

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

SJC-13354

AMY DOUCET, et al.,
Plaintiffs-Appellants,

v.

FCA US LLC,
Defendant-Appellee.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

**BRIEF OF AMICUS CURIAE NEW ENGLAND LEGAL FOUNDATION
IN SUPPORT OF THE DEFENDANT-APPELLEE FOR AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae New England Legal Foundation ("NELF") states, pursuant to S.J.C. Rule 1:21, that it is a 26 U.S.C. § 501(c)(3) nonprofit, public interest law foundation, incorporated in Massachusetts in 1977, with its headquarters in Boston. NELF does not issue stock or any other form of securities and does not have any parent corporation. NELF is governed by a self-perpetuating Board of Directors, the members of which serve solely in their personal capacities.

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ISSUES PRESENTED

Amicus curiae New England Legal Foundation (NELF) addresses the questions presented by this Court in its amicus announcement of November 23, 2022:

Whether there is personal jurisdiction in Massachusetts over the successor in interest to an out-of-State car manufacturer with respect to the plaintiffs' product liability claims, where the allegedly defective vehicle was initially leased and sold at a Massachusetts dealership, but where the alleged injury occurred in New Hampshire, involving a New Hampshire resident, including: (1) whether personal jurisdiction exists under subsection (a) of the State's long-arm statute, G. L. c. 223A, § 3, and (2) whether personal jurisdiction exists under the due process clause of the United States Constitution.

Whether the plaintiffs are entitled to jurisdictional discovery to the extent that they have failed to establish specific personal jurisdiction.

INTEREST OF AMICUS CURIAE

NELF is a nonprofit, public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston. NELF's membership consists of corporations, law firms, individuals, and others who believe in its mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF's members and supporters include a cross-section

of large and small businesses and other organizations from all parts of the Commonwealth, New England, and the United States.

NELF is committed to the enforcement of the statutory and constitutional limits placed on the courts of the Commonwealth in their exercise of personal jurisdiction over a nonresident corporate defendant. In particular, NELF is committed to protecting a nonresident defendant from being subject to the coercive power of the forum state's Judiciary when the plaintiff cannot establish a sufficient connection between his claims and the forum state to warrant the exercise of such power. NELF is also committed to enforcing the principle of "interstate federalism," under which a state with little interest in a case should not encroach on a state that has a more significant relationship with the litigation.

NELF has appeared regularly as amicus curiae before this Court in several other cases involving the rights of corporate defendants, domestic and foreign alike. This is such a case, and NELF believes that its brief

will assist the Court in deciding the legal issues presented here.¹

ARGUMENT

I. A COURT OF THE COMMONWEALTH CANNOT EXERCISE PERSONAL JURISDICTION OVER A NONRESIDENT CORPORATE DEFENDANT WITH RESPECT TO THE PRODUCT LIABILITY CLAIMS OF A NONRESIDENT PLAINTIFF, WHO PURCHASED THE ALLEGEDLY DEFECTIVE PRODUCT IN HIS STATE OF RESIDENCE AND SUFFERED A PERSONAL INJURY FROM THE USE OF THAT PRODUCT IN HIS STATE OF RESIDENCE.

The central question in this case is whether a court of the Commonwealth can exercise personal jurisdiction over a nonresident corporate defendant with respect to the product liability claims of a nonresident plaintiff, who purchased the defendant's allegedly defective product in his state of residence and who allegedly suffered a personal injury from the use of that product in his state of residence.² The

¹ Pursuant to Mass. R. App. P. 17(a)(1)(5), NELF states that neither the defendant-appellee, nor its counsel, nor any individual or entity other than amicus, has authored this brief in whole or in part, or has made any monetary contribution to its preparation or submission. Pursuant to Mass. R. App. P. 17(c)(5)(D), NELF also states that neither amicus nor its counsel has ever represented any party to this appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in this appeal.

² NELF assumes, for the sake of the amicus announcement in this case, that the jurisdictional contacts of the defendant's predecessor in interest, DaimlerChrysler

short answer is no, because this fact pattern connects the plaintiff's claims with his state of residence, in this case New Hampshire, and not with the forum state of Massachusetts.³

Indeed, this fact pattern is on all fours with *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco County*, 137 S. Ct. 1773 (2017) (no personal jurisdiction under Due Process Clause of United States Constitution, U.S. Const. amend. XIV, § 2, over nonresident manufacturer with respect to product liability claims of nonresident plaintiffs who purchased, used, and allegedly suffered

Motors Corp., LLC, may be imputed to the defendant, FCA US LLC, in light of FCA US's assumption of DaimlerChrysler's liability for claims such as the plaintiff's, in prior bankruptcy proceedings. See Addendum to Appellee's Brief (Add.) at 43 (n.6 of Superior Court Memorandum of Decision, discussing FCA US's assumption of liability for certain claims in parties' amended Master Transaction Agreement). See also *Wetteman v. Nucleus Research, Inc.*, No. 1984CV03334-BLS2, 2022 WL 1235267, at *3 (Mass. Super. Feb. 16, 2022) (Salinger, J.) ("A corporation's contacts with a forum may be imputed to its successor if forum law would hold the successor liable for the actions of its predecessor.") (cleaned up).

³ The plaintiffs first sued in New Hampshire state court, the defendant removed the case to federal court on diversity grounds, and the federal court for the District of New Hampshire dismissed the case for lack of personal jurisdiction. See Add. at 43. The plaintiffs did not appeal this decision to the First Circuit. *Id.*

harm from allegedly defective product in their states of residence). Consistent with the Due Process Clause and *Bristol-Myers*, personal jurisdiction should also not lie under the relevant provision of the Massachusetts long-arm statute, G. L. c. 223A, § 3(a).⁴ See *Oracle USA, Inc. v. Comm'r of Revenue*, 487 Mass. 518, 525 (2021) (“When statutory language is susceptible of multiple interpretations, a court should avoid a construction that raises *constitutional doubts* and instead should adopt a construction that *avoids potential constitutional infirmity.*”) (emphasis added).

The plaintiff, Paul Doucet,⁵ is a resident of New Hampshire. Addendum to Appellee’s Brief (Add.) at 42 (Superior Court Memorandum of Decision, at 2). In 2013, he purchased, in New Hampshire, a used 2004

⁴ That subsection provides:

A court may exercise personal jurisdiction over [a nonresident defendant] . . . as to a cause of action in law or equity arising from the [defendant’s] (a) transacting any business in this commonwealth.

G. L. c. 223A, § 3(a).

⁵ For the sake of convenience, amicus refers to the plaintiffs collectively as the plaintiff, Paul Doucet, who suffered the injuries at issue.

Chrysler Sebring manufactured by DaimlerChrysler Motors Corp., LLC, the predecessor in interest to the defendant, FCA US LLC, in a private sale with the car's then-owner, also a New Hampshire resident.⁶ *Id.* In 2015, the plaintiff was riding in the front passenger seat of his car, in New Hampshire, when the car was involved in a front-end collision, causing the plaintiff to suffer severe injuries, in New Hampshire. *Id.*

In 2003, ten years before the plaintiff purchased the car in New Hampshire, DaimlerChrysler invoiced and shipped the car to a Rhode Island Chrysler dealership, which transferred the car to a Massachusetts Chrysler dealership, which, in turn, leased and then sold the car to a Massachusetts resident. *Add.* at 42. The vehicle was then resold in Massachusetts, before being sold, in 2010, to the New Hampshire resident who, in turn, sold the car to the plaintiff, in 2013. *Id.*

All of the jurisdictionally *relevant* facts underlying the plaintiff's claims--i.e., the state where the plaintiff lives, the state where he

⁶ See n.2 above, discussing succession in ownership between DaimlerChrysler and FCA US in prior bankruptcy proceedings, and FCA US's assumption of liability for certain claims against DaimlerChrysler.

purchased the car, and the state where he suffered the auto accident and resulting injury--point to New Hampshire, and not Massachusetts, as the state with the legitimate interest in exercising personal jurisdiction over FCA US. New Hampshire, and not Massachusetts, "ha[s] significant interests at stake--providing [its] residents with a convenient forum for redressing injuries inflicted by out-of-state actors, as well as enforcing [its] own safety regulations." *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1030 (2021) (cleaned up). In so allocating personal jurisdiction between sister states, "[t]he law of specific jurisdiction⁷ thus seeks to ensure that States with *little legitimate interest* in a suit do not encroach on States more affected by

⁷ This case implicates specific (case-linked) jurisdiction under the Due Process Clause, in which the plaintiff's claims "must arise out of or relate to the defendant's contacts with the forum." *Ford*, 141 S. Ct. at 1025 (cleaned up). This differs from general (all-purpose) jurisdiction, which would only apply if the defendant were essentially "at home" in the forum state, and would attach to claims arising anywhere in the world against the defendant. See *Ford*, 141 S. Ct. at 1024 (discussing same). A corporation is typically "at home" in just two jurisdictions: the state where it is incorporated and the state where it has its principal place of business. See *id.* FCA US is incorporated in Delaware and is headquartered in Michigan. See Add. at 43 (Superior Court Memorandum of Decision, at 3).

the controversy.” *Ford*, 141 S. Ct. at 1025 (discussing principle of “interstate federalism” animating due process limits on forum’s exercise of personal jurisdiction over nonresident defendant) (emphasis added).

A. The Plaintiff’s Claims Do Not “Arise From” The Defendant’s Massachusetts Contacts Under The Massachusetts Long-Arm Statute.

Nothing in the Massachusetts long-arm statute is to the contrary. That statute provides, in relevant part, that “[a] court may exercise personal jurisdiction over [a nonresident defendant] . . . as to a cause of action in law or equity *arising from* the [defendant’s] (a) transacting any business in this commonwealth.” G. L. c. 223A, § 3(a) (emphasis added).

This statutory language imposes two requirements: that the defendant was sufficiently transacting business in the Commonwealth at the time of the incident, and that the plaintiff’s claims “arise from” that in-state activity. See *Tatro v. Manor Care, Inc.*, 416 Mass. 763, 767 (1994) (discussing same). The “arising from” requirement means that the defendant’s Massachusetts contacts must be the but-for

cause of the plaintiff's subsequent out-of-state injury. See *Tatro*, 416 Mass. at 770-71.

Even if the defendant were sufficiently transacting business in Massachusetts at the time of the accident, the plaintiff's claims could not satisfy the long-arm statute because they did not "arise from" the defendant's Massachusetts contacts. First, neither the defendant nor its predecessor in interest, DaimlerChrysler, introduced the plaintiff's car to the Massachusetts market. Instead, that step was accomplished by the Rhode Island and Massachusetts dealerships, which are independent and legally separate corporate entities. Indeed, nothing in the long-arm statute "displace[s] bedrock principles of corporate common law. . . . One of the basic tenets of that body of law is that corporations--notwithstanding relationships between or among them--ordinarily are regarded as *separate and distinct entities*." *Scott v. NG U.S. 1, Inc.*, 450 Mass. 760, 765-66 (2008) (emphasis added).

Accordingly, the Massachusetts contacts of the dealerships should not be imputed to the nonresident defendant manufacturer, because they are each a separate and distinct legal entity. This result would

apply even if the dealerships had been subsidiaries of the defendant, and even if the defendant had exercised control over their operations. "Massachusetts respects the corporate form. . . . Even where a non-resident parent owns the controlling share of a subsidiary doing business in Massachusetts, personal jurisdiction does not exist unless the stringent Massachusetts veil-piercing test is satisfied." *In re Lupron Mktg. & Sales Practices Litig.*, 245 F. Supp. 2d 280, 298 (D. Mass. 2003) (declining, under Massachusetts long-arm statute, to impute Massachusetts contacts of subsidiary to nonresident parent corporation) (citing *My Bread Baking Co. v. Cumberland Farms, Inc.*, 353 Mass. 614, 618-19 (1968) (emphasis added)). See also *Scott*, 450 Mass. at 768 ("[C]ontrol, even pervasive control, without more, is not a sufficient basis for a court to ignore corporate formalities[.]").

And nowhere does the plaintiff allege facts even suggesting any inter-corporate wrongdoing by the defendant that could warrant a court of the Commonwealth to disregard the corporate form that separates the defendant from the dealerships. See *Andresen v. Diorio*, 349 F.3d 8, 12 (1st Cir. 2003)

(declining, under Massachusetts long-arm statute and Due Process Clause, to impute Massachusetts contacts of subsidiary to nonresident parent corporation, where plaintiff failed to allege or "show that the parent's control in this instance was so pervasive and detailed as to invoke the sham or alter ego labels.").⁸

Second, even if the dealerships' Massachusetts contacts were attributable to the defendant, the

⁸ See also *Scott*, 450 Mass. at 768 ("[T]he cases which have looked through the corporate form [involved] an element of dubious manipulation and contrivance and finagling. . . . Ultimately, the decision to disregard *settled expectations* accompanying corporate form requires a determination that the parent directed and controlled the subsidiary, and used it for an improper purpose, based on evaluative consideration of twelve factors.") (emphasis added).

Those twelve factors are:

- (1) common ownership;
- (2) pervasive control;
- (3) confused intermingling of business assets;
- (4) thin capitalization;
- (5) nonobservance of corporate formalities;
- (6) absence of corporate records;
- (7) no payment of dividends;
- (8) insolvency at the time of the litigated transaction;
- (9) siphoning away of corporation's funds by dominant shareholder;
- (10) nonfunctioning of officers and directors;
- (11) use of the corporation for transactions of the dominant shareholders; and
- (12) use of the corporation in promoting fraud.

Scott, 450 Mass. at 768 (cleaned up).

plaintiff's claims would still not "arise from" those imputed contacts, because the defendant did not transact any business with the plaintiff in Massachusetts (or anywhere else, for that matter). After all, the Massachusetts dealership leased and then sold the vehicle in Massachusetts to *third parties*, who have nothing to do with the plaintiff. "[A] defendant's relationship with a *third party*, standing alone, is an insufficient basis for [exercising personal] jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1780 (cleaned up) (emphasis added).

For this salient reason alone, *Tatro* is altogether distinguishable from this case. In particular, the plaintiff in *Tatro* was a Massachusetts resident who, in response to a California hotel's solicitation of conference business in Massachusetts, reserved a hotel room with the California hotel in Massachusetts and subsequently suffered an injury in her reserved hotel room in California. See *Tatro*, 416 Mass. at 765-66. This initial contractual relationship, formed between *the plaintiff and the defendant* in Massachusetts, ultimately resulted in the plaintiff's injury in California. See *id.* at 766. Accordingly, this Court concluded that the plaintiff's

claims "arose from" the defendant's Massachusetts activity because that activity was the necessary "first step in a train of events that result[ed] in [the plaintiff's] personal injury" in California. *Tatro*, 416 Mass. at 770.

Under *Tatro*, then, a Massachusetts plaintiff who alleges a personal injury suffered in another state must show that the nonresident defendant took the necessary "first step" with the plaintiff in Massachusetts that ultimately resulted in the out-of-state injury. In this case, however, the defendant never took any such necessary first step with the plaintiff in Massachusetts (or anywhere else). The only "first step" that the defendant took in Massachusetts with respect to the plaintiff's car, if any at all,⁹ was with unrelated third parties. This is an inadequate basis for establishing personal jurisdiction. See *Bristol-Myers*, 137 S. Ct. at 1780 (discussing same). The lack of any "first step" between the plaintiff and defendant in Massachusetts distinguishes this case from *Tatro* and, therefore,

⁹ See NELF's argument, above, that the core principle of corporate separateness should preclude imputing the jurisdictional contacts of the dealerships to the defendant.

prevents the plaintiff from establishing that his claims "arose from" the defendant's Massachusetts activity under the long-arm statute.

B. The Plaintiff's Claims Do Not "Arise Out Of Or Relate To" The Defendant's Massachusetts Contacts Under The Due Process Clause.

In any event, *Bristol-Myers* should defeat the plaintiff's attempt to establish personal jurisdiction under the Due Process Clause. In *Bristol-Myers*, the Supreme Court held that due process prohibited a court of the forum state of California from exercising specific personal jurisdiction over a nonresident manufacturer where, as here, the plaintiffs were residents of other states who purchased, used, and allegedly suffered harm from the allegedly defective product in their states of residence, and not in the forum state. "[T]he nonresidents were not prescribed [the drug] Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Bristol-Myers*, 137 S. Ct. at 1781.

This pointed summary by the Supreme Court of the key jurisdictional facts in *Bristol-Myers* applies with equal force to the jurisdictional facts in this case, i.e., a nonresident plaintiff who purchases, uses and

suffers an injury from the allegedly defective product in his state of residence. In each case, there is virtually no nexus between the forum and the plaintiff's claims.

In particular, the Due Process Clause requires the plaintiff to show that the defendant "purposefully avail[ed] itself of the privilege of conducting activities within the forum State," and that the plaintiff's claims "ar[is]e out of or relate[d] to the defendant's contacts with the forum." *Ford*, 141 S. Ct. at 1024-1025 (cleaned up). Even if FCA US purposefully availed itself of the Massachusetts market for selling its cars, the plaintiff could not show that his claims "arise out of or relate to" the defendant's Massachusetts contacts.

First, as with this Court's interpretation of the long-arm statute's "arising from" language in *Tatro*, discussed above, the Supreme Court has held that a claim "arises out of" the defendant's forum contacts if those contacts are the but-for cause of the claim. See *Ford*, 141 S. Ct. at 1026. For all of the reasons that amicus has stated above, the plaintiff cannot establish that FCA US's Massachusetts contacts caused

him to suffer injury in the car accident in New Hampshire.

Second, the plaintiff's claims do not "relate to" the defendant's forum contacts. Under this "relatedness" prong of the Supreme Court's Due Process test, "there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Ford*, 141 S. Ct. at 1026 (cleaned up) (emphasis added). However, in this case, as in *Bristol-Myers*, the relevant activity or occurrence pertaining to the plaintiff's claims--i.e., the purchase and use of the disputed product, and the personal injury allegedly resulting from its use--took place in the plaintiff's state of residence, and not in the forum state.

In sharp contrast to *Bristol-Myers* and this case, the plaintiffs in the (consolidated) *Ford* case established personal jurisdiction because they were residents of the forum states, and they suffered injuries in the forum states from auto accidents involving the defendant's vehicles that occurred in the forum states. See *Ford*, 141 S. Ct. at 1023. In

short, the plaintiff's product liability claims in this case align with the unsuccessful *Bristol-Myers* plaintiffs, and not with the successful *Ford* plaintiffs.

Moreover, even if the dealerships' introduction of the disputed vehicle to the Massachusetts market were imputable to the defendant, those Massachusetts contacts would be irrelevant to establishing personal jurisdiction under the Due Process Clause, just as they would be irrelevant under *Tatro* and the long-arm statute, discussed above. See *Ford*, 141 S. Ct. at 1030 (rejecting defendant's argument that plaintiffs should have filed suit in jurisdictions where defendant originally sold cars to third parties, or in jurisdictions where cars were designed or manufactured).

In rejecting the defendant's argument that the plaintiffs should have sued in the states of original sale of their used vehicles, the Supreme Court in *Ford* first identified the significant interests of the forum states, where, unlike here, the plaintiffs resided and were injured from an auto accident--namely, "providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-

state actors, as well as enforcing their own safety regulations." *Ford*, 141 S. Ct. at 1030 (cleaned up). In the case at bar, this rationale would apply to the plaintiff's state of residence of New Hampshire, and not the forum state of Massachusetts.

The Court in *Ford* then contrasted these strong state interests with the remote and weak interest of the states of original sale (in this case, Massachusetts), in words that resonate strongly with the jurisdictional facts of this case:

For each of those States [of original sale], the suit involves all *out-of-state parties*, an *out-of-state accident*, and *out-of-state injuries*; the suit's only connection with the State is that a former owner once (many years earlier) bought the car there. In other words, there is a less significant relationship among the defendant, the forum, and the litigation [in the state of original sale]. . . . [Such a] regime would *undermine*, rather than promote, what [Ford] calls the Due Process Clause's 'jurisdiction-allocating function.'

Ford, 141 S. Ct., at 1030 (emphasis added).

In sum, *Ford* precludes the state of original sale of the plaintiff's vehicle from exercising personal jurisdiction over the nonresident manufacturer when, as here, "the suit involves all out-of-state parties, an out-of-state accident, and out-of-state injuries."

Ford, 141 S. Ct., at 1030. Therefore, the plaintiff cannot establish that his claims "relate to" the defendant's Massachusetts contacts under the Due Process Clause. Accordingly, this Court should affirm the Superior Court's dismissal of this case for lack of personal jurisdiction.

II. THE PLAINTIFF SHOULD NOT BE ALLOWED TO CONDUCT JURISDICTIONAL DISCOVERY BECAUSE HE HAS FAILED TO ALLEGE FACTS THAT COULD ESTABLISH PERSONAL JURISDICTION UNDER EITHER THE LONG-ARM STATUTE OR THE DUE PROCESS CLAUSE.

Finally, the plaintiff should not be entitled to jurisdictional discovery. In addition to the defendant's argument that the plaintiff has waived this issue, by failing to raise it below, the plaintiff has also failed to allege jurisdictional facts that could satisfy either the long-arm statute or due process. It bears repeating that the plaintiff alleges that he is a resident of New Hampshire who purchased the vehicle in New Hampshire, was in an auto accident in New Hampshire, and suffered an injury in New Hampshire. For all of the reasons that amicus has discussed above, none of these jurisdictional facts "arose from" the defendant's Massachusetts activity under the long-arm statute, or "arose out of or

related to" the defendant's Massachusetts contacts under the Due Process Clause.

Therefore, no amount of discovery in the world could change the fact that the plaintiff cannot establish specific personal jurisdiction over the defendant in Massachusetts. See *B. Bullen v. Cohnreznick, LLP*, 35 Mass. L. Rptr. 557, 2019 WL 3331280, at *2 n.4 (Mass. Super. June 17, 2019) (Salinger, J.) ("Trial courts have broad discretion to decide whether discovery is required on the issue of personal jurisdiction. . . . [T]he undisputed facts . . . make it clear that any exercise of general jurisdiction over [the defendant] would be unconstitutional. No discovery can change the fact that [the defendant] is not at home here.") (cleaned up). Simply put, the plaintiff's "failure to allege specific contacts, relevant to establishing personal jurisdiction [in Massachusetts], in a jurisdictional discovery request [should] be fatal to that request." *Pettengill v. Curtis*, 584 F. Supp.2d 348, 361 (D. Mass. 2008) (cleaned up).

CONCLUSION

For the foregoing reasons, NELF respectfully requests that the Court affirm the judgment of the Superior Court.

Respectfully submitted,

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Dated: January 13, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I certify that this brief complies with the requirements of Mass. R. App. P. 17 and 20. I also certify that I ascertained compliance with the length limit of Mass. R. App. P. 20(a)(2)(C), by composing this brief on Microsoft Word 2010 in 12-point Courier New. Pursuant to Mass. R. App. P. 20(a)(2)(D), I further certify that the number of pages to be counted in this brief is 20.

/s/ Ben Robbins

Ben Robbins

CERTIFICATE OF SERVICE

I, Ben Robbins, hereby certify that on this 13th day of January, 2023, I served the within Brief Of Amicus Curiae New England Legal Foundation In Support Of The Defendant-Appellee, in *Amy Doucet, et al. v. FCA US LLC*, No. SJC-13354, by causing it to be delivered by eFileMA.com to counsel for the Defendant-Appellee, Peter M. Durney, pdurney@cornellgollub.com. I also certify that, on the same day, I emailed a pdf copy of the brief to counsel for the plaintiffs-appellants, Andrew D. Nebenzahl, anebenzahl@neblawgroup.com, whose name did not appear on the eFileMA.com service list.

Signed under penalties of perjury.

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