No. 16-559

In the Supreme Court of the United States

KONINKLIJKE PHILIPS N.V., A/K/A ROYAL PHILIPS, ET AL.,

Petitioners,

v.

THE STATE OF WASHINGTON,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TORT REFORM ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TORT REFORM ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the nation's business community, and has participated as *amicus curiae* in numerous cases addressing jurisdictional issues.[1]

Founded in 1986, 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 reform of the civil justice system with the goal of ensuring fairness, balance, and predictability

[1] *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. Counsel of record for all parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief and provided their consent. Their letters of consent have been filed concurrently with this brief.

in civil litigation. For over two decades, ATRA has filed *amicus* briefs in cases that have addressed important liability issues.

This is the fourth pending certiorari petition presenting a personal jurisdiction question that the Chamber, ATRA, and other *amici* have recently urged the Court to grant. See page 3 and note 2, *infra*. That is a consequence of several deep divisions among the lower courts regarding the proper application of due process limits on the exercise of personal jurisdiction. These divisions have significant, adverse practical consequence for *amici*'s members, which routinely do business with companies located around the country and across the globe.

Clear legal rules are essential to enable businesses to make rational investment decisions, comply with relevant legal standards and regulations, and otherwise structure their affairs. Unfortunately, for more than thirty years, the law governing specific personal jurisdiction—the bedrock doctrine governing *where* a defendant can appropriately be haled into court—has been anything but clear.

The decision in this case, for example, addresses the extent to which a State can exercise specific personal jurisdiction over a defendant on the ground that the defendant somehow participated in the "stream of commerce" relating to a particular good—or a component subsequently incorporated into the good—at some point upstream from the good's arrival in the forum State. The court below adopted a breathtakingly expansive approach to "stream-of-commerce" personal jurisdiction that conflicts with this Court's precedents, will generate unpredictable results, and deepens a split in authority that makes

it exceedingly difficult for many businesses to predict where they face the risk of being haled into court.

Amici file this brief to urge the Court to grant certiorari to address this issue and clarify the legal standard governing "stream of commerce" personal jurisdiction.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition in this case is one of several pending before the Court presenting questions regarding the due process limits on personal jurisdiction. The Chamber explained in its *amicus* brief in *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., Cty. of S.F.*, No. 16-466, at 3-6, that this Court's intervention is essential to resolve the conflicting approaches in the lower courts with respect to a number of these issues, which arise in a very substantial proportion of lawsuits in both federal and state courts. Indeed, this is the fourth pending case in which the Chamber, ATRA, and other *amici* have—in just the last month—urged the Court to grant review to address different aspects of the due process limits on personal jurisdiction.[2]

For more than thirty years, ever since *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462 (1985), and *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102 (1987), this Court and the lower

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[2] The Chamber and other *amici* have suggested that the Court grant plenary review in *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., Cty. of S.F.*, No. 16-466; summarily reverse or grant plenary review in *BNSF Railway Co.* v. *Tyrrell*, No. 16-405; and grant plenary review in *TV Azteca, S.A.B. de C.V.* v. *Ruiz*, No. 16-481, or hold that petition pending a decision on the merits in *Bristol-Myers Squibb Co.*

courts have struggled—without success—to establish clear standards for the due process limits on a State's exercise of specific personal jurisdiction over a component manufacturer under a "stream of commerce" theory. The result has been needless confusion, waste of judicial and party resources, and an unnecessary drag on business decision-making and investment. This case presents the Court with an excellent opportunity to bring much-needed clarity to this area of the law. And it is the only pending petition of which we are aware that squarely presents the stream-of-commerce issue for this Court's resolution.

The practical importance of this issue has increased significantly in the wake of this Court's decisions in *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760 (2014), and *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011), which curbed the expansive approach to general jurisdiction adopted by some lower courts—including where the assertion of general jurisdiction was based in part on the defendant's products reaching the forum State through the stream of commerce. See *Goodyear*, 564 U.S. at 922. As a result, lower courts have placed greater focus on the standards governing specific personal jurisdiction.

The Washington Supreme Court held that specific jurisdiction over petitioners was proper even though their only relevant "connection" with the State of Washington was the incorporation of components manufactured by petitioners into new products made by third-party end-product manufacturers that in turn were sold throughout the United States, including in Washington. According to the Washington court, the exercise of jurisdiction was permissible because (in that court's view) the decisions of this

Court do not "foreclose an exercise of personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as part of the regular flow of commerce." Pet. App. 11a. That conclusion—resting on a pure "stream of commerce" theory of jurisdiction—is wrong as a matter of law and policy.

Most importantly, the decision below cannot be squared with this Court's precedents. Numerous decisions by this Court make clear that specific personal jurisdiction over out-of-state defendants turns on whether there is a relationship between the forum State and the purposeful acts *of the defendants*. Any relationships between the forum and the plaintiffs or the forum and third parties are irrelevant to the analysis. Thus, the fact that "sales took place" in a given State—even in "a substantial volume"—cannot possibly create the necessary connection between the defendants and the forum when, as here, none of the sales was promoted, directed, or otherwise controlled by the defendants—because the sales consisted entirely of goods manufactured by others outside of Washington that merely incorporated components manufactured by petitioners.

The Washington Supreme Court relied on this Court's decision in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873 (2011), but *Nicastro* does not support the decision below. Six Members of this Court determined in *Nicastro* that a manufacturer's efforts to sell its product throughout the United States market did not subject the manufacturer to suit in New Jersey. And even the three dissenters in *Nicastro*—who believed that the manufacturer could be sued in New Jersey—expressly contrasted the manufacturer there, which *itself* had established

purposeful contacts with the United States, from a components supplier that exercised no control over the ultimate destination of its components after they were purchased by end-product manufacturers.

If a *product manufacturer's* deliberate and purposeful decision to target the United States market as a whole does not confer jurisdiction, a *component supplier*'s decision to sell to *third parties* that then happen to target the United States—or even Washington or another State in particular—surely does not confer jurisdiction either.

As a practical matter, moreover, the Washington court's approach makes it effectively impossible for any component supplier to predict where it may be subject to suit. Many goods sold in this country today—including computers, smartphones, automobiles, and even medicines—incorporate components made throughout the world. Suppliers rarely will know, let alone control, where end-products containing their devices or components are distributed. Nor can suppliers easily predict, based on vague notions of "substantial volume" or "regular flow," whether a court will conclude that the test for personal jurisdiction is satisfied.

The lower court's test thus promises tremendous uncertainty for courts and parties alike, contrary to the principle that "[j]urisdictional rules should avoid these costs whenever possible." *Id.* at 885 (plurality).

Finally, apart from whether the lower court's rule is correct, the pervasive disagreement among the lower courts regarding the issue of stream-of-commerce jurisdiction cries out for this Court's resolution. Almost thirty years after *Asahi*, it is high time for the Court to articulate a uniform national

standard to govern the basic question of whether a given forum has the power to adjudicate these sorts of disputes.

ARGUMENT

This case presents a recurring question of great importance to the business community: the extent to which so-called "specific" or "conduct-linked jurisdiction" (*Daimler*, 134 S. Ct. at 751) extends to component suppliers whose relevant conduct consists solely of selling components to manufacturers of end products outside the forum State. The decision below conflicts with this Court's precedents, generates needless uncertainty for defendants and for courts, and deepens an already-entrenched circuit split. This Court's review is warranted.

I. The Lower Court's Decision Conflicts With This Court's Precedents.

It has "long been settled" that a "state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 291 (1980). Minimum contacts, in turn, require "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958) (quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945)).

This requirement "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the unilateral activity of another party or a third person." *Burger King*, 471 U.S. at 475 (citations and

some quotation marks omitted). The Washington Supreme Court's decision flouts these principles.

A. Sales By An End-Product Manufacturer Do Not Create The Required Minimum Contacts Between The Forum And The Component Supplier.

In this case, the only "contact" between petitioners and the State of Washington relied upon by the court below occurred when third-party manufacturers purchased petitioners' components outside of Washington, incorporated them into new products outside of Washington, and then distributed those new products throughout the country. Over a vigorous dissent, a majority of the Washington Supreme Court agreed with the State that "the [defendants] have established purposeful minimum contacts by placing [component parts] into the stream of commerce with the knowledge and intent that their [components] would be incorporated into products sold in massive quantities throughout the United States, including in large numbers in Washington." Pet. App. 7a-8a.

But petitioners themselves—the component manufacturers—had no control over where the "stream of commerce" would flow once they sold their parts to the end-product manufacturers. They did not target the United States in general—let alone the State of Washington in particular—by advertising, attending trade shows, or promoting their components. Indeed, they did not take *any* action purposefully directed at the State of Washington at all.

That should have been the end of the matter, because actions by third-parties such as the end-product manufacturers—even if foreseeable or sub-

stantial in the aggregate—cannot give rise to jurisdiction over a defendant that itself lacks any purposeful connection with the forum State. As this Court has explained, "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295; see also *Rush* v. *Savchuk*, 444 U.S. 320, 328-29 (1980) (refusing to impute an insurer's forum contacts to its insured where the defendant had "no control" over the insurer's decision-making, so that "it cannot be said that the defendant engaged in any purposeful activity related to the forum").

Indeed, this Court recently reaffirmed that "[f]or a state to exercise jurisdiction consistent with due process, the *defendant's* suit-related conduct must create a substantial connection with the forum State." *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). Accordingly, the "unilateral activity of * * * a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 417 (1984). It must be "the defendant *himself* that create[s] a 'substantial connection' with the forum State." *Burger King*, 471 U.S. at 475.

That is why four Justices concluded in *Asahi* that the Due Process Clause "require[s] something more than that the defendant was aware of its product's entry into the forum State through the stream of commerce in order for the State to exert jurisdiction over the defendant," 480 U.S. at 111, and why four Justices similarly concluded in *Nicastro* that the contrary position "based on general notions of fairness

and foreseeability" is "inconsistent with the premises of lawful judicial power." 564 U.S. at 883.

The fact that the lawsuit alleges the commission of intentional acts (here, an antitrust conspiracy) makes no difference to the jurisdictional analysis, which turns on forum-targeting actions *of the defendant* rather than the conduct of third parties. As this Court has recently confirmed, the "same principles" are used to determine whether personal jurisdiction exists in cases involving intentional torts as in cases involving other causes of action. *Walden*, 134 S. Ct. at 1123. Here too, "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct *by the defendant* that creates the necessary contacts with the forum." *Ibid.* (emphasis added).

Calder v. *Jones*, 465 U.S. 783 (1984)—cited by the *Walden* Court to "illustrate[] the application of these principles" (134 S. Ct. at 1123)—demonstrates how far afield the Washington Supreme Court's decision in this case strayed from this Court's precedents. In *Calder*, the plaintiff brought a libel suit in California against a reporter and editor who worked for the National Enquirer magazine in Florida. The Enquirer sold 600,000 copies of its magazine in California—"almost twice the level of the next highest State." 465 U.S. at 785.

Nevertheless, the *Calder* Court stressed, an employee's "contacts with [a forum State] are not to be judged according to their employer's activities there." *Id.* at 790; cf. *Daimler*, 134 S. Ct. at 759-60 (rejecting Ninth Circuit's "agency theory" of general jurisdiction, under which foreign corporations are subject to suit based on the subsidiary's imputed contacts with the forum). Thus, in *Calder*, this Court refused to

uphold jurisdiction over the defendants simply because they supplied an allegedly tortious article to their employer, who incorporated the article into a publication that it sold in large numbers in California. 465 U.S. at 790. Rather, as *Calder* held, "[e]ach defendant's contacts with the forum State must be assessed individually." *Ibid*.

It is similarly improper to impute contacts between third parties and the State of Washington to foreign component suppliers. The fact that end-product manufacturers sell "large numbers" of products containing defendants' components in Washington (Pet. App. 8a) does not confer jurisdiction over component suppliers any more than the fact that a publisher sells "large numbers" of newspapers in California containing a defendant's allegedly tortious article, standing alone, confers jurisdiction over the article's author and editor. *Calder*, 465 U.S. at 790. When petitioners' own contacts with Washington are assessed individually, as they must be, it is apparent that they do not create the constitutionally required connection to the forum State.

In sum, the Washington Supreme Court erred in holding that personal jurisdiction was proper because a "substantial volume of sales took place in a state as part of the regular flow of commerce." Pet. App. 11a. That conclusion cannot be squared with the requirement that "[j]urisdiction is proper [only] where the contacts" with the forum "proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King*, 471 U.S. at 475.[3]

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[3] Indeed, only one Justice has even so much as suggested that third-party sales volume, irrespective of purposeful defendant-

Petitioners did not target Washington with their conduct and did not seek the benefits or protections of Washington's laws. Rather, they simply sold components to third parties *outside* the State. As the dissent below put it, "[t]he only connection the complaint alleged between Defendants and Washington stemmed from the unilateral activities *of others* in incorporating Defendants' [products] into new end products for sale in Washington." Pet. App. 38a-39a (McCloud, J., dissenting) (emphasis added). That attenuated, insubstantial connection simply is not enough to establish jurisdiction under this Court's precedents.

B. The Lower Court Misread This Court's Stream-Of-Commerce Cases.

The Washington Supreme Court misconstrued this Court's stream-of-commerce precedents—particularly in light of the jurisdictional principles articulated above. In *Asahi*, this Court was divided over when a forum State may exercise jurisdiction with respect to a foreign component manufacturer whose product was incorporated in tire tubes sold in large numbers in California.

The court below attempted to avoid that division by focusing on Justice Breyer's opinion in *Nicastro*, which it took to be controlling. Pet. App. 11a. But *Nicastro* was not a components case; it involved a company that made deliberate "sales effort[s]" to

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forum contacts such as advertising or other targeting, can provide a basis for the exercise of personal jurisdiction. *Asahi*, 480 U.S. at 122 (Stevens, J., concurring). And even Justice Stevens would not have looked to volume alone—as the Washington Supreme Court did here—but would also have considered factors like "the value[] and the hazardous character of the components." *Ibid.*

market its *own* products in the United States. 564 U.S. at 888 (Breyer, J.). And Justice Breyer expressly declined to adopt any of the various approaches delineated in the separate opinions in *Asahi*. *Ibid*. *Nicastro* simply does not resolve whether Washington may exercise jurisdiction over petitioners.

Insofar as *Nicastro does* pertain to the issue in this case, moreover, it indicates that jurisdiction is *not* proper. Four Justices in *Nicastro* squarely rejected Justice Brennan's concurrence in *Asahi* as "inconsistent with the premises of lawful judicial power." *Id*. at 883. The mere fact that a defendant might foresee that its component parts would wind up in a given forum, the plurality said, was irrelevant because—as we have explained above—"it is the defendant's *actions*, not his expectations, that empower a State's courts to subject him to judgment." *Ibid*. (emphasis added).

Three more Justices would have upheld the exercise of personal jurisdiction over the manufacturer in *Nicastro*. But they would have found jurisdiction only because "the defendant *himself*" took actions to "target[] a national market." *Id*. at 905 (Ginsburg, J., dissenting). And these justices expressly distinguished *Nicastro* from *Asahi*, noting that the defendant in *Asahi* was "a component-part manufacturer with little control over the final destination of its products once they were delivered into the stream of commerce" and—like the defendants here—"did not itself seek out customers in the United States, * * * engaged no distributor to promote its wares here, [and] appeared at no tradeshows in the United States." *Id*. at 908 (Ginsburg, J., dissenting).

In short, there is no basis to read *Nicastro* to permit courts to exercise the sweeping adjudicatory

authority claimed by the court below. The lower court's reliance on *Nicastro* was particularly erroneous given the background principle, re-emphasized in *Walden*, that in all events it must be the defendant *itself* that targets the relevant forum. As four Justices explained in *Nicastro*, "[t]his Court's precedents make clear that it is the defendant's *actions*, not his expectations, that empower a State's courts to subject him to judgment." *Nicastro*, 564 U.S. at 883 (plurality) (emphasis added).

II. Businesses Need Predictable Jurisdictional Rules.

The holding below also is incompatible with the basic notions of fairness and predictability that undergird the due process limitations on personal jurisdiction. This Court long ago recognized that the law of personal jurisdiction should be structured so as to "give[] 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*, 444 U.S. at 297.

The Court has since reiterated that "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). In this as in other contexts, therefore, "[j]urisdictional rules should be clear." *Direct Mktg. Ass'n* v. *Brohl*, 135 S. Ct. 1124, 1133 (2015) (quoting *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 321 (2005)).

Personal jurisdiction rules focused on a component supplier's affirmative and purposeful contacts with a forum State ensure that companies have

"clear notice that [they are] subject to suit" in the forum and accordingly can take actions to "alleviate the risk of burdensome litigation there." *Burger King*, 471 U.S. at 475 n.17 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). But that predictability would be destroyed if, as the court below held, jurisdiction could exist over claims that arise out of forum contacts generated and controlled by a third party.

That is especially true today. Goods of all kinds—such as computers, smart phones, automobiles, and even medicines—incorporate components made throughout the world. One report tracking the iPhone's supply chain identified 785 different suppliers in 31 countries. Ian Barker, *The global supply chain behind the iPhone 6*, BetaNews (2014), http://goo.gl/ehweyR.[4]

In most cases, a component supplier has "little control over the final destination of its products once they [are] delivered into the stream of commerce."

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[4] Another analysis, evaluating just a handful of the hundreds of components used in a single laptop computer, identified (1) a processor made in Arizona by Intel, (2) a body made in China by Taiwan-based Catcher Technology (though other suppliers make bodies for the same computer), (3) a display made in Korea by LG Display (though Samsung also supplies displays for this same laptop), (4) a hard drive made in Thailand by Hitachi, (5) RAM made in Boise by Micron Technology (the same model may alternatively use Mitsubishi or IBM RAM), (6) a wireless card made (perhaps) in Germany, China, Taiwan, or Singapore probably by one of GlobalFoundries, Semiconductor Manufacturing International Corporation, United Microelectronics, or TSMC (all of which are sub-suppliers to Broadcom), and (7) a graphics chipset made in Taiwan by TSMC but branded by Nvidia. Josh Fruhlinger, *Where did I come from? The origin(s) of my MacBook Pro*, ITworld (May 3, 2012), http://goo.gl/isnlLN.

Nicastro, 564 U.S. at 908 (Ginsburg, J., dissenting) (quoting *A. Uberti & C.* v. *Leonardo*, 892 P.2d 1354, 1361 (Ariz. 1995)). And when an end-product manufacturer uses multiple component suppliers for the same good, even those suppliers who know where the end-product manufacturer is distributing goods may not know where *their* components are likely to end up.

A focus on whether a "substantial volume" or "large numbers" of products containing petitioners' components ultimately were sold in Washington state inevitably will create confusion for suppliers trying to predict where they are likely to be amenable to suit. Pet. App. 8a. And questions over whether a particular level of sales suffices to create jurisdiction—and how that level should be measured—will mean yet more uncertainty and expensive and time-consuming litigation. Cf. *Nicastro*, 564 U.S. at 908 n.15 (Ginsburg, J., dissenting) (arguing that a low volume of sales in a forum State might be counterbalanced if "[b]y dollar value, the price of a single machine represents a significant sale").

As a practical matter, therefore, the likely consequence of the lower court's decision will be that every component manufacturer that sells to any end-product manufacturer that distributes goods in the United States should anticipate that it may be subject to suit in any State or federal court throughout the country. Suppliers—foreign and domestic, large and small—will have to understand "not only the tort law [and other law] of every State, but also the wide variance in the way courts within different States apply that law." *Nicastro*, 564 U.S. at 892 (Breyer, J., concurring).

That burden will fall on all companies, but especially heavily on small and medium suppliers, who may lack the resources to make complex legal and factual assessments or procure expensive insurance coverage. And it will ultimately hurt consumers, by raising prices, making component sourcing more difficult, and reducing the choice of available goods and services.

III. This Court's Guidance Is Urgently Needed.

As petitioners explain in detail (Pet. 14-18)—and as discussed by the dissenting justices below (Pet. App. 30a-31a)—the lower courts are deeply divided over the proper personal jurisdiction standard to apply in "stream-of-commerce" cases. See also Brief of the Chamber of Commerce of the United States of America and the Pharmaceutical Research and Manufacturers of America as *Amici Curiae* in Support of Petitioner, *Novo Nordisk A/S* v. *Lukas-Werner*, No. 13-214, at 10-13 (discussing the five competing tests applied by the lower courts).

Unsurprisingly, this state of affairs has resulted in conflicting and irreconcilable outcomes. Many courts have held, based on factual allegations materially indistinguishable from those here, that an out-of-forum component supplier is *not* subject to suit solely because the manufacturer of end-products systematically sells its products in the forum State. See, *e.g.*, *Merriman* v. *Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006) (price-fixing claim against rubber-processing chemical producers); *Frankenfeld* v. *Crompton Corp.*, 697 N.W.2d 378, 386 (S.D. 2005) (same); see also *In re Dynamic Random Access Memory*, 2005 WL 2988715, at *6-7 (N.D. Cal. Nov. 7, 2005) (price-fixing claims against computer memory

manufacturers); cf. *Lesnick* v. *Hollingsworth & Vose Co.*, 35 F.3d 939, 940 (4th Cir. 1994) (tort claim against supplier of 10 *billion* cigarette filters, some of which were eventually sold in Maryland).

This division creates needless confusion, expense, and opportunities for plaintiffs' lawyers to engage in forum-shopping. It certainly has done nothing to promote the fairness and predictability that is the cornerstone of the guarantee of due process.

In short, this case presents a unique opportunity for the Court to restore order to this tangled area of the law. It is well past time for the Court to answer the question it left open in *Asahi*.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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