*'s brief on the merits in the Court of Appeals, the overwhelming tide of authority following the Supreme Court's recent decisions on this issue is to reduce punitive awards to ratios of 1:1 or lower when the compensatory awards are "substantial"—a description that readily applies to the compensatory awards in this case.

The Court of Appeals' opinion also fell prey to other errors in applying the U.S. Supreme Court's guideposts. For example, the court used the same

compensatory damages as the denominator when calculating the ratio of compensatory to punitive damages for two separate punitive awards against members of the same corporate family for a single course of conduct. Op. 77. That methodology effectively doubles (or triples, or quadruples) the constitutionally permissible punitive award in a case—for exactly the same conduct—simply based on how many members of a corporate family the plaintiff has listed on the complaint. And in relying on the size of the defendants to justify the enormous awards in this case (Op. 79-80), the court parted company with authority holding that otherwise unconstitutional punitive awards may not be justified by a defendant's wealth.

These issues regarding the question of excessiveness are profoundly important to *amici*'s members in Missouri and elsewhere. Given the recurring nature of these issues and the conflict between the Court of Appeals' opinion and authority from federal and state courts around the country applying the same due process limitations, this matter should be transferred to this Court for further review.

For all of these reasons, the Court should grant the defendants-appellants' application for transfer.

Dated: August 14, 2020

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that that a copy of the foregoing was filed and served via electronic mail through the Court's electronic filing system, on this 14th day of August, 2020, on:

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