No. 5-15-529

IN THE INTERMEDIATE APPELLATE COURT OF ILLINOIS
FIFTH APPELLATE DISTRICT

ANCO Insulations, Inc., *et al*.,

Defendant-Appellant,

v.

IRENE JEFFS, Individually and as Special Administrator of the ESTATE OF DALE E. JEFFS, Deceased,

Plaintiff-Appellee.

On appeal from the Circuit Court for the Third Judicial Circuit,
Madison County, Illinois
No. 15-L-533

BRIEF OF *AMICUS CURIAE* THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PLAINTIFF-APPELLEE

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POINTS AND AUTHORITIES

STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE*

The American Association for Justice ("AAJ"), formerly the Association of Trial Lawyers of America, is a voluntary national bar association whose members primarily represent individual plaintiffs in civil actions, including many who, like Appellee here, seek legal recourse for injuries received in the workplace. AAJ is committed to principles of the right of access to justice and the right to trial by jury.

AAJ appears here to address the critical importance of assuring those who require redress in the courts the opportunity to present their case in a single forum where no defendant can rightfully be called a stranger, even though the parties the plaintiff seeks to hold responsible for the harm that underlies the lawsuit are found in multiple jurisdictions. For that purpose, AAJ will only address the due-process issues presented by general jurisdiction. While the Plaintiffs have also raised significant issues of jurisdiction by consent and specific jurisdiction, putting forth detailed arguments that AAJ finds persuasive and to which an AAJ brief would not add more, *Amicus Curiae* has elected to limit its arguments to the appropriate considerations of general jurisdiction, a subject that has received too little attention because discussions of specific jurisdiction dominate the caselaw. AAJ further details some of the countervailing due-process considerations that lie on plaintiffs' side of the ledger that further assure that traditional notions of fair play and substantial justice decisively favor the assumption of jurisdiction in this matter.

STANDARD OF REVIEW

Amicus Curiae addresses only one issue presented for this Court's review: whether the courts of Illinois have personal jurisdiction over Ford Motor Company. That issue, concerning personal jurisdiction, is reviewed *de novo*. *Russell v. SNFA*, 2013 IL 113909, ¶ 28, *cert. denied*, 134 S. Ct. 295 (2013) (Mem.).

INTRODUCTION

This is a case about maintaining access to the courts for redress of injuries. In the most seminal case in all of American constitutional law, the Supreme Court of the United States declared that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (citing 3 W. Blackstone, *Commentaries on the Laws of England* 23 (1768)). A century later, the Court emphasized the fundamental importance of that access because the "right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio Railway Co.*, 207 U.S. 142, 148 (1907).

The access afforded must be meaningful access. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Meaningful access is more than a right to appear in court; it requires an opportunity to have the rights and liabilities at issue heard completely and fairly so that a successful lawsuit results in appropriate redress. In a case like this one, that means compensatory damages, as courts have also long recognized that the "'cardinal principle of damages in Anglo-American law is that of compensation for the injury caused to plaintiff by defendant's breach of duty.'" *Carey v. Piphus*, 435 U.S. 247, 255 (1978) (quoting 2 F. Harper & F. James, *Law of Torts* § 25.1, at 1299 (1956)).

The access concept enjoys a constitutional status[1] and is fully embraced in our jurisdictional jurisprudence, which mandates that corporations engaged in profitmaking

[1] The Supreme Court of the United States has recognized "a separate and distinct right to seek judicial relief for some wrong" is guaranteed by the federal Constitution.

interstate activities not "escape having to account for . . . consequences that arise proximately from such activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74 (1985).

In this matter, the issue is whether jurisdiction may be exercised over Ford. Ford maintains a robust physical and economic presence in Illinois, and the claims at issue here mirror the activities that have long subjected Ford to liability within the state without even a hint of jurisdictional objection. Ford is no stranger to Illinois, but is instead fully at home. On the other hand, adopting Ford's position in this case will work a hardship on the plaintiff that is at odds with due process, the touchstone upon which the jurisdictional decision rests. It would force the plaintiff to maintain multiple actions in a host of different states to seek redress for a single, indivisible injury. In Ford's view, the 38 defendants named in this complaint, spanning nine different states, could obligate Jeffs to bring actions in all nine of those states, litigating the same issues over and over, including disputes over apportionment of those damages each time. Logic indicates that such a course does not just bring a real danger of inconsistent results, but a high likelihood that variations in assessments of liability and proportional responsibility would occur. Because due process assures fairness to both plaintiffs and defendants, and because the burden of adjudicating its liability in Illinois is *de minimis* to Ford, the due-process scales tilt decisively in Jeffs's favor.

Christopher v. Harbury, 536 U.S. 403, 415-16 & n.12 (2002). Similarly, the Illinois Constitution promises that "[e]very person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation." Ill. Const. art. I, § 12.

ARGUMENT

I. Jurisdiction Exists Over Ford.

A thorough exploration of the applicable competing due-process considerations here inexorably leads to a finding of jurisdiction. On the Defendant's side of the due-process ledger is a requirement that the person or entity haled into court have sufficient "minimum contacts with [the forum state] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation marks and citation omitted). On the Plaintiff's side of that ledger, the "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Ford's due-process concerns are *de minimis*, while those of the plaintiff are substantial.

A. Assuming general jurisdiction over Ford does not abridge "traditional notions of fair play and substantial justice."

The Illinois long-arm statute authorizes a court to "exercise jurisdiction in any action arising within or without this State against any . . . corporation doing business within this State." 735 ILCS 5/2-209(b)(4). It further permits the "exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c). As a result, the statute authorizes the exercise of jurisdiction as far as the outer reaches of the Illinois and federal Constitutions permit. *See Kostal v. Pinkus Dermatopathology Lab., P.C.*, 357 Ill. App. 3d 381, 387, 827 N.E.2d 1031, 1036-37 (Ill. Ct. App. 5th Dist. 2005). Due process provides the fundamental constitutional limitation on the exercise of long-arm jurisdiction. *Aasonn, LLC v. Delaney*, 2011 IL App

(2d) 101125, ¶ 12. *See also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011).

The Illinois Supreme Court has instructed that under the long-arm statute's catch-all provision, 735 ILCS 5/2-209(c), "the sole issue before the court is whether the nonresident defendant's connection or contact with Illinois is sufficient to satisfy federal and Illinois due process." *Russell*, 2013 IL 113909, ¶ 30. That limitation is a function of *International Shoe*'s requirements of "minimum contacts" and "traditional notions of fair play and substantial justice." *Id*. at ¶ 34 (citations omitted). The relevant inquiry to establish minimum contacts is whether the defendant "has engaged in continuous and substantial business activity within the forum." *Id*. at ¶ 36. Where it exists, a plaintiff may maintain a "cause of action against a defendant based on activity that is entirely distinct from its activity in the forum." *Id*. (citing *Goodyear*, 564 U.S. at 924). Continuous business activity comprises "a fair measure of permanence and continuity," as opposed to casual or occasional pursuits. *Id*. (quoting *Morgan, Lewis & Bockius LLP v. City of East Chicago*, 401 Ill. App. 3d 947, 953, 934 N.E.2d 23, 31 (Ill. Ct. App. 1st Dist. 2010)).

Here, as Ford itself tells this Court, it employs 5,500 workers in Illinois and sold Illinois residents more than 100,000 vehicles. Br. and Argument of Defendant-Appellant Ford Motor Co. (hereinafter "Ford Br.") 12. The vast majority of its Illinois employees, more than 4,200, work at the Chicago Works Assembly Plant, the company's oldest continuously operating factories and one of its largest assembly plants. (Jeffs Trial Br. Ex. 8: Ford, Chicago Assembly Plant, *available at* https://corporate.ford.com/company/plant-detail-pages/chicago-assembly-plant.html). Ford employs more than 1,200 additional workers at its Chicago Stamping Plant. (Jeffs Trial Br. Ex. 9: Ford Motor Company's

Answers to Plaintiff's Personal Jurisdiction and Venue Interrogatories, at 18). These facilities used asbestos insulation in the exact same manner as the Ford facility at which Mr. Jeffs was exposed. (Jeffs Trial Br. Ex. 11: Documents Produced by Ford Motor Company PALLECONE 002099-002102; PALLECONE 004370-004371). Thus, Ford is exposed to liability in Illinois for precisely the type of claim that the estate of Jeffs asserts. It therefore cannot claim surprise, difficulty, or a lack of fundamental fairness in being made to defend liability for asbestos-related injuries in Illinois.

In addition, the record shows that Ford has a technical training center in Illinois and received a state business investment package worth more than $30 million to upgrade the 2009 facility. (Jeffs Trial Br. Ex. 7: Press Release, Illinois Office of the Governor, *Ford Launches Illinois-Supported Training Center and New Lincoln MKS in Chicago: Governor Blagojevich Announces State's Investment Package Keeping Thousands of Jobs in Illinois* (June 25, 2008).). The state support received for the center was the product of Ford's "demonstrated long-term commitment to Illinois." (*Id.*). In its response to the state funding, Ford welcomed the support - support provided by Illinois taxpayers. (*Id.*). *See also* Ill. Dep't of Commerce & Economic Opportunity, *2015 Economic Development for a Growing Economy (EDGE) Tax Credit Program Annual Report* 22 (June 30, 2016), *available at* https://www.illinois.gov/dceo/AboutDCEO/ReportsRequiredByStatute/Final%20Draft%20of%202015%20EDGE%20Annual%20Report.pdf (detailing years in which Ford received tax credits); Michael J. Berens & Ray Long, *Illinois Businesses Get Lucrative EDGE Tax Breaks, Fall Short of Job Goals*, *Chicago Tribune*, Oct. 2, 2015, *available at* http://www.chicagotribune.com/news/watchdog/ct-illinois-corporate-tax-breaks-met-

20151002-story.html (reporting that Ford was among the companies to receive tax credits under the EDGE program, collecting more than $25 million in tax benefits over the last five years and qualifying for an additional $20 million over the next four years after upgrading plants in Chicago and Chicago Heights).

Ford also supplies cars and trucks to its many dealerships in Illinois on a continuous basis, stays in touch for product information and marketing purposes with millions of Illinois owners of Ford products, and markets its vehicles to Illinois consumers.

Moreover, Ford is so embedded in the Illinois economy and in matters of state concern that the State asked Ford to provide it with a statement concerning the banning of asbestos when considering the prohibition of asbestos in brake linings in 1971, an issue with clear relation to this case. Ford immediately prepared the requested statement. App. 1a-2a.

Ford claims that its Illinois presence was comparable to that found insufficient in *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014), and thus asserts that Ford could not be said to be "at home" in Illinois. Ford Br. 12. In doing so, Ford ignores the critical contextual difference between it and the defendant in *Daimler*. Defendant Daimler had no presence in California, the jurisdiction where the lawsuit was brought. The plaintiffs in that case sued Daimler for actions taken by its Argentine subsidiary by asserting the California presence of the German company's independently incorporated, indirect U.S. subsidiary. The "Rube Goldberg" approach to connecting a U.S. company to an Argentine one through a German parent was what doomed the enterprise in the U.S. Supreme Court. What the recent decisions in *Goodyear* and *Daimler*, heavily relied upon by Ford, mean is that "[c]ompanies that are neither incorporated nor headquartered in the United States likely

can no longer be subject to general jurisdiction in this country, no matter what contacts they have with a particular state." Pamela K. Bookman, *Litigation Isolationism*, 67 Stan. L. Rev. 1081, 1092-93 (2015).

Those difficulties involving non-domestic corporations or attenuated or logically remote connections through separately incorporated subsidies do not present themselves here. Ford was sued as Ford and not through some agent. Though Ford insists in may only be sued in two places, the place of incorporation or its principal place of business, *Daimler* itself acknowledged that no precedent "hold[s] that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business." 134 S. Ct. at 760 (emphasis in original).

Ford attempts to minimize its Illinois presence by comparing its substantial Illinois presence with the overall global reach of the company based on *Daimler*'s statement that a "corporation that operates in many places can scarcely be deemed at home in all of them." *Id*. at 762 n.20. The Plaintiff here does not contend otherwise; it only asserts that the robust presence Ford enjoys in Illinois is sufficient.

The statistics Ford presents of its comparatively small Illinois presence to its overall global operation are unavailing. *Daimler* made clear that local activity that seeks to assert jurisdiction over out-of-state activity must have some cogent connection to the enterprise from which liability arises. *Id*. Thus, *Daimler* held that an Argentine subsidiary's cooperation with an Argentine regime that tortured its own citizens could not be connected to the sale of automobiles in California. Here, the connection is far more palpable. Workers at Ford plants in Illinois have been exposed to asbestos, brought lawsuits over that exposure, and forced Ford to defend there. *See*, *e.g.*, *Brown v. Rapid Am. Corp.*, No:

05L4062, 2005 WL 4582719 (Ill. Cir. Ct. 2005) (Complaint naming Ford as defendant in asbestos case). There is no question that Ford's activities in Illinois are connected to the out-of-state activities that form the basis of the Jeffs's claim.

Finally, regardless of whether it is sufficient by itself or not,[2] as the court below held and Plaintiff-Appellee Jeffs argues, Ford's registration to do business in Illinois provides added weight to the other arguments that Ford is essentially at home in the State. Illinois law provides that:

> A foreign corporation which shall have received authority to transact business under this Act shall . . . enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such authority is granted; and . . . *shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.*

805 ILCS 5/13.10 (emphasis added).

Ford is a large and sophisticated corporation with global reach. *See* Ford, *Operations Worldwide*, http://corporate.ford.com/company/operation-list.html#s0f0It (last visited Oct. 10, 2016). It undeniably has access to top-tier legal counsel, as it has had for its entire existence. Its registration to do business in Illinois means acceptance of the "rights and privileges," as well as the "duties, restrictions, penalties, and liabilities" of an Illinois-

[2] *Amicus* does not question the sufficiency of this ground for upholding jurisdiction, which, if adopted by this Court would make it unnecessary to undertake a due-process analysis. In fact, *Amicus* fully concurs with the argument made by Jeffs and adopted by the trial court and submits that it has a strong relationship to the "at home" analysis that is part and parcel of the general-jurisdiction analysis. Because *Amicus* has nothing independently to add on the issue of consent and because *Amicus* suggests that consent is a function of the text and construction of Illinois law, it is beyond the scope of this brief, except to indicate *Amicus*'s agreement with Jeffs and its assertion that it also supports general jurisdiction.

based company. That acceptance, particularly in combination with the previously stated activities within the State, renders it at home in Illinois. *Cf. World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (recognizing that when a company has "clear notice that it is subject to suit [in a potential forum State, it] can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.").

Ford's presence in Illinois is not the product of random or episodic contacts with the State, but activities that Ford could expect may draw it into litigation of the type brought by Jeffs. *Cf. World-Wide Volkswagen*, 444 U.S. at 297-98. From these significant, longstanding and ongoing activities, Ford is not a stranger to Illinois, the "'quality and nature of the defendant's activity'" is substantial and permanent, and Ford has plainly "'purposely avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Russell*, 2013 IL 113909, ¶ 42 (quoting *Burger King*, 471 U.S. at 474-75).

Given the totality of the circumstances, there is little doubt that Ford "has taken up residence in Illinois." *Id.* at ¶ 36 (quoting *Morgan*, 401 Ill App. 3d at 953, 934 N.E.2d at 31).

B. *Daimler* did not effect a jurisdictional revolution.

Ford and its *amici* assert that *Daimler* and *Goodyear* massively changed the scope of general jurisdiction that a State can exercise over a non-resident corporation. *See* Ford Br. 10-11; *Amicus Curiae* Br. for Coalition for Justice, Inc. 1. The assertion does not bear the weight they seek to give it. Instead, both cases recognized that the "'canonical opinion in this area remains *International Shoe*.'" *Daimler*, 134 S. Ct. at 754 (quoting *Goodyear*, 564 U.S. at 922-23). In *Daimler*, the Court was called upon to decide "the authority of a

court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States." *Id*. at 750. In *Goodyear*, the question was whether "foreign subsidiaries of a United States parent corporation [are] amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 564 U.S. at 918. These are not the issues presented by this case, which involve no foreign defendant nor any subsidiaries. Moreover, the Court resolved the issues in both cases on an application of *International Shoe*'s acknowledgement that the quality and relatedness of a corporation's continuous activities within a forum determines its amenability to suit. *See Daimler*, 134 S. Ct. at 757 (quoting *Int'l Shoe*, 326 U.S. at 318).

In *Daimler*, the District Court had held "Daimler's own contacts with California were, by themselves, too sporadic to justify the exercise of general jurisdiction," and no party challenged that finding. *Id*. at 758. Therefore, the decision turned on whether Daimler's indirect subsidiary, MBUSA, acted as Daimler's agent, such that its jurisdictional status could be imputed to Daimler. *Id*. Due to the posture of the case, the Court assumed and did not explore whether MBUSA qualified as at home in California. *Id*. In the end, however, the Court concluded that

> Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.

Id. at 760 (footnote omitted).

There was nothing earth-shattering in that ruling. Ford and its *amici* hang their hat for their claimed jurisdictional revolution on the description enunciated in *Goodyear* that the test is whether "affiliations with the State are so 'continuous and systematic' as to

render [it] essentially at home in the forum State." 564 U.S. at 919. To Ford, the use of "at home" changed everything. However, as the *Goodyear* Court made clear through citation, the "at home" aspect of the description derives from *International Shoe*, 326 U.S. at 317, rather than was something newly devised and applied as a further limitation on jurisdiction. As articulated in *International Shoe*, the due-process concern reflects the quality of contacts with "the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there" in light of "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home.'" *Id*.

Moreover, this State's courts had already recognized that Due Process requires a presence that makes that makes an out-of-state defendant to be the equivalent of at home before *Daimler*. *See, e.g.*, *Russell*, 2013 IL 113909, ¶ 36 ("taken up residence"); *Morgan, Lewis and Bockius LLP*, 401 Ill. App. 3d at 953, 934 N.E.2d at 30-31; *Howard v. Mo. Bone & Joint Ctr., Inc.*, 373 Ill. App. 3d 738, 741, 869 N.E.2d 207, 210-11 (Ill. Ct. App. 5th Dist. 2007).

Plainly, the "at home" concern of the inconveniences of defending a lawsuit in Illinois is not present where a company has substantial facilities and exposure to identically premised lawsuits on the basis of specific jurisdiction from those operations at its Illinois plants. After all, "because 'modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,' it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity." *Burger King*, 471 U.S. at 474 (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). It is even less inconvenient today than in

1957, when the Court first made that statement, with the modern advent of on-line research, face-to-face communications, and ubiquitous travel options. Any burden on Ford is *de minimis* and insufficient to constitute a cognizable due-process burden.

II. Denying Jurisdiction Would Place a Substantial Due Process Burden on the Plaintiff.

A. Due Process protects Plaintiff's rights, as well as those of Defendants.

Due process is not a one-way concept that only considers the reasonableness of an adjudication to a defendant and cannot be reduced to "talismanic jurisdictional formulas." *Id*. at 485. It protects all parties in a legal action. The Supreme Court "has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982). Weighing these frequently opposing values requires a court to undertake a complex evaluation for the "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria & Rest. Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895 (1961) (citations omitted). Unlike some legal principles, due process "is not a technical conception with a fixed content unrelated to time, place and circumstances." *Id*. (citations omitted). Instead, the due-process guarantee "expresses the requirement of 'fundamental fairness,'" which mandates a court "first consider[] any relevant precedents and then . . . assess[] the several interests that are at stake." *Lassiter v. Dep't of Social Servs. of Durham Cty.*, 452 U.S. 18, 24-25 (1981). Doing so in the instant matter decisively favors the Plaintiff.

B. Multiple adjudications in different forum states would disadvantage Jeffs and advantage Ford, in violation of Due Process.

As the record in this case indicates, Jeffs was a traveling insulator, working with asbestos in at least the following states: Michigan, Illinois, Indiana, Tennessee, Washington, Oregon, Missouri, Florida, and Canada. Jeffs brought suit against the corporations jointly responsible for his disease, naming 38 defendants from nine different jurisdictions who contributed to his asbestos disease.

Typically, a cause of action for injuries from exposure to asbestos requires a plaintiff to prove that the defendant's asbestos was the cause of the injury by showing he regularly worked in sufficient proximity to where the defendant's asbestos was frequently used. *Johnson v. Owens-Corning Fiberglas Corp.*, 313 Ill. App. 3d 230, 235, 729 N.E.2d 883, 887 (Ill. Ct. App. 3d Dist. 2000). Given the nature of the professions exposed to asbestos and the regularity that multiple jobsites and employers are involved, most plaintiffs name multiple defendants, who, in turn, seek to apportion liability among the various potential defendants from whom the plaintiff may also have received exposure to asbestos. *See* Anita Bernstein, *Asbestos Achievements*, 37 Sw. U. L. Rev. 691, 709 (2008). *See also Restatement (Second) of Torts* § 433B (1965); *Restatement (Third) of Torts: Apportionment of Liability* § A19 (2000). Illinois law holds that a defendant in such a case is entitled to present evidence of a decedent's other asbestos exposures as part of its defense, even when those defendants are not present in the case. *See Nolan v. Weil-McLain*, 233 Ill.2d 416, 445, 910 N.E.2d 549, 564-65 (Ill. 2009).

If Jeffs must litigate against defendants separately in each of the nine jurisdictions in which he has named defendants, defendants will be entitled to raise this "empty chair" defense, pointing the blame, in whole or in part, on the absent defendants in each case

litigated. This, in turn, would place Jeffs in the awkward position of having to litigate on behalf of the absent defendants, seeking to limit their liability in order to assure that the defendant in court is held responsible for its proper proportionate share. In such circumstances, when the issue is likely to arise only in the late stages of a trial, a plaintiff would be forced to prepare a defense for nonparties, examining examine jury instructions, marshalling evidence, making objections, arguing the case, and examining witnesses from the standpoint of unrepresented parties. In a leading case, the Montana Supreme Court held a statute that placed plaintiffs in such a position violated due process because "plaintiffs may not receive a fair adjudication of the merits of their claims." *Newville v. State, Dep't of Family Servs.*, 883 P.2d 793, 802 (Mont. 1994). The Montana court held the statute "clearly unreasonable as to plaintiffs" and lacking in necessary procedural safeguards. *Id*. The Illinois Supreme Court used a similar rationale to affirm a circuit court decision declaring a statute that purported to abolish joint and several liability unconstitutional. *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 424-31 (Ill. 1997). Notably, the Supreme Court's opinion quoted the circuit court's reliance on Montana's *Newville* opinion. *Id*. at 424.

The difficulties presented by a requirement that Jeffs engage in piecemeal litigation on a state-by-state basis to seek a remedy for an indivisible injury provide a due-process basis for recognizing jurisdiction over Ford here. The U.S. Supreme Court has instructed that "jurisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent." *Burger King*, 471 U.S. at 478. A failure to assume jurisdiction over the entire dispute plainly creates the dilemma that *Burger King*

condemned and makes litigation "gravely difficult and inconvenient" for the plaintiff, while placing the plaintiff at a "severe disadvantage" compared to his opponent.

Instead, considerations of due process require an assumption of jurisdiction. The doctrine of jurisdiction by necessity additionally supports jurisdiction here. For example, the Supreme Court of the United States held that a State may exercise jurisdiction over a foreign corporation as to causes of action that do not arise from the business done by a foreign corporation in the State where the corporation's business activities in the State are so continuous and substantial as to make exercise of such jurisdiction reasonable. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). In *Perkins*, the forum most connected with the defendant and with the disputed transaction was not Ohio, where plaintiff brought suit, but the Philippines, which was under Japanese occupation at the time. Ohio, however, was the most logical related forum in the United States. Jurisdiction was upheld under the circumstances, and *Perkins* arguably is a decision implicitly employing the doctrine of jurisdiction by necessity.

The Supreme Court has not formally adopted the doctrine of jurisdiction by necessity, finding no instance where the record supported its full consideration. The doctrine applies when no other forum exists to adjudicate the matter fully. *See Shaffer v. Heitner*, 433 U.S. 186, 211 n.37 (1977) (*cited in Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 419 (1984)). In *Helicopteros*, the Court found it unnecessary to decide its applicability because "respondents failed to carry their burden of showing that all three defendants could not be sued together in a single forum." 466 U.S. at 419 n.13.

Here, a decision that jurisdiction does not exist under traditional jurisdictional jurisprudence necessarily holds that no forum exists where Jeffs's claims may be fully

adjudicated with all possible defendants. Because all defendants are necessary to a full and fair determination of liability, damages and apportionment, both fundamental principles undergirding due process and jurisdiction by necessity combine to make a compelling case for the assumption of jurisdiction.

CONCLUSION

To avoid jurisdiction, Ford essentially argues that it is a stranger to Illinois, such that the state's courts may not exercise general jurisdiction over it—and that when it is alleged to have been a culpable party in Jeffs's asbestos-related disease, it may insist on a separate trial in a court of its preference separate from other culpable parties. Its continuous, permanent and robust presence in the State belies that argument. Instead, the scales of due process tip strongly in favor of adjudicating Jeffs's entire claim in a single forum. Jurisdiction over Ford is warranted.

For the foregoing reasons, the trial court's order should be affirmed.

Date: October 14, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages or 4,985 words.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2016, a true and correct copy of the foregoing Brief of *Amicus Curiae* the American Association for Justice in Support of Plaintiff-Appellee was served via United Parcel Service Two-day delivery to the following counsel:

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APPENDIX

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ENGINEERING AND
MANUFACTURING STAFF

November 19, 1971

Intra Company

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Subject: Fibrous Asbestos Emissions

On October 19, 1971, the State of Illinois held a public hearing concerning the banning of asbestos in brake-linings beginning with the 1975 model year. At this hearing, the State of Illinois requested a statement from Ford Motor Company regarding the banning of asbestos. Mr. Damian is in the process of preparing a statement for filing on November 22, 1971. The purpose of this letter is to provide a summary of available information concerning asbestos, for background or reference use, covering the following topics:

1. The effects of asbestos on health
2. Sources of ambient fibrous asbestos
3. Automotive uses versus total asbestos consumption
4. Ford studies to determine asbestos emission rates
5. Alternatives for asbestos in brake-linings

1. Health Effects

Inhalation of fibrous asbestos has been considered the source of asbestosis and mesothelioma (rare form of cancer frequently observed in asbestos workers). Non-fibrous asbestos, on the other hand, is believed to be harmless to human health. The mechanism by which fibrous asbestos promotes cancer formation has not been determined, however, it is conjectured that synergistic effect of asbestos with various pollutant (such as cigarette smoke) is the major cause. Asbestos induced cancer is limited to those who work in asbestos mines or industries which produces asbestos products or those who live in the vicinity of asbestos mines and asbestos processing industries (e.g. industrial processes in which workers actually come in contact with fibrous asbestos). A high prevalence of asbestosis has also been observed among consturction workers who specialize in spray insulation of buildings. The contraction of this type of cancer usually results from a 15-30 year of exposure and the frequency of cancer occurrence is related to the dosage of fibrous asbestos which is many orders of magnitude higher than that observed in ambient background air.

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2. Sources

The fibrous asbestos content of Detroit's ambient air is estimated to be about 1×10^{-8} grams/m^3. A recent literature review by the Public Health Service states that the bulk of airborne asbestos originates from natural sources such as soil dust and locally from asbestos mines and processing plants. Limited amounts of fibrous asbestos are also emitted from the use of asbestos cement used often as spray building insulation. According to another review by the National Research Council, automotive contribution from brake-linings is believed to be negligible because asbestos fibers are destroyed by the intense heat created by the braking process (about 1400°F) to a non-fibrous state.

3. Uses

The total U. S. asbestos production in 1965 was 8×10^5 tons. Cement, floor tile, paper, and other building construction materials accounted for about 90% of asbestos consumption. Friction materials - - primarily brake linings - - accounted for 2.8×10^4 tons or 3.5% of the total asbestos production.

4. Brake Lining Emission Rates

Attempts have been made at Ford to determine the fibrous asbestos emission rates from a laboratory brake-lining test stand. An elaborate electron microscope technique is used to identify the tiny fibers (about 1×10^{-6} inches diameter). Our preliminary experiments indicate that there is very little fibrous asbestos present in brake dust. The fibers are less than 0.5 u in length and most of them are converted to a non-fibrous state by the process of braking. Our emission rate estimate is very close to the background ambient concentration levels.

5. Brake Lining Alternate Materials

Alternatives for asbestos based linings are few and all have some disadvantages in terms of either performance, cost, or both. Ford has been using cermet linings (sintered metal) for heavy duty trucks and semi-met (metal strand and carbon mixture) for police cars, both containing no asbestos. Beginning with the 1971 model year , Ford has been supplying optional semi-met front-end brakes for police car fleets. Semi-met linings are superior in performance to conventional brake-linings (about equivalent in terms of cold-wear and noise), but the cost penalty is severe ($1.25/car just for front-end brakes). Ford is experimenting with semi-met linings for rear wheels. However, there are some cold-stopping and wear difficulties associated with rear wheel semi-met linings in their present form and may necessitate major redesigning of the rear wheel brake systems.

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