No. 24-335

IN THE

Supreme Court of the United States

VIVENDI S.E., ET AL.,

Petitioners,

v.

EPAC TECHNOLOGIES LTD.,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of New York

BRIEF OF *AMICI CURIAE* PROFESSORS JOHN F. COYLE, WILLIAM S. DODGE, AND ROBIN EFFRON IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF THE *AMICI CURIAE*[1]

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Amici have taught and written extensively about personal jurisdiction and dispute resolution clauses and have an interest in the sound development of this field.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* made any monetary contribution to its preparation or submission. Pursuant to Rule 37.2, counsel for *amici* provided timely notice to all counsel of record of their intent to file this brief.

SUMMARY OF THE ARGUMENT

This Court has consistently held that, under the Fourteenth Amendment, a state may exercise personal jurisdiction over a defendant if the defendant consents to jurisdiction, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985), or if the defendant has sufficient minimum contacts with the state that exercising jurisdiction over the defendant "does not offend traditional notions of fair play and substantial justice," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

In the decision below, the New York court held that it had personal jurisdiction over the defendant based on the "closely-related" doctrine. Under that doctrine, a forum selection clause may subject a defendant that did not sign the contract containing the clause to the jurisdiction of the forum designated in the clause if the defendant is "closely related" to a contract signatory and it is foreseeable that the non-signatory could be involved in litigation relating to the contract. The closely-related doctrine contradicts the Court's personal jurisdiction precedents.

The doctrine first developed in decisions dismissing or transferring an action brought by a non-signatory to a contract including a forum selection clause in a forum other than the one specified in the forum selection clause. In those outbound applications (meaning applications in which a non-signatory plaintiff is denied its preferred forum), the doctrine raises no constitutional issues of personal

jurisdiction because it does not subject a non-signatory defendant to personal jurisdiction.

Subsequently, without careful analysis (and often with no analysis at all), courts approved inbound application of the doctrine—applications in which the clause is invoked to support jurisdiction in the designated forum—to hold that a non-signatory defendant may be subjected to jurisdiction in the chosen forum based on its close relationship to a signatory.

This expansion of the closely-related doctrine to inbound applications conflicts with this Court's personal jurisdiction holdings. A defendant cannot fairly be said to have consented to jurisdiction based on a forum selection clause in a contract that it never signed, regardless of whether it is foreseeable the non-signatory might become involved in litigation relating to the contract. Moreover, a close relationship between a non-signatory defendant and a signatory to a contract containing the forum selection clause does not establish the sort of minimum contacts between the defendant and the state designated in the clause that supports the state's exercise of personal jurisdiction over the defendant.

This case cleanly presents the issue whether the closely-related doctrine comports with due process. The defendants have no contacts at all with New York, let alone sufficient minimum contacts to support personal jurisdiction under this Court's precedents. They are also not a party to any agreement containing a New York forum selection clause. Nevertheless, the New York court held that they were subject to jurisdiction in New York by

operation of the closely-related doctrine. Because the state and lower federal courts are consistently using this doctrine to uphold exercise of personal jurisdiction in violation of fundamental due process principles, and because of the importance of the issue to commercial transactions, this Court should grant review.

ARGUMENT

Under the closely-related doctrine, a forum selection clause may bind a defendant that never signed the contract containing the clause when the defendant is "closely related" to a contract signatory and it is foreseeable the non-signatory will become involved in litigation relating to the contract. The doctrine flatly contradicts this Court's due process holdings by permitting a state court to exercise personal jurisdiction over an out-of-state defendant that neither consented to jurisdiction nor has sufficient minimum contacts with the forum state.

I. Courts developed the closely-related doctrine without regard to the due process principles controlling personal jurisdiction.

Courts first developed the closely-related doctrine to dismiss or transfer cases when a forum selection clause designated the courts of another jurisdiction. In that context, personal jurisdiction over the non-signatory is not an issue because the non-signatory filed suit in the contested forum.

Due Process problems arose when courts uncritically extended the doctrine to the converse

situation—to exercise personal jurisdiction over non-signatory defendants

a. The Fourteenth Amendment prohibits a state court from exercising personal jurisdiction over a foreign corporation unless it consents to jurisdiction or has minimum contacts with the state.

The Fourteenth Amendment's Due Process Clause limits the ability of state courts to exercise personal jurisdiction over an out-of-state defendant. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

A court may exercise jurisdiction over such a defendant in several circumstances, only two of which are relevant here. First, "[b]ecause the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived." *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). Thus, a court may exercise personal jurisdiction over defendants who "consent to the personal jurisdiction of the court." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985). Consent to jurisdiction may be provided before a dispute arises. *Ins. Corp. of Ireland*, 456 U.S. at 704 ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court."). For example, if a party enters into a contract containing a forum selection clause, enforcing that clause to subject the party to personal jurisdiction "does not offend due process." *Burger King*, 471 U.S. at 472 n.14.

Second, a court may exercise jurisdiction over a non-consenting out-of-state defendant that has "'contacts' with the forum State." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021) (quoting *Int'l Shoe*, 326 U.S. at 316). The scope of jurisdiction depends on the extent of the contacts. If a corporate defendant is "incorporated" or has "its principal place of business" in the state, a court in that state may exercise "general jurisdiction" over the corporation to hear "any and all claims brought against [it]." *Id.* at 359. By contrast, if a defendant has fewer contacts, the state court may exercise only "specific jurisdiction" over claims arising out of or relating to those contacts. *Id.*

To support specific jurisdiction, the defendant must have "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe*, 326 U.S. at 316*; Ford Motor Co.*, 592 U.S. at 358. This minimum-contacts requirement is met only if a defendant has taken some affirmative act "by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Ford Motor Co.*, 592 U.S. at 359. "The contacts must be the defendant's own choice." *Id.* They cannot be "random, isolated, or fortuitous." *Id.* Nor does it suffice for a defendant to engage in activities that may foreseeably affect the forum state. *Burger King*, 471 U.S. at 474 ("[F]oreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." (quoting *World-Wide Volkswagen*, 444 U.S. at 295)).

Moreover, even if a defendant has minimum contacts with a state, the state's personal jurisdiction

extends only to claims that "arise out of or relate to" those minimum contacts. *Id*. (quoting *Helicopteros Nacionales de Colombia*, *S.A. v. Hall*, 466 U.S. 408, 414 (1984)). If the claim against the defendant is unrelated to the defendant's contacts with the forum, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 264 (2017).

b. Courts extended the closely-related test to non-signatory defendants without considering this Court's personal jurisdiction precedents.

1. Forum selection clauses function in one of two ways, depending on where a lawsuit is filed. A defendant may invoke the forum selection clause to seek dismissal or transfer of a lawsuit filed against it in a forum other than that selected (an "outbound" application). On the flip side, a plaintiff may invoke the forum selection clause to permit a suit to be litigated against the defendant in the selected forum (an "inbound" application).

An outbound application of a forum selection clause does not subject a party to jurisdiction in the selected forum. Instead, the clause is invoked to dismiss or transfer a suit. By contrast, an inbound application seeks to subject a defendant to the jurisdiction of the court in which the suit is filed. In that circumstance, the clause provides the basis for exercising personal jurisdiction over the defendant.

There is generally no constitutional impediment to an inbound application of a forum

selection clause to a signatory defendant, because the defendant's agreement to the clause operates as consent to jurisdiction in the selected forum. *See* John F. Coyle & Katherine C. Richardson, *Enforcing Inbound Forum Selection Clauses in State Court*, 53 ARIZ. ST. L.J. 65, 73–74 (2021).

2. This case presents the question whether a court may use a forum selection clause to exercise personal jurisdiction over a non-signatory defendant. Many courts have held that a signatory plaintiff may require a non-signatory defendant to litigate in the selected forum if the defendant has a sufficiently close relationship with a party to the contract. The reasoning of the New York court in this case is typical. It held that a "non-signatory may . . . be bound by a forum selection clause where the non-signatory and a party to the agreement have such a 'close relationship' that it is foreseeable that the forum selection clause will be enforced against the non-signatory." Pet. App. 3.

This inbound application against non-signatories grew out of cases upholding outbound applications of forum selection clauses against non-signatories.

The Third Circuit's decision in *Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 202 (3d Cir. 1983), provides an early example of outbound application of the closely-related test. There, Coastal Steel, a New Jersey-based manufacturer, contracted with Farmer Norton, an English company, for a steel manufacturing plant in New Jersey. *Id.* at 192. Later, Farmer Norton entered into a subcontract with another English

company, Tilghman, to erect a blast furnace in the plant. *Id.* Farmer Norton and Tilghman's contract, to which Coastal was not a party, contained a forum selection clause providing that "any dispute . . . shall be determined by the English Courts of Law." *Id.* at 193.

When the blast unit malfunctioned, Coastal Steel sued Tilghman in New Jersey federal court. *Id.* Tilghman moved to dismiss the case based on the English forum selection clause. *Id.* In response, Coastal Steel argued that it was not a party to the English contract containing the English forum selection clause and was therefore not bound by the clause. *Id.*

The Third Circuit held that the clause was enforceable against Coastal Steel, observing that "Coastal chose to do business with Farmer Norton, an English firm, knowing that Farmer Norton would be acquiring components from other English manufacturers." *Id.* at 203. Thus, the court said, it was "perfectly foreseeable that Coastal would be a third-party beneficiary of an English contract, and that such a contract would provide for litigation in an English court." *Id.*

Subsequent cases built on *Coastal Steel* in developing the closely-related doctrine. In *Hugel v. Corp. of Lloyd*'s, 999 F.2d 206 (7th Cir. 1993), the Seventh Circuit held that a signatory defendant could rely on the clause to seek dismissal of a suit brought by a non-signatory plaintiff. In doing so, the court held that it did not matter whether the non-signatory was a third-party beneficiary of the contract containing the forum selection clause. *Id.* at 209 &

n.7. The *Hugel* court reasoned that the non-signatory was so "closely" related to one of the signatories that it was "'foreseeable' that it [would] be bound" by the clause. *Id.* at 209–11 (quoting *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n.5 (9th Cir. 1988)).

Whatever the merits of the decisions permitting outbound application of forum selection clauses against non-signatories, they do not raise constitutional personal jurisdiction concerns because they do not involve subjecting a non-signatory defendant to jurisdiction. Those decisions simply preclude a plaintiff from continuing an action in the forum in which the plaintiff filed. There was no need for the courts to discuss constitutional limits on personal jurisdiction in those cases because no such issue was presented.

3. The closely-related doctrine went constitutionally awry when courts expanded it to permit inbound application of forum selection clauses to require non-signatory defendants to litigate in the selected forums. This expansion came with no careful analysis (and often no analysis at all) of the due process limitations on personal jurisdiction.

AAMCO Transmissions, Inc. v. Romano, 42 F. Supp. 3d 700 (E.D. Pa. 2014), provides an early example of an inbound application of the closely-related doctrine to a non-signatory defendant. [2]

[2] Another early example is *Synthes, Inc. v. Emerge Med., Inc.*, 887 F. Supp. 2d 598 (E.D. Pa. 2012). In that case, the court exercised personal jurisdiction over a defendant based on its close relationship to a signatory, stating that "[i]t is widely accepted that non-signatory third-parties who are closely related to [a] contractual relationship are bound by forum selection

There, Robert Romano and AAMCO entered into a franchise agreement including a forum selection clause requiring all disputes to be litigated in federal court in Pennsylvania. *Id.* at 704–05. AAMCO subsequently sued Robert and his wife, Linda Romano, in the designated court, asserting claims arising from alleged violations of the non-compete provision in the franchise agreement. *Id.* at 703–05.

Although Linda was not a party to the contract and had no contacts with Pennsylvania, the court held that she was subject to personal jurisdiction in Pennsylvania based on the forum selection clause. *See id.* at 709. The court reasoned that "[g]iven her spousal relationship with Robert Romano, Linda Romano is so closely related to Robert Romano's dispute with AAMCO that she should have foreseen being bound by the forum selection clause in the Franchisee Agreement." *Id.* The court did not address whether Linda had consented to jurisdiction in Pennsylvania or had sufficient minimum contacts with that state to satisfy the Due Process Clause limitations on personal jurisdiction.[3] It asserted jurisdiction over her because she was married to—and

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clauses contained in the contracts underlying the relevant contractual relationship." *Id.* at 607 (quoting *First Fin. Mgmt. Grp., Inc.* v. *Univ. Painters of Balt., Inc.*, No. Civ.A.11-5821, 2012 WL 1150131, at *3 (E.D. Pa. Apr. 5, 2012)).

[3] Although the Constitution permits federal courts to exercise broader personal jurisdiction than state courts, federal rules permit a federal court to hear a diversity case only to the same extent as could a state court in that state. *See* Fed. R. Civ. P. 4(k)(1)(A); *see also Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 108 (1987) (applying the Louisiana long-arm statute in a diversity case absent federal law providing otherwise).

hence closely related to—the person who had signed the contract containing the clause.

More recently, in *Franlink Inc. v. BACE Servs.*, 50 F.4th 432 (5th Cir. 2022), the Fifth Circuit applied the closely-related doctrine to permit inbound application of a forum selection clause to assert personal jurisdiction over a non-signatory defendant. The case involved a franchise agreement by which Franlink authorized Amy Wells and Craig Wells to operate a staffing company named BACE Services. *Id.* at 436. After disputes arose between those parties, Franlink filed suit against not only the parties to the franchise agreement but also three non-signatories, JTL (a competing staffing company), Bradley Morton (the son and stepson of Amy and Craig Wells, respectively, who had been employed by BACE but later joined JTL and allegedly solicited BACE customers), and Pay Day (a competing staffing company operated by Amy and Craig Wells). *Id.* at 436–37.

The Fifth Circuit acknowledged that "[t]he absence of the non-signatory's consent presents a due process problem by forcing a party to litigate in a forum that would otherwise lack personal jurisdiction." *Id.* at 441 (citing John F. Coyle & Robin Effron, *Forum Selection Clauses, Non-signatories, and Personal Jurisdiction*, 97 NOTRE DAME L. REV. 187, 213 (2021)). The court also noted that there "is good reason to be dubious of the doctrine[.]" *Id.* Nonetheless, to avoid creating a circuit conflict, and asserting that there are equitable benefits of the closely-related doctrine, the Fifth Circuit upheld inbound application of the forum selection clause to

permit the court to exercise personal jurisdiction over one of the non-signatory defendants. It did so without making any effort to analyze whether this Court's personal jurisdiction precedents permit such an application of the clause. *Id.*

Courts across the country have relied on the closely-related doctrine to exercise jurisdiction over non-signatory defendants. [4] The doctrine is particularly prevalent in New York, perhaps the country's leading commercial center. Courts there

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[4] *See, e.g., Umlaut, Inc. v. P3 USA, Inc.*, No. 19-cv-13310, 2020 WL 4016098, at *3 (E.D. Mich. July 15, 2020) (binding non-signatory defendants to a forum selection clause as claims for tortious interference "depend on the existence of the contractual relationship between the parties"); *Matthews Int'l Corp. v. Lombardi*, No. 20-cv-00089, 2020 WL 1275692, at *6 (W.D. Pa. Mar. 17, 2020) (subjecting non-signatory defendants to personal jurisdiction because they could reasonably foresee that poached employees of plaintiff would have non-compete agreements containing forum selection clauses); *Southridge Partners II Ltd. P'ship v. SND Auto Grp., Inc.*, No. 3:17-CV-1925, 2019 WL 6936727, at *5 (D. Conn. Dec. 19, 2019) (holding that non-signatory corporate officers who negotiated or signed a forum selection clause on behalf of a corporate entity were bound by the clause in their individual capacities); *Peterson v. Evapco, Inc.*, 188 A.3d 210, 236–38 (Md. Ct. Spec. App. 2018) (asserting personal jurisdiction based on closely-related doctrine); *Diamond v. Calaway*, No. 18 Civ. 3238, 2018 WL 4906256, at *4 (S.D.N.Y. Oct. 9, 2018) (holding that a non-signatory spouse was bound by a forum selection clause because her bank account was used by signatory); *Fair Isaac Corp. v. Gordon*, No. A16-0274, 2016 WL 7439084 at *2–3 (Minn. Ct. App. Dec. 27, 2016) (applying the closely-related doctrine to establish personal jurisdiction); *Power UP Lending Grp., Ltd. v. Murph*y, No. 16-CV-1454, 2016 WL 6088332, at *6–7 (E.D.N.Y. Oct. 18, 2016) (holding that chief officers of a signatory corporation were bound by forum selection clause in their individual capacities).

have repeatedly applied the closely-related doctrine to enforce forum selection clauses against non-signatories without distinguishing between inbound and outbound applications of such clauses and without sufficient consideration of this Court's precedent on due process.[5]

II. A close relationship with a legally separate person or entity plus foreseeability does not constitute consent to jurisdiction or establish minimum contacts with the selected forum.

The cases permitting inbound application of a forum selection clause to support personal jurisdiction in the selected forum over a non-signatory cannot be reconciled with this Court's personal jurisdiction cases. A close relationship between a defendant and a separate person or entity, plus foreseeability that the non-signatory might be sued in the designated forum, is not sufficient to establish consent by the defendant to jurisdiction in that forum. Nor do they establish that the defendant has sufficient minimum contacts with the selected forum to justify the exercise of personal jurisdiction.

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[5] *See, e.g.*, *Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352–54 (N.Y. App. Div. 2020); *Universal Inv. Advisory SA v. Bakrie Telecom Pte., Ltd.*, 62 N.Y.S.3d 1, 8 (N.Y. App. Div. 2017)*; Tate & Lyle Ingredients Ams., Inc. v. Whitefox Techs. USA, Inc.*, 949 N.Y.S.2d 375, 377 (N.Y. App. Div. 2012).

a. A close relationship and foreseeability do not constitute consent.

Consent to personal jurisdiction is a waiver of a person's Fourteenth Amendment right not to be subject to that court's jurisdiction. That waiver, as with the waiver of any other constitutional right, must be informed and voluntary. *Green v. United States*, 355 U.S. 184, 191 (1957) ("In any normal sense, [waiver] connotes some kind of voluntary knowing relinquishment of a right."). "The classic description of an effective waiver of a constitutional right is the intentional relinquishment or abandonment of a known right or privilege." *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (internal quotation marks omitted).

For this reason, a contract containing a forum selection clause provides a basis for personal jurisdiction over the parties to the agreement. *See Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315–16 (1964). By entering into the contract, the parties deliberately consent to the jurisdiction of the court specified in the contract. *Id.*

But the same cannot be said for entities that do not sign the contract or otherwise agree to its terms. By definition, an entity that does not agree to a contract does not "agree . . . to submit to the jurisdiction" based on a forum selection clause in that contract. *Id.* This view aligns with the basic principle of contract law that "[c]ontracts bind parties, not nonparties." *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165, 175 n.4 (2010).

That a non-signatory defendant may have a close relationship with a party to the contract does not change the analysis. Constitutional rights are "personal." *New York v. Ferber*, 458 U.S. 747, 767 (1982). Unless two entities share the same legal rights—for example, when one entity is the "alter ego" of another or one entity is the successor in right to the other, *see Manetti-Farrow*, 858 F.2d at 514 n.5—the waiver by one entity of its constitutional rights does not result in the waiver of another entity's constitutional rights. Only a rightholder or its authorized agent may waive the rightholder's right. If two entities are legally distinct, a close relationship between two entities does not provide a basis to impute one entity's waiver of consent to jurisdiction to the other entity.

Despite this limitation, courts relying on the closely-related doctrine (including the New York court in this case) have held that it is permissible to deem a non-signatory to have consented to jurisdiction if the relationship to a signatory is so close that "it is foreseeable that the forum selection clause will be enforced against the non-signatory." *Highland Crusader Offshore Partners v. Targeted Delivery Techs. Holdings*, 124 N.Y.S.3d 346, 352 (N.Y. App. Div. 2020); *see also Italian Exhibition Grp. USA, Inc. v. Bartolozzi*, No. 23-CV-4417, 2023 WL 7301810, at *1 (S.D.N.Y. Nov. 6, 2023). This circular reasoning borders on the frivolous. The only reason a non-signatory might foresee that it would be subject to suit in the state in this situation is that the state has declared that it will be subject to suit. States cannot circumvent the Constitution in this way.

It is true, of course, that this Court has held that a state law may dictate that affirmatively directing certain activity toward the state constitutes implicit consent to being sued in the state. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 147–48 (2023) (Jackson, J., concurring) ("A defendant can waive its rights by . . . voluntarily invok[ing] certain benefits from a State that are conditioned on submitting to the State's jurisdiction.").

But this Court has never allowed a state to bootstrap jurisdiction by proclaiming that a person consents to its jurisdiction by engaging in activity *not* directed at the state. A state may not, for example, proclaim that it has personal jurisdiction over a party doing business in three or more other states. Accepting such an approach would mean that personal jurisdiction no longer provides a meaningful limitation on the power of state courts, because states could declare that any activity, regardless of where it occurs, constitutes consent to suit in the state.

b. A close relationship and foreseeability do not establish minimum contacts.

As explained above, for a court to exercise personal jurisdiction over a defendant based on the defendant's contacts with the state, "the [defendant's] relationship [with the forum] must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014). The defendant must take some affirmative act "by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Ford Motor Co.*, 592 U.S. at 359. Decisions by others cannot

establish jurisdiction over a defendant. "The contacts must be the defendant's own choice." *Id.*

A defendant's relationship with another entity that has consented to jurisdiction by entering into a forum selection clause does not constitute purposeful availment by the defendant of the state designated in the clause. Indeed, entering into a contract with a forum selection clause does not even establish minimum contacts between a *signatory* to the contract and the designated state. A forum selection clause *waives* the signatory's due process right by consenting to personal jurisdiction; it does not establish contacts with the state satisfying due process.

More importantly, the decision to sign a contract containing a forum selection clause reflects only a decision by the signatory to consent to the jurisdiction of the designated state. It does not constitute a decision by the non-signatory to do business or otherwise direct its activities to the forum state. *See* Coyle, *supra*, at 215.

This Court has consistently refused to extend personal jurisdiction over a defendant based on the actions of another entity with which it has a relationship. In *Bristol-Myers*, for example, the Court rejected the argument that a defendant's decision to enter into a contract with a California company to do business outside of California exposed the defendant to California's jurisdiction. Although the company had comprehensive contacts with California, the Court refused to impute those contacts to the defendant based on its relationship with the company, observing that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for

jurisdiction." *Bristol-Myers*, 582 U.S. at 265 (quoting *Walden*, 571 U.S. at 286). Instead, what matters is whether the defendant purposefully availed itself of activity in the state, and none of the defendant's actions underlying the suit were directed at California. *Id.* at 268.

Nor does it matter whether the defendant could have foreseen that litigation involving the entity with which it has a close relationship would occur in the forum state. As this Court has repeatedly stressed, foreseeability alone does not suffice for personal jurisdiction. *World-Wide Volkswagen*, 444 U.S. at 295. The determinative constitutional question is whether the defendant has purposefully availed itself of the forum, not whether it was foreseeable that a plaintiff might try to drag the defendant into court there. *See id.* at 297; *Burger King*, 471 U.S. at 474.

For all of these reasons, the decision of the New York court in this case is contrary to basic principles of due process as consistently recognized by this Court's precedents. As explained in the petition, there is no reasonable argument that the non-signatory defendants consented to jurisdiction in New York, and it is conceded that they have no contacts at all with New York, let alone sufficient contacts to support personal jurisdiction. Because the lower courts are consistently using the closely-related doctrine to uphold exercise of personal jurisdiction in violation of fundamental due process principles, and because of the importance of the issue to commercial relationships, the Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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