

No. A-_____

In the Supreme Court of the United States

MURCO WALL PRODUCTS, INC.,

Applicant,

v.

MICHAEL D. GALIER,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF OKLAHOMA**

Pursuant to 28 U.S.C. § 2101(d) and Rule 13.5 of the Rules of this Court, applicant Murco Wall Products, Inc. respectfully requests a 60-day extension of time, to and including Friday, March 24, 2023, within which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Oklahoma in this case. The Oklahoma Supreme Court issued its opinion on October 25, 2022. See App., *infra*. Unless extended, the time to file a petition for a writ of certiorari will expire on January 23, 2023. This application complies with Rules 13.5 and 30.2 because it is being filed ten or more days before the petition is due. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a).

1. Murco is a family owned and operated company that has been a supplier of drywall materials since 1971. App., *infra*, 2. It is incorporated in Texas and maintains its principal place of business in Fort Worth, Texas. *Ibid*. Murco's product line included joint compound products, some of which contained asbestos from

1971 to 1978. Tr. of Proceedings, Afternoon Session 53-54, 164, *Galier v. Murco Wall Products, Inc.*, No. CJ-2012-6920 (Okla. Dist. Ct. May 5, 2015). Respondent Michael Galier, a citizen of Oklahoma, injured himself at work and was diagnosed with a hernia in 2011. Tr. of Proceedings, Afternoon Session 124-25, *Galier v. Murco* (May 11, 2015). Following hernia surgery, the excised hernia sac was sent for routine pathology, where it tested positive for mesothelioma. *Id.* at 125. Galier has never exhibited any symptom of mesothelioma, and every subsequent test for mesothelioma has been negative. *Id.* at 126-139, 141-142. He also has not sought treatment for mesothelioma. *Id.* at 138-39. Nonetheless, in November 2012, he brought a personal-injury case in Oklahoma state court against 18 manufacturers of asbestos-containing products, including Murco. Pet. 1, *Galier v. Borg-Warner Morse Tec Inc. et al.*, No. CJ-2012-6920 (Okla. Dist. Ct. Nov. 1, 2012). His theory is that he was exposed to asbestos as a child when, between 1969 and 1979, he visited job sites in Oklahoma at which his father was a contractor. Tr. of Proceedings, Afternoon Session 31, 151, *Galier v. Murco* (May 11, 2015).

Murco has consistently maintained that the state trial court lacked personal jurisdiction over it. Murco is not based in Oklahoma and has never had an office, property, or employees in that State. At most, the evidence showed that, during the 1970s, Murco made limited sales of both asbestos-containing and non-asbestos products to seven customers with Oklahoma addresses and that Murco maintained a sales person who covered an area within “about a 300 mile radius of Fort Worth.” App., *infra*, 4. At trial, Galier admitted that at his deposition he omitted Murco

from the alphabetical list of joint compound brands he recalled playing with as a child, after which his lawyer demanded a break. Tr. of Proceedings, Afternoon Session 98, *Galier v. Murco* (May 11, 2015). After prompting from his lawyer during the break, he added that he also remembered seeing Murco's name on boxed joint compound as a young child in the 1970s. *Id.* at 99. He could not say whether that product contained asbestos. *Id.* at 109; see App., *infra*, 4 n.2. Murco's records showed that, during that period, it sold both asbestos-containing and non-asbestos boxed compound. Tr.f Proceedings, Afternoon Session 99, *Galier v. Murco* (May 7, 2015).

The trial court held that Murco was subject to general personal jurisdiction in Oklahoma. App., *infra*, 4-5. Murco sought interlocutory review, to no avail. By the time of trial, only three defendants remained. *Galier v. Murco Wall Prods., Inc.*, No. 114,175, slip. op. ¶ 2 (Okla. Ct. Civ. App. Feb. 3, 2017). The jury returned a \$6 million award in favor of Galier and assigned 40% of the liability to Murco. *Id.* ¶ 3. Murco appealed, arguing (among other things) that the judgment was void because the trial court lacked personal jurisdiction over it. *Id.* ¶ 44. The Oklahoma Court of Civil Appeals court affirmed, concluding that Murco's contacts with Oklahoma supported the exercise of general personal jurisdiction. *Id.* ¶¶ 45-46. The Oklahoma Supreme Court denied discretionary review. Order, No. 114,175 (Okla. June 19, 2017). Murco then filed a petition for a writ of certiorari in this Court. The Court granted the petition, vacated the appellate court's decision, and remanded the case for further consideration in light of the Court's decision in *Bristol-Myers Squibb v.*

Superior Court, 137 S. Ct. 1773 (2017). See *Murco Wall Prods., Inc. v. Galier*, 138 S. Ct. 982 (2018).

On remand, the Oklahoma Court of Civil Appeals switched tack, holding that Murco was subject to specific personal jurisdiction in Oklahoma. App., *infra*, 6-7. Murco sought discretionary review in the Oklahoma Supreme Court, which granted review and affirmed. *Id.* at 7. In its view, Murco had sufficient minimum contacts with Oklahoma because its sales person’s coverage area of 300 miles around Fort Worth included parts of Oklahoma (although there was no evidence that the sales person actually visited Oklahoma) and because of Murco’s sales to customers with Oklahoma addresses, including one customer to which Murco sold products with both its own label and the customer’s private label. *Id.* at 11-12. The court then held that Galier’s claim arose out of or related to Murco’s Oklahoma contacts consistent with *Ford v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021). In the court’s view, under *Ford*, Galier did not have to prove a “direct link” between Murco’s sales to Oklahoma-based customers and his exposure to asbestos. *Id.* at 15-17. The court held that it was enough that Murco had sold *some* asbestos-containing products to Oklahoma-based customers and that Galier claimed that he had been exposed to some of Murco’s asbestos-containing products (although he could not identify which ones). *Ibid.*

2. Among other things, the petition for certiorari will argue that review is warranted because the Oklahoma Supreme Court’s personal-jurisdiction analysis is

in clear tension with the approach taken by other appellate courts and is inconsistent with this Court's rulings.

The Oklahoma court's holding that Murco had sufficient minimum contacts with Oklahoma implicates an acknowledged and longstanding circuit split over when a company can be held to have sufficient contacts with a forum state because its products ended up in that state. This Court has twice granted certiorari to resolve that issue, but both times no position commanded a majority of the Court. See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 885-886 (2011) (plurality op.); *id.* at 888-889 (Breyer, J., concurring); *Asahi Metals Indus. Co. v. Superior Ct.*, 480 U.S. 102, 108-112 (1987) (lead opinion of O'Connor, J.); *id.* at 116-117 (1987) (Brennan, J., concurring). In the absence of guidance from this Court, appellate courts have taken different approaches; some have held that it is enough if it was foreseeable that the products would end up in the forum state, while others require something "more," such as intentional targeting of the state. See *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 341-342 (W. Va. 2016) (describing the different approaches). In this case, there is no evidence that Murco made any sales in Oklahoma or otherwise sought to target the Oklahoma market. All that the evidence shows is that Murco made a limited number of sales to seven Oklahoma-based customers – but there is no indication that those sales took place in Oklahoma or that Murco knew (much less intended) that those customers would use or resell its products *in Oklahoma*. So at most, the evidence shows that it might have been foreseeable that Murco's products would be used in Oklahoma. That would not have been

enough in the many circuits and states that require something more than foreseeability. See, e.g., *ESAB Grp. v. Zurich Ins.*, 685 F.3d 376, 392 (4th Cir. 2012). Review is warranted to resolve that circuit split.

Further, the Oklahoma Supreme Court's holding that Galier's claim arose out of or related to Murco's contacts with Oklahoma is inconsistent with this Court's decision in *Ford*. There, the Court made clear that due process requires a "strong" relationship between the plaintiff's claim and the defendant's contacts. 141 S. Ct. at 1028. In particular, the Court warned that, in a products-liability case, due process may not be satisfied if the defendant did not sell in the forum state the exact product that allegedly caused the plaintiff's injury. *Ibid*. The Oklahoma Supreme Court ignored that admonition; it glossed over the fact that Galier could not identify *any* asbestos-containing product made by Murco to which he claimed to have been exposed. In effect, it held that Galier's claim was sufficiently related to Murco's forum contacts merely because some of Murco's products used in Oklahoma may have contained asbestos, and Galier is claiming exposure to asbestos. That is the type of "anything goes" approach that this Court rejected in *Ford*. *Id.* at 1026.

3. Murco requests this extension of time to file the petition for a writ of certiorari because undersigned counsel were not responsible for the preparation of Murco's briefs in the Oklahoma state courts and were not retained to prepare the petition for certiorari until early January 2023. They accordingly seek additional time to review and familiarize themselves with the record and with the issues presented here.

In addition, counsel primarily responsible for preparing the petition also have responsibility for a number of other matters with proximate due dates, including *Celanese International Corp. v. ITC*, No. 22-1827 (Fed. Cir.) (intervenor’s brief due January 27, 2023); *Anderson v. TikTok, Inc.*, No. 22-3061 (3d Cir.) (appellee’s brief due February 8, 2023); and *Ohl v. CSX Transportation, Inc.*, No. 22-13298 (11th Cir.) (appellee’s brief due February 13, 2023). Accordingly, an extension of time is warranted.

For the foregoing reasons, the application for a 60-day extension of time, to and including March 24, 2023, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully submitted.

/s/ Evan M. Tager
EVAN M. TAGER*
MINH NGUYEN-DANG
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000
etager@mayerbrown.com

* *Counsel of Record*

January 9, 2023