GROUNDS FOR TRANSFER TO THE SUPREME COURT

This Court should grant transfer because the following issues presented by the court of appeals' opinion are matters of general interest and importance or require reexamination of existing law, and because the court of appeals' opinion conflicts with the opinions of this Court and other Missouri appellate courts.

1. Is a joint trial of 22 plaintiffs (plus family members) alleging that use of defendants' product caused their ovarian cancer inconsistent with Rules 52 and 66.02 and due process, where (a) 22 women with ovarian cancer claimed to use the products during different time periods and for different durations, and had different risk factors, cancer subtypes, treatment histories, and prognoses, (b) the claims fell under the laws of 12 different states, and the jury instructions took more than five hours to read, and yet (c) the jury awarded identical $25 million compensatory damages awards to each plaintiff group, notwithstanding materially differing claims of harm (and without regard to whether the award was for personal injury, wrongful death, loss of consortium, or a combination)?

2. Given that but-for causation is the governing standard, and that counsel is permitted to clarify the but-for standard's meaning and application in closing argument, does the court of appeals' decision allowing plaintiffs' counsel to tell the jury that the but-for standard does not appear in the instructions and was "made up" by defendants' counsel conflict with *Callahan v. Cardinal Glennon Hospital*, 863 S.W.2d 852 (Mo. banc 1993); *White v. Gallion*, 532 S.W.2d 769 (Mo. App. 1975); and *Hill v. SSM Health Care St. Louis*, 563 S.W.3d 757 (Mo. App. 2018)?

3. Where defendants' relevant actions and corporate decisions occurred outside of Missouri, does the court of appeals' opinion allowing the exercise of specific personal jurisdiction in Missouri over the claims of 15 out-of-state plaintiffs conflict with *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017)?

4. In assessing the sufficiency of evidence supporting punitive damages, did the court of appeals err by disregarding all undisputed evidence favoring defendants?

5. Given that punitive damages in related "mass tort" cases inherently punish the same conduct repeatedly, and given the U.S. Supreme Court's guidance that due process

generally limits punitive damages in high-verdict cases to a 1:1 ratio with compensatory damages, and that punitive awards may not punish conduct toward nonparties, does the court of appeals' decision upholding the $1.6 billion punitive damages award miscalculate the ratio and conflict with *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007); U.S. Const. amend. XIV, § 1; Mo. Const. art. 1, § 10; and *Grabinski v. Blue Springs Ford Sales, Inc.*, 203 F.3d 1024 (8th Cir. 2000)?

STATEMENT OF FACTS

Plaintiffs are 22 women, along with seven family members, alleging that cosmetic talc produced by J&J and then JJCI was contaminated with asbestos and caused them to contract ovarian cancer. The circuit court allowed plaintiffs to submit their claims in a single mass trial.

Causation was the central issue. At trial, plaintiffs' counsel encouraged the jury to simply infer causation from the large number of plaintiffs before them who developed cancer after using defendants' talc: "[A]ll of these women have something in common. All of them used regularly and extensively Johnson & Johnson Baby Powder" and then "got cancer."[1] Tr. 767. Millions of women, however, have used defendants' talc products for decades. If this talc use caused ovarian cancer, epidemiological cohort studies—examining the cancer rates of women who have used cosmetic talc over a long time period—would confirm it. But such studies, collectively tracking nearly 200,000 women, do not support a causal link between cosmetic talc and ovarian cancer.

In addition to the epidemiological studies, the evidence established that defendants and independent experts regularly tested their cosmetic talc for asbestos—hourly sampling, weekly testing of washed powder, monthly testing of ore from mines, and quarterly testing of finished powder. The testing methods met or exceeded industry

[1] All record citations refer to materials filed with the court of appeals. "Tr." is the trial transcript; "AOB" is Appellants' Opening Brief; and "Op." is the opinion of the court of appeals.

standards and were approved by regulatory agencies. Those tests consistently showed that the cosmetic talc product was not contaminated with asbestos. AOB 42-43.

Essentially ignoring the independent scientific consensus that talc use has not been shown to cause ovarian cancer, AOB 31-35, plaintiffs alleged a conspiracy: that defendants have misled the regulatory and scientific community for 50 years and persuaded them to adopt and maintain testing protocols, even today, that are not sufficiently sensitive to detect asbestos. Plaintiffs also offered expert testimony purporting to find traces of asbestos in pre-opened, second-hand containers of talc, which were mostly purchased by plaintiffs' lawyers from strangers on eBay—with no information as to how or where the opened bottles were stored for decades. AOB 45-47.

The parties agreed that, on the issue of causation, the "but-for" standard governs. Accordingly, on cross-examination, defense counsel asked plaintiffs' only specific causation expert if he could say whether talc use was a but-for cause of any of the 22 plaintiffs' cancers. Tr. 3628-29. He could not do so. *Id*. Following up on that concession, defense counsel in closing explained that plaintiffs needed to, but could not, demonstrate but-for causation. Tr. 6071-72.

In response, and over defendants' objection, plaintiffs' counsel told the jury in closing that defense counsel "made up" the but-for causation standard. Counsel stressed that the jury would not see the words "but for" in the jury instructions. Tr. 6081-83.

The jury instructions that followed—covering claims of 22 plaintiff groups, governed by the laws of 12 states—took five hours to read. After deliberating for only eight hours (averaging less than 20 minutes per plaintiff group), the jury awarded 22 identical $25 million compensatory awards. The verdict gave the same amount to compensate a plaintiff for one year of treatment followed by remission as it gave to compensate another's years of multiple treatments and death. And it awarded the same amount without regard to whether that $25 million also compensated a spouse's separate claim for loss of consortium. The verdict also awarded $4.1 billion in punitive damages.

The court of appeals reversed the judgments against JJCI on the claims of two non-resident plaintiffs, and the judgments against J&J as to all 17 non-resident plaintiffs,

for lack of personal jurisdiction. Based on its reversal of those claims, the court reduced the awards proportionately, to $500 million in actual damages ($125 million of which was awarded jointly and severally against J&J), and to over $1.6 billion in punitive damages against JJCI ($900 million) and J&J (nearly $716 million). The court affirmed the judgments in all other respects.

LEGAL BASES FOR TRANSFER

Mass trial of claims of 22 women with ovarian cancer. Transfer is needed to address the opinion's conclusion that a trial of the claims of 22 women with ovarian cancer—resulting in identical compensatory awards to each plaintiff and judgments totaling $4.7 billion—was not unfairly prejudicial to defendants. If a trial involving the claims of multiple plaintiffs is to be allowed, it must be fair, and, critically, the jury must be able to separately assess each plaintiff's individual claims. Here, no such separate assessment occurred, or was even possible. In this trial of what were separate, unrelated plaintiffs, the jury was exposed to evidence of other plaintiffs' claims that would never have been admissible had the individual claims been tried separately.

The circuit court was required to "order separate trials" when necessary "to prevent … prejudice." R. 52.05(b); *see also* R. 66.02. Studies confirm that combining the claims of multiple unrelated plaintiffs in a jury trial increases the likelihood of verdicts in favor of plaintiffs, and can increase the amount of jury awards. *See, e.g.*, Irwin A. Horowitz & Kenneth S. Bordens, *The Consolidation of Plaintiffs: The Effects of Number of Plaintiffs on Jurors' Liability Decisions, Damage Awards, and Cognitive Processing of Evidence*, 85 J. Applied Psych. 909, 916-17 (2000). An unrelenting succession of 22 families emotionally testifying about cancer's effects inevitably and improperly influences the trial's outcome.

Here, the prejudice was manifest. To start, while the mere fact that 22 plaintiffs used talc and developed cancer does not prove causation, a combined trial of 22 women with cancer inherently gives the jury the strong, but false, impression that their talc use caused their cancer. And plaintiffs' counsel promoted that false inference, stressing from the beginning that "all of these women have something in common. All of them used

regularly and extensively Johnson & Johnson Baby Powder" and then "got cancer." Tr. 767; *see* AOB 21. Any jury would be affected.

Moreover, the verdict confirms that the jury failed to separately consider the claims of the 22 distinct plaintiffs. The 22 plaintiffs had disparate personal histories with respect to talc exposure, cancer risk factors, cancer subtypes, treatment histories, and prognoses, and their claims were governed by the standards of 12 states. *See* AOB 73-75, 79. Yet, as depicted below, the jury issued identical liability verdicts and awarded $25 million in compensatory damages to each of the 22 plaintiff groups, regardless of their distinct individual injuries, their varied legal claims, or even what the award compensated—personal injury, wrongful death, loss of consortium, or a combination:

Plaintiff Family	Personal Injury	Wrongful Death	Loss of Consortium	Total
Schwartz-Thomas	$25M	No claim	No claim	$25M
Scarpino	$25M	No claim	No claim	$25M
Salazar	$25M	No claim	No claim	$25M
Martinez	$25M	No claim	No claim	$25M
Zschiesche	$25M	No claim	No claim	$25M
Owens	$25M	No claim	No claim	$25M
Roberts	$25M	No claim	No claim	$25M
Kim	$25M	No claim	No claim	$25M
Brooks	$25M	No claim	No claim	$25M
Walker	No claim	$25M	No claim	$25M
Webb	No claim	$25M	No claim	$25M
Packard	No claim	$25M	No claim	$25M
Ingham	$12.5M	No claim	$12.5M	$25M
Hawk	$12.5M	No claim	$12.5M	$25M
Koman	$12.5M	No claim	$12.5M	$25M
Martin	$12.5M	No claim	$12.5M	$25M
Oxford	$12.5M	No claim	$12.5M	$25M
Sweat	$12.5M	No claim	$12.5M	$25M
Williams	$12.5M	No claim	$12.5M	$25M
Groover	$12.5M	$12.5M	No claim	$25M
Hillman	$12.5M	$12.5M	No claim	$25M
Goldman	$6.25M	$12.5M	$6.25M	$25M

AOB 81. This pattern cannot be attributed to anything but the impact of the mass trial.

The court of appeals' opinion dismissed this by stating that identical damages awards, "without more," are insufficient evidence of prejudice. Op. 11 (discussing *Eghnayem v. Boston Sci. Corp.*, 873 F.3d 1304, 1315 (11th Cir. 2017); *Elam v. Alcolac, Inc.*, 765 S.W.2d 42, 221 (Mo. App. 1988)). There was much more here. For example, one plaintiff was in remission for 32 years after one year of treatment, while another died after a painful ten-year battle. AOB 79. That plaintiffs with such different injuries received the same compensatory awards is proof that the jury did not conduct an individual assessment of each plaintiff's claims, independent of the claims of the other plaintiffs. Further, if a plaintiff joined a family member in the suit, the jury made no distinction at all either—it simply split the $25 million between them. *See* AOB 81.

For yet more real-world evidence that the mass trial affected the outcome, consider the outcomes of individual plaintiffs leveling the same or similar claims against J&J and JJCI. Since 2013, there have been 32 talc trials. Over half have ended in either a defense verdict or a mistrial, including a recent defense verdict in St. Louis. *See Forrest et al. v. Johnson & Johnson et al.*, No. 1522-CC00419-01 (Mo. Cir. Dec. 20, 2019). And even when plaintiffs succeeded in individual trials in the City of St. Louis (only to be later reversed on appeal), the compensatory damage awards have ranged from about $2.6 million to $10 million, far less than the $25 million per plaintiff group here.[2]

The opinion concludes that any prejudice from the 22-plaintiff trial was adequately mitigated by the trial court's instructions to "consider each Plaintiff's claim separately." Op. 14. The court told the jury that there were "various claims submitted to [it] separately" and "separate verdict form[s]." Tr. 5808 (Instr. No. 4). But the 140 transcript pages of instructions, which took more than *five hours* for the judge to read, were a symptom of the unfair trial, not a cure for it. Tr. 5807-949. Instructions that long

[2] *See Giannecchini v. Johnson & Johnson*, No. ED105443 (Mo. App. June 18, 2019) (No. 1422-CC09012-02) (approximately $2.6 million); *Estate of Fox v. Johnson & Johnson*, 539 S.W.3d 48 (Mo. App. 2017) ($10 million); *Ristesund v. Johnson & Johnson*, 558 S.W.3d 77 (Mo. App. 2018) ($5 million); *Slemp v. Johnson & Johnson*, No. 1422-CC-09326, 2017 WL 2131178 (Mo. Cir. May 4, 2017) ($5.4 million).

and complex do not support a presumption that the jury treated plaintiffs individually—particularly not when the jury deliberated for less than 20 minutes per plaintiff group, and then returned identical verdicts. AOB 82.

The court of appeals' opinion points to a mass trial's efficiencies. Op. at 9-10. However, it is established that the "benefits of efficiency" that come with consolidation "can never be purchased at the cost of fairness." *Malcolm v. Nat'l Gypsum Co.*, 995 F.2d 346, 350 (2d Cir. 1993); *see Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) ("[A] fair trial in a fair tribunal is a basic requirement of due process." (citation omitted)). This Court should grant transfer to ensure that Missouri courts adhere to these principles.

By way of very recent example: The South Carolina Supreme Court granted review, before trial, to determine whether it is too prejudicial to join two plaintiffs for trial—never mind 22—in a talc case like this one. *Devey, et al. v. Johnson & Johnson*, No. 2020-000645, Order (S.C. July 8, 2020). The Missouri Legislature has responded to the prejudice inherent in mass trials by barring joinders in these circumstances. § 507.040 RSMo. But that statute is prospective, and limited to cases involving separate "purchases of" or "incidents involving" the "same product or service." *Id.* The new legislation will not affect the many mass cases filed before February 2019. There are scores of such cases pending, involving hundreds of plaintiffs. That leaves this Court to address how to balance fairness and efficiency not only in this case, but in the numerous cases filed before 2019, and any other cases outside of the scope of the amendment.

Left undisturbed, the opinion will set the standard for when mass trials are to be prohibited. The answer appears to be almost never. Under the opinion, mass trials like this one will never be considered unduly prejudicial, provided there are separate instructions for each plaintiff—no matter how many plaintiffs, how distinct their claims, and how long and complex the instructions. The opinion suggests no limiting principle.

Misstatement of the governing law. The court of appeals' opinion allowing plaintiffs' counsel to misstate the governing law on causation is sharply at odds with this Court's precedent and that of other Missouri appellate courts—with respect to both the causation standard in tort cases and the proper role of counsel in explaining instructions

to the jury. This Court should grant transfer both to ensure fidelity to the causation standard adopted in *Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852 (Mo. banc 1993), and to prevent counsel from misleading jurors about the proper legal standards governing a party's claim or defense.

In *Callahan*, this Court set out the governing causation standard: "[T]he 'but for' test for causation is applicable in all cases except those involving two independent torts." 863 S.W.2d at 862-63. All parties and the court of appeals agreed that the but-for standard controls all plaintiffs' claims.

Plaintiffs' specific causation expert testified that he could not say that defendants' cosmetic talc was a but-for cause of any plaintiff's injury. Tr. 3628-29. Based on this testimony, in closing argument defense counsel addressed plaintiffs' failure to make the necessary but-for showing. Tr. 6071-72. When plaintiffs' counsel tried to plug the hole by telling the jury in closing that the but-for test was not the law—and that defense counsel "made [it] up"—he contradicted *Callahan*. Tr. 6081, 6083. The trial court overruled defendants' timely objection to plaintiffs' misstatement of the law.

The court of appeals' opinion held that this contradiction was not objectionable because the MAI omits the words "but for," and therefore the jury "did not have to find that 'but for' Defendants' Products, Plaintiffs would not have been injured." Op. 17. That is at odds with both *Callahan* and the design of the MAI causation instruction. The instruction is flexible, used both in cases requiring proof of but-for causation and in those two-fires cases that do not. *Callahan*, 863 S.W.2d at 863. To make that flexibility possible, the instruction does not use the words "but for." As this Court recognized, however, counsel can clarify the standard's application in closing argument, where appropriate: "whether and when Missouri requires 'but for' causation" can "arise … in the context of what is proper closing argument on a causation issue," because "MAI contemplates that the lawyers may explain the precise meaning of the instructions in closing arguments." *Id.* The court of appeals' opinion contradicts this Court's guidance and MAI's structure by disallowing defense counsel's proper argument, while permitting plaintiffs' counsel to mislead the jury on a critical issue immediately before deliberations.

In so holding, the opinion creates conflicts with authority that this Court should resolve. First, the Missouri court of appeals has long held that plaintiffs' tactic here—disparaging an accurate statement of the law merely because certain language does not appear verbatim in the MAI—is impermissible. In *White v. Gallion*, 532 S.W.2d 769 (Mo. App. 1975), for example, the negligence standard required drivers to keep a careful lookout, but the MAI negligence instruction used different language—not "lookout"—to convey the rule. Counsel seized upon that semantic distinction to mislead the jury about the substance of the instruction, "in effect" telling them "if the law required lookout the court's instruction would have said so." *Id.* at 771. *White* held that was a misstatement of law and required reversal of the verdict. *Id.* at 771-72. *Hill v. SSM Health Care St. Louis* reaffirmed this principle. 563 S.W.3d 757, 764 (Mo. App. 2018). The opinion here squarely conflicts with those decisions.

The opinion also conflicts with other appellate precedent in holding that the trial court enjoyed "wide discretion" to decide whether to correct counsel's misstatement. Op. 17. The Eastern District has held that courts have "'the duty, not discretion, to restrain and purge'" material misstatements of law, *Hill*, 563 S.W.3d at 763-64, and explained the "'duty'" to correct such misstatements is "'positive and absolute,'" *Langdon v. Wight*, 821 S.W.2d 508, 511 (Mo. App. 1991). And the Southern District holds "reversible error is almost inevitable" when a misstatement on a key issue of law is uncorrected. *Halford v. Yandell*, 558 S.W.2d 400, 412 (Mo. App. 1977). Those cases required reversal.

The opinion also incorrectly concludes that counsel was justified in calling the causation standard "made up" as a "rebuttal" to a purportedly misleading statement by defense counsel. Op. 17. Defense counsel's statement was not misleading.[3] Regardless, an inaccurate statement by defense counsel would not allow plaintiffs' counsel to

[3] In closing, defense counsel noted that plaintiffs' expert conceded that, when conducting a differential diagnosis, the expert "must rule out alternative causes." Tr. 6071. Counsel then asked if "things [would] be different" if plaintiffs "never used" the powder. *Id.* That did not suggest that "but-for" causation was a form of sole causation. Rather, it correctly stated that the powders must have been a necessary cause of the injuries.

misstate the law. The correct response is to object—which plaintiffs' counsel chose not to do. *See Criswell v. Short*, 70 S.W.3d 592, 595 (Mo. App. 2002).

As is evident from all these cases, the opinion below has ramifications beyond this case. It undermines a central premise of the MAI. Because the instructions were drafted for "simplicity," they purposely leave space that should be filled based on the specifics of the case, not just regarding causation, but on a wide range of legal issues. *See* MAI, *Why and How to Instruct a Jury*, at LVIII, LXXV-LXXVII (7th Ed. 2012) (listing examples). The MAI generally contemplates—indeed, puts "relatively greater importance upon"—counsel filling those spaces during closing argument, with the courts policing misstatements. *Id.* That system puts the onus on courts to ensure that counsel do not exploit the spaces left open in the MAI by misstating the governing law.

Personal jurisdiction. The U.S. Supreme Court has held that the "bare fact that [a defendant] contracted with [an in-state] distributor is not enough to establish personal jurisdiction in the State." *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1783 (2017). The opinion from the court of appeals nevertheless approved personal jurisdiction over the claims of 15 non-resident plaintiffs against JJCI based on exactly that—JJCI's contract with a Missouri company to produce a talc product called "Shimmer" for a short period of time. Op. 25-28.

The opinion distinguished *Bristol-Myers* on the ground that the product at issue there was not manufactured, labeled, or packaged in-state. Op. 26. But those were just the background facts of *Bristol-Myers*. 137 S. Ct. at 1778. Federal courts in Missouri have rejected the notion that the recitation of these "background" facts somehow "provide[s] litigants with a blueprint for properly asserting specific personal jurisdiction over nonresident plaintiffs' claims." *Jordan v. Bayer Corp.*, No. 4:17-CV-00865-AGF, 2018 WL 837700, at *4 (E.D. Mo. Feb. 13, 2018); *accord, e.g.*, *Dyson v. Bayer Corp.*, No. 4:17-CV-2584-SNLJ, 2018 WL 534375, at *4-5 (E.D. Mo. Jan. 24, 2018). The court of appeals' decision conflicts with those cases and warrants this Court's review. This Court should not allow specific personal jurisdiction to expand to include any place where a company engages a third party in connection with some part of the

manufacturing or distribution process when all of the defendants' relevant actions and corporate decisions occurred out of state.

Undisputed evidence favorable to defendants should not be disregarded. In reviewing whether plaintiffs made a submissible case for punitive damages, the opinion held that a court can *only* consider evidence supporting submission. Op. 71. Based on this interpretation of the standard of review, the opinion disregarded the following: decades of independent epidemiological studies that do not support finding a causal link between talc use and ovarian cancer, *see* AOB 31-35; that the FDA repeatedly found no health warnings warranted, AOB 27-28, 42, 119-20; and that no regulatory body has accepted the testing protocol plaintiffs advocate, AOB 44. The opinion reached this conclusion despite recognizing that "clear and convincing evidence is that which tilts the scales in the affirmative when weighed against the evidence in opposition." Op. 65.

The opinion's failure to consider undisputed evidence conflicts with this Court's decision in *Alcorn v. Union Pacific R.R. Co.*, 50 S.W.3d 226, 249 (Mo. banc 2001), *overruled on other grounds*, *Badahman v. Catering St. Louis*, 395 S.W.3d 29 (Mo banc. 2013). There, this Court relied on the *defendant*'s undisputed evidence in reversing a punitive damages award on appeal. It is one thing to say all evidence must be construed in the light best for plaintiffs; it is quite another—in conflict with *Alcorn* and the established definition of clear and convincing evidence, *see, e.g.*, *Peters v. General Motors Corp.*, 200 S.W.3d 1, 25 (Mo. App. 2006)—to say that a court must disregard undisputed facts showing the reasonableness of defendants' actions.

This Court should grant transfer to clarify that a court should consider undisputed facts, even if favorable to defendants, in assessing the submissibility of punitive damages.

Unconstitutional punitive damages. The combined $1.6 billion punitive damages awards—with punitive-compensatory damage ratios of 11.5:1 for J&J and 2.1:1 for JJCI—violated due process.[4] The U.S. Supreme Court has cautioned that "awards

[4] The court calculated the ratios differently: 5.72:1 for J&J and 1.8:1 for JJCI. Op. 78. While those calculations are improper (*see infra*), those ratios are also unconstitutional.

exceeding a single-digit ratio" will almost never "satisfy due process" in *any* case. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Where, as here, the compensatory damages are "substantial," a 1:1 ratio "can reach the outermost limit of the due process guarantee." *Id.* Further, punitive damages in this mass tort context, where juries can repeatedly penalize defendants for the same course of conduct, are by their nature constitutionally suspect. In this context, the high awards impose an "irrational and arbitrary deprivation of the property of the defendant." *Id.* at 429.

Moreover, the court of appeals incorrectly calculated the ratios. Op. 77 & n.27; *see* AOB 134. It double-counted the joint-and-several compensatory award, treating it as a measure of the harm that each defendant independently caused, rather than the harm they caused collectively. Doing so artificially drove the ratios down, in conflict with *Grabinski v. Blue Springs Ford Sales, Inc.*, 203 F.3d 1024, 1026 (8th Cir. 2000).

The court of appeals cited reprehensibility to justify the astronomical amounts and the high ratios. Op. 75-76. The findings of reprehensibility are flawed, and, in any event, cannot justify these awards. *State Farm* says that even "'a particularly egregious act'" could warrant unusually high ratios only when the act has caused "'a small amount of economic damages'"—not where the compensatory award is substantial, such as the $500 million award here. 538 U.S. at 425. The court of appeals also cited defendants' high net worth, Op. 80, but, as *State Farm* explains, "[t]he wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award," 538 U.S. at 427.

In addition, even putting the ratios aside, the award unconstitutionally punishes defendants for purported harms to nonparties and acts in other jurisdictions. *See Philip Morris USA, Inc. v. Williams*, 549 U.S. 346, 353 (2007) (punitive awards cannot "punish a defendant for injury that it inflicts upon nonparties"); *State Farm*, 538 U.S. at 421 (punitive award cannot be based on "acts committed outside of the State's jurisdiction").

CONCLUSION

For each of the reasons above, the case should be transferred.

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CERTIFICATE OF SERVICE

A copy of this application for transfer, the Form 15 cover sheet, and all accompanying attachments were served via electronic mail on all plaintiffs-respondents through their attorneys below on August 12, 2020:

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