

## [Products Liability Law Daily Wrap Up, SUPREME COURT—JURISDICTION—U.S.: Clarification sought on causal link necessary for personal jurisdiction, \(Apr. 10, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

The issue of whether a Delaware-based pharmaceutical manufacturer's clinical trials in Illinois were sufficient minimum contacts to allow a court in that state to exercise personal jurisdiction over the company is at the heart of a petition seeking U.S. Supreme Court review of an Illinois appellate panel's decision affirming a state trial court's refusal to dismiss out-of-state product liability claims against the maker of the prescription drug Paxil by women whose infants had been born with birth defects allegedly resulting from their mothers' ingestion of the antidepressant while pregnant. In its petition for certiorari, the drug maker queried whether a meaningful causal link between a non-resident defendant's forum-state contacts and a plaintiff's claim is necessary in order for the claim to be said to "arise out of or relate to" the non-resident defendant's forum-state contacts for purposes of specific personal jurisdiction (*GlaxoSmithKline LLC v. M.M. ex rel. Meyers*, cert. filed March 23, 2017).

GlaxoSmithKline LLC (GSK)—a pharmaceutical company incorporated in Delaware with corporate and administrative headquarters in Pennsylvania and North Carolina—manufactures Paxil, a prescription medication designed to treat depression, obsessive compulsive disorder, and anxiety. Between 1985 and 2003, GSK conducted 18 preclinical and clinical trials on the drug in Illinois.

In 2014, eight women who had ingested Paxil during their pregnancies and whose babies had been born with catastrophic birth defects filed a product liability lawsuit against the company on their children's behalf, alleging that Paxil was defectively designed, that GSK had failed to warn about the medication's alleged dangers if used during pregnancy, and that the drug maker was negligent, had breached warranties, and had negligently misrepresented and concealed the risk of Paxil use during pregnancy.

GSK moved to dismiss the out-of-state plaintiffs' claims on the grounds that Illinois was neither its state of incorporation nor its principal place of business, and that its business activities within the state did not render it subject to personal jurisdiction there. The trial court denied the company's motion and an appellate panel affirmed the trial court's decision [see *Products Liability Law Daily's* August 29, 2016 [analysis](#)].

**Petitioner's arguments.** Arguing that the petition presents a question about personal jurisdiction that has deeply split state high courts and the federal courts of appeal, GSK noted that six courts adhere to a proximate-causation standard while five—including the Illinois appellate court—have adopted a but-for causation standard. Four other courts apply an even looser standard that does not require any showing of causation.

Noting that the High Court already has granted certiorari during the current term in order to resolve the causal link versus no causal link side of the judicial split, GSK contended that stopping there would leave the lower courts without guidance. A split still would exist as to the level of causation applicable, the petitioner maintained. Moreover, because but-for causation lacks any limiting principle, it would accomplish little to reject the non-causal standard at issue in the previously accepted certiorari petition only to leave in place a but-for standard that is no more predictable and only marginally less malleable in its application, the drug maker said.

Therefore, the High Court should hold in the earlier case that a proximate causal link is required, GSK asserted. However, if the Court determines in that case only that *some* form of causation is required, then the instant petition should be granted because the circumstances present an excellent vehicle in which to decide the but-for versus proximate cause side of the authority split. At a minimum, the Court should hold the instant petition pending until its decision in the earlier case, GSK advanced.

Furthermore, if the Court opts not to resolve the proximate versus but-for causation issue in the earlier case, it should grant the instant petition in order to do so. The Illinois Appeals Court's decision powerfully illustrates the problems with not requiring a proximate causal link between a plaintiff's claim and the defendant's forum-state activities, GSK stated, arguing that the portion of its clinical-trial program that occurred in Illinois was far too miniscule to be viewed as a proximate cause of the aggrieved mothers' claims.

Proximate causation exists precisely to weed out such distant, attenuated, and insignificant events, GSK averred, adding that the fundamental problem with but-for causation is that many things can be but-for causes without being meaningful causes. The relatedness requirement is what is supposed to distinguish specific, or case-linked, jurisdiction from general, or all-purpose, jurisdiction, GSK said, explaining that a relatedness standard so low as to encompass links in a historical chain that are not material causes of the plaintiff's claim would fail to perform that basic function.

**Question presented.** Ergo, the pharmaceutical company is seeking High Court clarification on the following question: "For a claim to 'arise out of or relate to' a defendant's forum-state contacts, must there be a meaningful causal link between the defendant's forum-state contacts and the plaintiff's claim?"

The case is No. [16-1171](#).

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