

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel. NORFOLK)	
SOUTHERN RAILWAY COMPANY,)	
)	
Relator,)	
)	
v.)	Cause No. SC SC95514
)	
HONORABLE COLLEEN DOLAN,)	
JUDGE OF THE TWENTY-FIRST)	
JUDICIAL CIRCUIT IN THE COUNTY)	
OF ST. LOUIS, DIVISION 20,)	
)	
Respondent.)	

RELATOR'S BRIEF IN SUPPORT OF PETITION FOR WRIT

OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS

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JURISDICTIONAL STATEMENT

This Court has jurisdiction of this proceeding pursuant to Article V, Section 4.1 of the Missouri Constitution, which provides that “[t]he Supreme Court shall have general superintending control over all courts and tribunals” and “may issue and determine original remedial writs.” Section 530.020 of the Missouri Revised Statutes further provides that this Court “shall have power to hear and determine proceedings in prohibition.” Mo. Rev. Stat. § 530.020.

This is an original petition for writ of prohibition or, in the alternative, mandamus to the Missouri Supreme Court requesting that this Court issue a permanent writ to Respondent preventing the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over Norfolk Southern Railway Company (“NSRC”) or, in the alternative, directing Respondent to vacate her December 21, 2015, Order and grant NSRC’s Motion to Dismiss Plaintiff’s Petition for lack of personal jurisdiction.

This proceeding affords the Court the opportunity to answer two open questions in the State of Missouri: (1) whether Missouri, in light of the United States Supreme Court’s ruling in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), can exercise personal jurisdiction over a corporation that is neither incorporated nor headquartered in Missouri, sued by a foreign plaintiff, based on allegations lacking any connection to the State of Missouri, and (2) whether the Due Process Clause of the Fourteenth Amendment bars Missouri from exercising personal jurisdiction over a foreign corporation based solely on its compliance with Missouri’s business registration statutes requiring registration as a

foreign corporation and designation of an agent in Missouri for service of process (*see* Mo. Rev. Stat. §§ 351.572, 351.576, 351.582, 351.586).

STATEMENT OF FACTS

In the underlying lawsuit, Russell Parker (“Plaintiff”) filed a Petition in the Twenty-First Judicial Circuit Court of St. Louis County, Missouri (*Russell Parker v. Norfolk Southern Railway Company*, Case No. 15SL-CC02095), pursuant to the Federal Employers’ Liability Act, 45 U.S.C. § 51 *et seq.* (“FELA”). (Plaintiff’s Petition, A038¹-A042). Plaintiff, a resident of the State of Indiana, seeks damages for cumulative trauma injuries allegedly sustained during the course of his employment with NSRC, a Virginia corporation with its principal place of business in Virginia. (Plaintiff’s Petition, A038-A042; K. Swain Affidavit, ¶ 2, A051; Plaintiff’s Response to Motion to Dismiss, A063). Plaintiff did not work in the State of Missouri over the course of his working career with NSRC. (Plaintiff’s Petition, A038-A042; Respondent’s Answer, ¶ 3, A584).

NSRC moved to dismiss Plaintiff’s Petition for lack of personal jurisdiction on August 13, 2015. (A043-A061). Plaintiff responded to NSRC’s motion on September 25, 2015, and did not challenge any of the jurisdictional facts asserted by NSRC or provide any evidence indicating that he ever worked in Missouri. (A062-A428). Rather, Plaintiff’s response was that NSRC consented to personal jurisdiction in Missouri by

¹ Appendix citations are to documents included in the Appendix filed contemporaneously with this brief.

registering to do business as a foreign corporation in Missouri and designating an agent for service of process in Missouri, or that NSRC was “at home” in Missouri because it regularly transacts business in Missouri. (*Id.*). NSRC replied in support of its motion on October 13, 2015, and the parties each filed notices of supplemental authority thereafter. (A429-A462).

NSRC’s motion was argued before Judge Dolan on November 18, 2015. (11/18/15 Order, A463). Judge Dolan took the matter under advisement. (*Id.*). NSRC filed an additional notice of supplemental authority on December 7, 2015. (A464-A481).

On December 21, 2015, Judge Dolan issued her Order summarily denying NSRC’s motion to dismiss. (A482). In doing so, Judge Dolan did not make a finding as to whether NSRC was subject to general or specific jurisdiction, nor whether NSRC was subject to jurisdiction based on a theory of consent. (*Id.*).

NSRC filed a Petition for Writ of Prohibition or, In the Alternative, Writ of Mandamus with the Missouri Court of Appeals, Eastern District, on January 11, 2016, with accompanying Suggestions in Support. (A483-A507). Respondent filed Suggestions in Opposition with the Missouri Court of Appeals, Eastern District, on January 22, 2016. (A508-A520). The Court of Appeals denied NSRC’s writ petition on January 29, 2016. (A521).

NSRC filed a Petition for Writ of Prohibition or, In the Alternative, Writ of Mandamus with this Court on February 5, 2016, with accompanying Suggestions in Support. (A001-A035). On February 19, 2016, NSRC requested leave to file Supplemental Suggestions in Support of its Petition. (A522-A523). This Court granted

NSRC's request for leave on February 22, 2016. (A524). NSRC's Supplemental Suggestions in Support alerted this Court to a recent opinion from the United States Court of Appeals for the Second Circuit on the issues raised in NSRC's Petition. (A525-A581).

On April 5, 2016, this Court issued its preliminary writ of prohibition. (A582). The preliminary writ required Respondent to respond to NSRC's Petition by May 5, 2016, and commanded Respondent to take no further action in the underlying proceeding. (*Id.*). Respondent filed her Answer and Return to NSRC's Petition on May 4, 2016. (A583-A704). That response admitted all of the salient facts forming the basis of NSRC's jurisdiction objection, including the following:

- Plaintiff is a resident of the State of Indiana (Relator's Petition for Writ, ¶ 2, A002; Respondent's Answer, ¶ 2, A584);
- Plaintiff did not work in the State of Missouri over the course of his working career with NSRC (Relator's Petition for Writ, ¶ 3, A002; Respondent's Answer, ¶ 3, A584); and
- NSRC is a corporation incorporated in the Commonwealth of Virginia, with its principal place of business in Virginia (Relator's Petition for Writ, ¶ 4, A002; Respondent's Answer, ¶ 4, A584).

POINTS RELIED ON

- I. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because Missouri Courts lack specific jurisdiction over NSRC when the allegations in the underlying Petition do not arise from or relate to NSRC’s activities in Missouri.**

Brown v. Lockheed Martin Corp., 814 F.3d 619 (2d Cir. 2016)

Chromalloy American Corp. v. Elyria Foundry Co., 955 S.W.2d 1 (Mo. banc 1997)

International Shoe Co. v. Washington, 326 U.S. 310 (1945)

Statutes

Mo. Rev. Stat. § 506.500

- II. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because Missouri Courts lack general jurisdiction over NSRC when NSRC is not incorporated in Missouri, does not have a principal place of business in Missouri, and cannot be regarded as “essentially at home” in Missouri.**

Brown v. Lockheed Martin Corp., 814 F.3d 619 (2d Cir. 2016)

Daimler AG v. Bauman, 134 S. Ct. 746 (2014)

Neeley v. Wyeth LLC, No. 4:11-cv-00325, 2015 WL 1456984 (E.D. Mo. May 4, 2015)

Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952)

III. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because NSRC did not consent to jurisdiction in the underlying matter and the Due Process Clause of the Fourteenth Amendment prohibits a finding that a foreign corporation consented to jurisdiction based on compliance with mandatory business registration requirements.

Daimler AG v. Bauman, 134 S. Ct. 746 (2014)

State ex rel. K-Mart Corp. v. Holliger, 986 S.W.2d 165 (Mo. banc 1999)

Genuine Parts Co. v. Cepec, __ A.3d __, 2016 WL 1569077 (Del. Apr. 18, 2016)

Brown v. Lockheed Martin Corp., 814 F.3d 619 (2d Cir. 2016)

Statutes

Conn. Gen. Stat. § 33-920

Conn. Gen. Stat. § 33-926

Conn. Gen. Stat. § 33-929

Mo. Rev. Stat. § 351.572

Mo. Rev. Stat. § 351.586

Mo. Rev. Stat. § 351.594

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ARGUMENT

Until the mid-20th century, personal jurisdiction jurisprudence was based on the United States Supreme Court's holding in *Pennoyer v. Neff*, 95 U.S. 714 (1877), which held that a State court's jurisdiction over non-resident defendants could not be exercised beyond the State's borders. The United States Supreme Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), changed this territorial approach to jurisdiction, leading to the development of two distinct categories of personal jurisdiction – specific personal jurisdiction and general personal jurisdiction. *Daimler*, 134 S. Ct. at 754. Specific jurisdiction is authorized when a corporation's in-state activities give rise to the liabilities sued on. *Id.* (citing *International Shoe*, 326 U.S. at 317); *see also Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227, 232 (Mo. banc 2010). General jurisdiction, on the other hand, allows a court to exercise jurisdiction over a corporation for causes of action entirely unrelated to the corporation's in-state activities. *Daimler*, 134 S. Ct. at 754 (citing *International Shoe*, 326 U.S. at 318); *see also Bryant*, 310 S.W.3d at 232. A court may also acquire jurisdiction over a defendant through waiver or

consent in certain limited circumstances. *Bryant*, 310 S.W.3d at 232; *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-04 (1982). Regardless of the basis, “a [State’s] assertion of jurisdiction exposes defendants to the State’s coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment’s Due Process Clause.” *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011).

In her December 21, 2015, Order, Respondent did not specifically rule on whether NSRC is subject to either specific or general personal jurisdiction, or whether NSRC consented to personal jurisdiction through its compliance with Missouri’s mandatory business registration requirements. (12/21/15 Order, A482). However, as set forth herein, the pertinent law on personal jurisdiction in Missouri and as recently clarified by the United States Supreme Court demonstrates that there is no basis for exercising personal jurisdiction over NSRC in the underlying matter.

Standard of Review²

Section 530.020 of the Missouri Revised Statutes provides that this Court “shall have power to hear and determine proceedings in prohibition.” Mo. Rev. Stat. § 530.020. Section 530.010 further provides, “[t]he remedy afforded by the writ of prohibition shall be granted to prevent usurpation of judicial power, and in all cases where the same is now applicable according to the principles of law.” Mo. Rev. Stat. § 530.010. Prohibition is an appropriate remedy where a trial court erroneously exercises personal jurisdiction over

² This standard applies to each point in this Argument section.

a defendant. *State ex rel. Riverside Joint Venture v. Mo. Gaming Comm’n*, 969 S.W.2d 218, 221 (Mo. banc 1998).

A writ of mandamus will issue where a court “has acted unlawfully or wholly outside its jurisdiction or authority or has exceeded its jurisdiction, and also where it has abused whatever discretion may have been vested in it.” *State ex rel. Office of Public Counsel v. Public Service Comm’n of State*, 236 S.W.3d 632, 635 (Mo. banc 2007) (quoting *State ex rel. Keystone Laundry & Dry Cleaners, Inc. v. McDonnell*, 426 S.W.2d 11, 14 (Mo. 1968)).

A writ of prohibition or mandamus should issue here because Respondent erroneously exercised personal jurisdiction over NSRC, in contravention of NSRC’s due process rights. The *Daimler* Court unequivocally held that foreign corporations have due process rights that must be considered when exercising jurisdiction over such defendants. Under *Daimler*, the Missouri Circuit Court lacks personal jurisdiction over NSRC to hear a case that has no relation to and no contacts with the State of Missouri.

I. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because Missouri Courts lack specific jurisdiction over NSRC when the allegations in the underlying Petition do not arise from or relate to NSRC’s activities in Missouri.

For a non-resident defendant to be subject to specific personal jurisdiction in Missouri, the plaintiff’s claims against that defendant must arise out of the activities

enumerated in the Missouri long-arm statute. *See Chromalloy American Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 4 (Mo. banc 1997). The Missouri long-arm statute provides, in pertinent part, that:

Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action **arising from** the doing of any of such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;
- (4) The ownership, use, or possession of any real estate situated in this state;
- (5) The contracting to insure any person, property or risk located within this state at the time of contracting[.]

Mo. Rev. Stat. § 506.500.1 (emphasis added). “Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.” Mo. Rev. Stat. § 506.500.3; *see also International Shoe*, 326 U.S. at 319 (noting that specific jurisdiction is proper if

obligations being sued on “arise out of or are connected with the activities” of foreign corporation within the state).

Respondent concedes that the long-arm statute does not apply to this case. (Respondent’s Answer, ¶ 21, A586). Respondent admits that Plaintiff is an Indiana resident and never worked in Missouri for NSRC. (Relator’s Petition for Writ, ¶¶ 2-3, A002; Respondent’s Answer, ¶¶ 2-3, A584). Similarly, Plaintiff’s Petition in the underlying matter failed to allege that any NSRC activities in Missouri gave rise to Plaintiff’s claims. (A038-A042). Plaintiff also never challenged the assertion that his claims did not arise out of any NSRC activities in Missouri. (Plaintiff’s Response in Opposition to NSRC’s Motion to Dismiss, A062-A428).

The fact that NSRC does business in Missouri has no bearing on the specific jurisdiction analysis, despite Respondent’s assertion to the contrary. (Respondent’s Answer, ¶¶ 21-32, A586-A591). Plaintiff’s alleged injuries in the underlying matter are unrelated to NSRC’s contacts with Missouri. Therefore, NSRC is not subject to specific personal jurisdiction in Missouri. *See, e.g., Smith v. Union Carbide Corp.*, Case No. 1422-CC00457, 2015 WL 191118 at *1, 2 (Mo. Cir. Ct. Jan. 12, 2015) (“The Petition does not allege that [defendant] committed any act in Missouri in connection with Plaintiff’s claims. Therefore, the Court lacks specific personal jurisdiction over [defendant.]”); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 625 (2d Cir. 2016) (noting that because injury did not arise of out defendant’s Connecticut activities, specific jurisdiction does not apply); *Keeley v. Pfizer, Inc.*, No. 4:15-CV-00583, 2015 WL 3999488 at *1, 3 (E.D. Mo. July 1, 2015) (holding that specific jurisdiction does not

apply when plaintiff's injury is not connected with defendant's contacts with forum state); *In re Zofran (Ondansetron) Products Liability Litigation (Simmons v. GlaxoSmithKline LLC)*, MDL No. 1:15-MD-2657-FDS, 2016 WL 2349105 at *1, 5 (D. Mass. May 4, 2016) (noting that Missouri courts would not have specific jurisdiction over claims brought by non-Missouri residents because no facts alleged connecting their claims to defendant's conduct in Missouri).³

³ Numerous courts have issued post-*Daimler* opinions finding no specific jurisdiction under the same facts at issue here – i.e., that Plaintiff has failed to allege any activity by a defendant corporation in the forum state gave rise to Plaintiff's claim. *See, e.g., Waite v. All Acquisition Corp.*, Case No. 15-cv-62359-BLOOM/Valle, 2016 WL 2346743 at *1, 4 (S.D. Fla. May 4, 2016); *Dimitrov v. Nissan North America, Inc.*, No. 15-C-06332, 2015 WL 9304490 at *1, 3 (N.D. Ill. Dec. 22, 2015); *In re Plavix Related Cases*, No. 12-L-5688, 2014 WL 3928240 at *1, 8-9 (Ill. Cir. Ct. Aug. 11, 2014).

II. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because Missouri Courts lack general jurisdiction over NSRC when NSRC is not incorporated in Missouri, does not have a principal place of business in Missouri, and cannot be regarded as “essentially at home” in Missouri.

In *Daimler* and *Goodyear*, the United States Supreme Court altered the due process analysis applicable to a State’s assertion of general personal jurisdiction over a foreign corporation. *Daimler* did away with a “continuous and systematic” business contacts analysis, holding that, absent exceptional circumstances, a company is only subject to general jurisdiction in its state of formation or where it has its principal place of business, i.e., where it is “at home.” 134 S.Ct. 746, 760-62 (2014) (holding that, even after attributing California contacts of New Jersey subsidiary, which included facilities located in California and significant sales in California, to foreign corporation,⁴ the foreign corporation was not subject to personal jurisdiction in California because plaintiffs’ claims had no connection to California). The *Daimler* Court made clear that

⁴ “Foreign corporation” for purposes of personal jurisdiction includes not only corporations incorporated or headquartered in a foreign country, but also those incorporated or headquartered in a sister-state. *Daimler*, 134 S.Ct. at 754 (citing *Goodyear*, 564 U.S. at 919).

simply doing business in a forum does not constitute an “exceptional case” allowing general personal jurisdiction in a forum other than a corporation’s formal place of incorporation or principal place of business. *Id.* at 760-61 (holding that a formulation approving the exercise of general jurisdiction in every State in which the corporation engages in a substantial, continuous, and systematic course of business is “unacceptably grasping”).

The *Daimler* Court affirmed the black letter law regarding general personal jurisdiction announced three years earlier in *Goodyear* – that the bases for general jurisdiction for a foreign corporation are the corporation’s state of incorporation, or its state of principal place of business, and any deviation from those bases requires “exceptional circumstances” such that the foreign corporation is rendered “at home” in the forum State.⁵ *Id.* at 760, 761 n.19.

The critical question following *Daimler*, then, is not whether a foreign corporation has some in-state contacts or a business presence, but whether, within the entire context

⁵ The *Daimler* Court provides *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), as an example of an “exceptional” case. In that case, a foreign corporation suspended its regular activities during wartime and temporarily relocated its principal place of business to Ohio. *Daimler*, 134 S. Ct. at 761 n.19. During that time, all of the company’s activities “were directed by the company’s president from within Ohio . . . [such that] Ohio could be considered a surrogate for the place of incorporation or head office.” *Id.* at 756 n.8.

of the corporation's national and global activities, the exceptional circumstances regarding its contacts with the forum state subject the corporation to suit there because the foreign corporation is "at home" there. *Id.* at 762 n.20. After all, "a corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* Doing business in the forum, therefore, is simply not enough. *Id.* ("Nothing in *International Shoe* and its progeny suggests that a particular quantum of local activity should give a State authority over a far larger quantum of activity having no connection to any in-state activity.").

Missouri courts applying *Daimler* have rejected similar attempts to deviate from its holding and found that a nonresident corporation is only subject to general personal jurisdiction in its state of incorporation or the state where its principal place of business is located. *See, e.g., Franzman v. Wyeth, Inc., et al.*, Cause No. 11SL-CC05155-01 (St. Louis County, Twenty-First Judicial Circuit, Aug. 31, 2015) (A457-A459); *Nicely v. Wyeth, Inc.*, Cause No. 11SL-CC04757 (St. Louis County, Twenty-First Judicial Circuit, Aug. 31, 2015) (A460-A462); *Smith*, 2015 WL 191118 at *2-3 (holding that Delaware corporation not subject to general jurisdiction for asbestos lawsuit filed in Missouri); *Neeley v. Wyeth LLC*, No. 4:11-cv-00325, 2015 WL 1456984 at *1, 3 (E.D. Mo. May 4, 2015) (concluding that foreign defendants' contacts do not qualify as an "exceptional case" under the "tighter" standard presented in *Daimler*).

Courts from other jurisdictions have similarly held that *Daimler* precludes exercise of general jurisdiction in any forum where a foreign corporation does business. *See, e.g., BNSF Ry. Co. v. Superior Court*, 185 Cal. Rptr. 3d 391 (Cal. App. 2 Dist. 2015) (railroad

incorporated in Delaware, with principal place of business in Texas, not subject to general personal jurisdiction in California based on asbestos exposures that occurred in Kansas);⁶ *Brown*, 814 F.3d at 628-30 (finding no general personal jurisdiction despite the fact that defendant was registered to do business in Connecticut, derived \$160 million in revenue in Connecticut between 2008 and 2012, maintained employees at four locations in Connecticut, leased a 9,000 square foot facility in Connecticut, and paid taxes in Connecticut); *Nicholson v. E-Telequote Ins. Inc.*, No. 14-cv-4269, 2015 WL 5950659 at *1, 4 (N.D. Ill. Oct. 13, 2015) (“[D]oing 10 percent of your business in Illinois does not make a corporation ‘at home’ in Illinois.”).

NSRC was not formed in, nor does it have its principal place of business in, Missouri. (K. Swain Affidavit, ¶¶ 2-3, A051).

Turning to the question of whether exceptional circumstances exist such that the Court should consider NSRC “at home” in Missouri, NSRC has track in 22 states and its presence in Missouri is as follows:

- Approximately 2% of Norfolk Southern Railway Company’s total work force is employed in locations within Missouri. Norfolk Southern Railway Company employs more employees in Alabama, Georgia, Illinois, Indiana,

⁶ This decision is pending on appeal before the California Supreme Court. *See BNSF Ry. Co. v. Superior Court (Kralovetz)*, 352 P.3d 417 (Cal. July 22, 2015).

Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia than in Missouri. (*Id.*, ¶ 5, A051).

- Approximately 2% of Norfolk Southern Railway Company's total operating revenue is generated in Missouri. Norfolk Southern Railway Company generates more revenue in Alabama, Georgia, Illinois, Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia than in Missouri. (*Id.*, ¶ 6, A052).
- Norfolk Southern Railway Company has approximately 2% (line owned) and 2% (total mileage operated) of its track mileage in Missouri. Norfolk Southern Railway Company has more total track mileage in Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia than in Missouri. (*Id.*, ¶ 7, A052).

(*Id.*). Respondent has not challenged these statements. (Respondent's Answer, ¶¶ 27-29, A588-A589). As the United States Supreme Court found in *Daimler*, these types of percentages—which are much smaller percentages than those set forth in the *Daimler* opinion (over 10% of all new Mercedes-Benz passenger cars were sold by MBUSA in California, 134 S.Ct. at 752)—do not provide a valid basis for exercising general personal jurisdiction over NSRC.

Simply put, NSRC's activities in Missouri are not so continuous and systematic as to render Missouri its home state. If they did, NSRC would be “at home,” and subject to general personal jurisdiction, in almost half of the United States. This result is not

supported by *Daimler*. 134 S. Ct. at 760-61 (“Plaintiffs would have us . . . approve the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business. That formulation, we hold, is unacceptably grasping.”).⁷

⁷ Again, as with the issue of specific jurisdiction, numerous courts have issued post-*Daimler* decisions finding no general jurisdiction under the same facts at issue here – i.e., that the corporation is sued in a state where it is not incorporated, where it does not have its principal place of business, and no exceptional circumstances warrant finding the corporation “at home” in that state. *See, e.g., Barone v. Intercontinental Hotels Group PLC*, No. 15-cv-04990-JCS, 2016 WL 2937502 at *1, 7-8 (N.D. Cal. May 20, 2016); *In re Zofran (Ondansetron) Products Liability Litigation*, 2016 WL 2349105 at *3; *Kipp v. Ski Enterprise Corp. of Wisconsin, Inc.*, 783 F.3d 695, 698-99 (7th Cir. 2015); *Ricks v. Armstrong Int’l, Inc.*, No. 4:14-CV-37-BO, 2014 WL 2873189 at *1, 1 (E.D.N.C. June 24, 2014); *In re Plavix Related Cases*, 2014 WL 3928240 at *6-7.

III. Relator is entitled to an order prohibiting the Twenty-First Judicial Circuit of St. Louis County, Missouri, from exercising personal jurisdiction over NSRC, or, in the alternative, requiring Respondent to vacate her December 21, 2015, order, because NSRC did not consent to jurisdiction in the underlying matter and the Due Process Clause of the Fourteenth Amendment prohibits a finding that a foreign corporation consented to jurisdiction based on compliance with mandatory business registration requirements.

With no factual or legal basis for Plaintiff to assert specific or general jurisdiction over NSRC, Respondent here has been reduced to arguing that NSRC waived its legitimate jurisdictional objection merely by complying with Missouri's mandatory business registration requirements.

However, a foreign corporation does not waive its constitutional due process protections and consent to personal jurisdiction simply by registering to do business in this State and conducting business here pursuant to that registration. *See, e.g., Genuine Parts Co. v. Cepec*, __ A.3d __, 2016 WL 1569077 at *1, 2-3 (Del. Apr. 18, 2016); *Brown*, 814 F.3d at 633-41.

To the contrary, "consent by registration" evolved from a territorial view of personal jurisdiction that has long been rendered obsolete, even before the *Daimler* opinion. In fact, this Court has never held that registration of a foreign corporation and designation of an agent for service of process is sufficient to confer personal jurisdiction over that foreign corporation. *State ex rel. K-Mart Corp. v. Holliger*, 986 S.W.2d 165, 168 (Mo. banc 1999). As the Court previously noted, the limitation on any such assertion

of consent-based jurisdiction “may be, of course, the due process clause of the United States constitution.” *Id.*⁸

Indeed, *Daimler* is explicit that courts cannot claim personal jurisdiction over a foreign corporation simply because it does a “substantial, continuous, and systematic course of business” in the forum state. 134 S. Ct. at 761. This “exorbitant” exercise of jurisdiction is “barred by due process constraints on the assertion of adjudicatory authority.” *Id.* at 751.

Respondent nonetheless asserts that NSRC consented to personal jurisdiction for a claim that arose outside of Missouri, brought by an Indiana resident, because NSRC complied with Missouri’s business registration statutes. (Respondent’s Answer, ¶¶ 21,

⁸ The Court declined to reach the specific issue of whether jurisdiction based solely on “consent by registration” comports with due process because K-Mart Corporation, a Michigan corporation conducting business in Missouri, conceded that there were no due process concerns over Missouri’s exercise of personal jurisdiction. *Id.* at 166, 168-69. That is not the case here. NSRC did not concede its due process protections and repeatedly stated that it cannot be subject to personal jurisdiction in Missouri simply because it registered to do business here and conducts substantial and continuous business here. (NSRC’s Motion to Dismiss, A043-A061; NSRC’s Reply in Support of Motion to Dismiss, A429-A442; NSRC’s Notices of Supplemental Authority, A455-A462, A464-A481).

23, 26-32, A586-A591). Respondent's position, if accepted, would strip *Daimler* of any relevance and eviscerate the due process protections due all nonresident corporations sued in a forum that is not its state of incorporation or corporate headquarters. After all, registration and designation of an agent for service of process are required of every foreign corporation doing business in any state. *See Brown*, 814 F.3d at 640 ("It appears that every state in the union – and the District of Columbia, as well – has enacted a business registration statute."); *see also* Tanya J. Monestier, REGISTRATION STATUTES, GENERAL JURISDICTION, AND THE FALLACY OF CONSENT, 36 Cardozo L. Rev. 1343, 1363 n.109 (2015) (listing every state business registration statute). The notion that a corporation consents to personal jurisdiction for any and all claims that occur anywhere in the world is simply inconsistent with the due process limits articulated in *Daimler*. 134 S. Ct. at 762 n.20 ("Nothing in *International Shoe* and its progeny suggests that a particular quantum of local activity should give a State authority over a far larger quantum of activity having no connection to any in-state activity.").

To the extent that any Missouri trial or appellate courts have endorsed a "consent by registration" theory of jurisdiction, those opinions should be overruled by this Court, as the Delaware Supreme Court recently did to its own precedent in *Cepec*. 2016 WL 1569077 at *3, 11-14. "Consent by registration" evolved from an outdated view of jurisdiction that no longer applies to corporations competing in a global economy. *Id.* at *10 ("[W]e no longer live in a time where foreign corporations cannot operate in other states unless they somehow become a resident; nor do we live in a time where states have

no effective bases to hold foreign corporations accountable for their activities within their borders.”). Adherence to this historical view of personal jurisdiction violates due process.

A. History of the “Consent by Registration” Theory

Before *International Shoe*, the United States Supreme Court held that personal jurisdiction could not be exercised over defendants outside the State’s borders. See *Pennoyer*, 95 U.S. at 722. Thus, courts required the presence of a defendant within a State as “a necessary prerequisite to a court’s asserting personal jurisdiction over him.” *Brown*, 814 F.3d at 631 (quoting 4 Wright, Miller & Kane, FEDERAL PRACTICE & PROCEDURE § 1064 (4th ed. 2010)); see also *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977) (citing *Pennoyer* and noting that, based on its holding, “[i]f a nonresident defendant could not be found in a State, he could not be sued there”).

The “consent by registration” theory of jurisdiction over a foreign corporation emerged from *Pennoyer*’s territorial limits, based in part on 19th century views about corporations. *Brown*, 814 F.3d at 631 (quoting *Bank of Augusta v. Earle*, 38 U.S. 519, 588 (1839) (“[A] corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence.”)). Business registration statutes, like the Missouri statutes at issue here, “were enacted primarily to allow states to exercise jurisdiction over corporations that, although not formed under its laws, were transacting business within a state’s borders and thus potentially giving rise to a state citizens’ claims against them.” *Id.* at 632 (citing *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408-09 (1929); *Robert*

Mitchell Furniture Co. v. Selden Breck Constr. Co., 257 U.S. 213, 215 (1921)). Consent based on compliance with these registration statutes was borne out of the prevailing view at the time that corporations began operating in multiple states “that a corporation had no inherent right to do business in a foreign state since it was not a ‘citizen’ of that state within the meaning of the Privileges and Immunities Clause in Article IV” of the United States Constitution. *Id.*

The Supreme Court has not addressed “consent by registration” since views on corporations have evolved and the jurisdictional analysis shifted to one of “minimum contacts” and fairness in *International Shoe*. See Matthew Kipp, INFERRING EXPRESS CONSENT: THE PARADOX OF PERMITTING REGISTRATION STATUTES TO CONFER GENERAL JURISDICTION, 9 Rev. Litig. 1, 4-7 (1990). In fact, following *International Shoe*, the Supreme Court questioned whether registration and designation of a registered agent, standing alone, are sufficient to confer jurisdiction over a foreign corporation: “The corporate activities of a foreign corporation which, under state statute, make it necessary for it to secure a license and to designate a statutory agent upon whom process may be served provide a helpful but not a conclusive test.” *Perkins*, 342 U.S. at 446. That question has not been answered by the Supreme Court since *International Shoe*.⁹

⁹ Oral argument in *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2011), a general personal jurisdiction case, makes clear that compliance with business registration statutes does not definitively confer consent to jurisdiction. During oral argument, Justice Ginsburg questioned counsel as to whether or not in-state business

However, any exercise of personal jurisdiction, including exercise based on “consent by registration,” must comport with the limits imposed by the Due Process Clause of the Fourteenth Amendment. U.S. Const. Amend. XIV; *see also Daimler*, 134 S. Ct. at 753; *Goodyear*, 564 U.S. at 918.

B. “Consent by Registration” Is Not a Valid Basis for Exercising Jurisdiction Because It Does Not Comport With Due Process

NSRC contends that “consent by registration” violates due process. It does not dispute that a foreign corporation, under certain circumstances, may consent to or intentionally waive personal jurisdiction. *See Bauxites*, 456 U.S. at 703-04. However, any finding of consent or intentional waiver must comport with due process. *Id.* at 702. Moreover, “consent by registration” is not one of the methods recognized by the United States Supreme Court in *Bauxites* as a constitutionally valid means of consent. *Id.* at 703-04. Rather, the *Bauxites* Court identified the following methods of express or implied consent to personal jurisdiction: (1) contractual agreement between the parties to

registration and the appointment of an agent for service of process were sufficient contacts to warrant the exercise of personal jurisdiction. *Goodyear*, 564 U.S. 915 (2011), Oral Argument, Justice Ginsburg at 18:00, available at http://www.oyez.org/cases/2010-2019/2010/2010_10_76. Justice Ginsburg would not have posed the question if registration and appointment were already established contacts under the law to confer consent jurisdiction.

jurisdiction in a particular court, (2) a stipulation by a defendant to jurisdiction, (3) a contractual agreement to arbitrate, (4) voluntary use of certain state procedures, such as filing a cross-claim, and (5) waiver by failing to timely raise the issue of lack of personal jurisdiction. *Id.*; *see also Perkins*, 342 U.S. at 446.

Numerous courts have rejected the untenable position that registration and designation of a registered agent equals consent. *See, e.g., Cepec*, __ A.3d __, 2016 WL 1569077 at *10-18 (overruling prior Delaware Supreme Court precedent that registration and designation of agent for service of process amount to consent and holding that “consent by registration” no longer valid in light of U.S. Supreme Court holdings in *Goodyear* and *Daimler*); *Brown*, 814 F.3d at 633-41 (holding that compliance with Connecticut’s business registration statutes does not amount to consent to personal jurisdiction); *Smith*, 2015 WL 191118 at *3 (finding no general jurisdiction over foreign corporation that registered to do business in Missouri and appointed an in-state registered agent); *Beard v. Smithkline Beecham Corp.*, No. 4:15-CV-1833 RLW, 2016 WL 1746113 at *1, 2 (E.D. Mo. May 3, 2016) (recognizing a line of older cases that found “consent by registration” but holding that “more recent judicial precedent from the United States Supreme Court and this district . . . have determined that more substantial contacts are required to hale a litigant into the court’s forum”); *Keeley*, 2015 WL 3999488 at *4 (“If following [foreign business registration] statutes creates jurisdiction, national companies would be subject to suit all over the country. This result is contrary to the holding in *Daimler* that merely doing business in a state is not enough to establish general jurisdiction.”); *Neeley*, 2015 WL 1456984 at *3 (holding that registration and designation

of registered agent insufficient to subject foreign corporation to personal jurisdiction); *In re Zofran (Ondansetron) Products Liability Litigation*, 2016 WL 2349105 at *4 (holding that defendant did not consent to personal jurisdiction in Missouri by appointing a registered agent for service of process because “the Missouri statute does not mention consent to personal jurisdiction at all, much less provide for explicit consent to personal jurisdiction for claims based on conduct and injuries arising outside of Missouri”); *Dimitrov*, 2015 WL 9304490 at *4 (noting that “consent by registration” is not valid because the Illinois business registration statute does not address personal jurisdiction); *Public Impact, LLC v. Boston Consulting Group, Inc.*, 117 F. Supp. 3d 732, 738-40 (M.D.N.C. 2015) (holding that foreign corporation not subject to general jurisdiction in North Carolina for registering to do business in North Carolina); *In re Asbestos Products Liability Litigation (No. VI)*, MDL Docket No. 875, 2014 WL 5394310 at *1, 10-11 (E.D. Pa. Oct. 23, 2014) (noting that being licensed to do business in forum and designating an agent for service are not enough to establish general jurisdiction over foreign corporation under *Daimler*).

The analysis of the Second Circuit Court of Appeals in *Brown* is particularly instructive. There, an Alabama resident filed suit in Connecticut against numerous defendants, including Lockheed Martin Corporation, for asbestos exposures that occurred outside Connecticut, in Alabama, Delaware, Georgia, Illinois, New Mexico, and Michigan. 814 F.3d at 623-24. The Second Circuit considered and rejected plaintiff’s argument that jurisdiction over Lockheed, a Maryland corporation with its principal place

of business in Maryland, was proper in Connecticut based on its registration to do business and appointment of a registered agent. *Id.* at 622, 630-41.

After considering the evolution of personal jurisdiction and the development of “consent by registration” as a means of exercising jurisdiction, *id.* at 631-33, the Second Circuit examined Connecticut’s business registration statutes¹⁰ and judicial interpretation of them by Connecticut’s courts. *Id.* at 633-37. It noted that, as is the case here, the Connecticut Supreme Court had not given “a definitive interpretation of the jurisdictional import of Connecticut’s registration and agent-appointment statutes.” *Id.* at 634; *see also Holliger*, 986 S.W.2d at 168 (“We need not address the issue of whether registration of a foreign corporation and designation of an agent for service of process, without more, is always sufficient to confer jurisdiction. The limitation on such assertion may be, of course, the due process clause of the United States constitution.”). Connecticut’s Appellate Court, however, accorded a broad interpretation to the statutes, holding that registration meant a corporation submitted to general jurisdiction. *Brown*, 814 F.3d at 634-35 (citing *Talenti v. Morgan & Brother Manhattan Storage Co.*, 968 A.2d 933 (Conn. App. 2009)).

¹⁰ Connecticut’s statutes are substantially similar to Missouri’s. *Compare* Conn. Gen. Stat. § 33-920 *with* Mo. Rev. Stat. § 351.572; *compare* Conn. Gen. Stat. § 33-926 *with* Mo. Rev. Stat. § 351.586; *compare* Conn. Gen. Stat. § 33-929 *with* Mo. Rev. Stat. § 351.594.

The Second Circuit found the Appellate Court’s interpretation constitutionally problematic for several reasons. *Id.* at 635-37. First, as in Missouri, the statutes do not “contain express language alerting the potential registrant that by complying with the statute and appointing an agent it would be agreeing to submit to the general jurisdiction of the state courts.” *Id.* at 636. Second, the specific jurisdiction provisions of Connecticut’s long-arm statute would be unnecessary except for unregistered corporations because registered corporations would be subject to any and all suits by virtue of their registration. *Id.* Finally, the authority given a registered agent by Connecticut’s statute to accept service of process, like Missouri’s¹¹

need go only so far as accepting service of “process, notice or demand” that is “required or permitted by law” to be served on the foreign corporation. This phrase suggests some limitation in accordance with law: **we see no basis for excluding constitutional due process limitations from an inquiry into what is “permitted by law.”**

Id. (emphasis added).

Absent explicit statutory language regarding consent to jurisdiction, and reading due process limitations into what “process, notice or demand” is “permitted by law,” the Second Circuit noted that the “essentially at home” test announced by the Supreme Court in *Goodyear* and *Daimler* “suggests that federal due process rights likely constrain an

¹¹ See Conn. Gen. Stat. § 33-929(a); Mo. Rev. Stat. 351.594.1.

interpretation that transforms a run-of-the-mill registration and appointment statute into a corporate ‘consent’ – perhaps unwitting – to the exercise of general jurisdiction by state courts” *Id.* at 637. The alternative interpretation, proposed by the plaintiff in *Brown* and Respondent here, would create a result rejected by *Daimler*:

If mere registration and the accompanying appointment of an in-state agent—without an express consent to general jurisdiction—nonetheless sufficed to confer general jurisdiction by implicit consent, every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*’s ruling would be robbed of meaning by a back-door thief.

Id. at 640. Thus, Respondent’s proposed interpretation of Missouri’s business registration statutes must be rejected on constitutional due process grounds. *Id.*; *see also Cepec*, __ A.3d __, 2016 WL 1569077 at *13-14 (noting that a court’s duty is to construe a statute “in a manner consistent with the U.S. Constitution” and that reading consent into a business registration statute lacking language that explicitly states a corporation consents to jurisdiction would offend due process); *Keeley*, 2015 WL 3999488 at *4 (“A defendant’s consent to jurisdiction must satisfy the standards of due process and finding a defendant consents to jurisdiction by registering to do business in a state or maintaining a registered agent does not.”); *In re Zofran (Ondansetron) Products Liability Litigation*, 2016 WL 2349105 at *4 (“[T]he Missouri statute does not mention consent to personal jurisdiction in Missouri courts at all, much less provide for explicit consent to personal

jurisdiction for claims based on conduct and injuries arising outside of Missouri. Accordingly, [defendant] did not consent to personal jurisdiction in Missouri by appointing a registered agent for service of process in the state.”).

Respondent’s reliance on Eighth Circuit precedent interpreting a distinctly different state registration statute in *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (8th Cir. 1990), is therefore misplaced. The *Knowlton* opinion pre-dates *Daimler*, did not interpret Missouri’s business registration statutes, and fails to cite a single case, statute, or other authority to support its proclamation that designation of an agent for service is “solidly established” as a way to consent to jurisdiction. *See Knowlton*, 900 F.2d at 1199. The Eighth Circuit arrived at this conclusion by stating that consent to service through designation of a registered agent makes a nonresident “suable in the local courts.” *Id.* However, no authority is advanced to support this conflation between consent to service and consent to jurisdiction. *See id.* In fact, numerous pre-*Daimler* opinions have rejected the very same consent theory accepted by the Eighth Circuit. *See, e.g., Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992) (“Not only does the mere act of registering an agent not create . . . general business presence . . . it also does not act as consent to be hauled into Texas courts on any dispute with any party anywhere concerning any matter.”); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (“Registering to do business is a necessary precursor to engaging in business activities in the forum state. However, it cannot satisfy . . . standing alone . . . the demands of due process. Such an interpretation of the Indiana registration statute would render it constitutionally suspect. . . .”); *Reynolds & Reynolds Holdings, Inc. v. Data*

Supplies, Inc., 301 F. Supp. 2d 545, 550-51 (E.D. Va. 2004) (“Merely performing the administrative task of registering a company with the State ... and appointing an agent for service of process within the state are not substantial enough contacts to justify subjecting a company to general jurisdiction.”); *Viko v. World Vision, Inc.*, No. 2:08-CV-221, 2009 WL 2230919 at *1, 6 (D. Vt. July 24, 2009) (“[A] finding of general jurisdiction on a consent-based theory in this case would require the Court to adopt a unique conception of consent relative to all other legal contexts. In this case, there is no contract between [the parties] to litigate in Vermont, no agreement to arbitrate, and no stipulation to jurisdiction by the Defendants.”).

Even if consent based on compliance with business registration statutes was once a valid basis for exercising general jurisdiction in Missouri, such a basis has been rendered unconstitutional by *Daimler*. A state is not permitted to extend the reach of personal jurisdiction beyond what is permitted by the Due Process Clause. *Goodyear*, 564 U.S. at 918. The United States Supreme Court has long held that a state may not burden “the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S.Ct. 2586, 2595 (2013).

In *Southern Pacific Co. v. Denton*, 146 U.S. 202, 206-07 (1892), the Supreme Court considered a Texas statute that required foreign corporations to register with the state, appoint an agent for service of process, and waive its right to remove a case to federal court. The Court held that this statute, which required a corporation “as a condition precedent to obtaining a permit to do business within the state, to surrender a

right and privilege secured to it by the [C]onstitution and laws of the United States, was unconstitutional and void[.]” *Id.* at 207. As noted above, nothing in Missouri’s business registration statutes requires a foreign corporation to consent to jurisdiction in Missouri on any and all claims that could be brought against it, and reading such a requirement into the statutes would violate NSRC’s constitutional rights. *See id.*

If the “consent” argument is allowed to be a means of establishing jurisdiction, any company that does any business in Missouri (and follows the rules by registering its business and designating an agent) automatically becomes subject to general personal jurisdiction in Missouri. This is the antithesis of the *Daimler* holding. 134 S. Ct. at 760-61 (“Plaintiffs would have us . . . approve the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business. That formulation, we hold, is unacceptably grasping.”).

C. Public Policy Dictates Rejecting a “Consent By Registration” Basis For Jurisdiction

Putting aside due process concerns, adopting “consent by registration” as an independent basis for personal jurisdiction would exact “a disproportionate toll on commerce [that] is itself constitutionally problematic.” *Cepec*, __ A.3d at __, 2016 WL 1569077 at *14. It will encourage other states (at least one of which—Delaware—has already rejected the “consent” argument) to do the same:

If all of [Missouri’s] sister states were to exercise general jurisdiction over our many corporate citizens, who often as a practical matter must operate in all fifty states and worldwide

to compete, that would be inefficient and reduce legal certainty for businesses. Human experience shows that “grasping” behavior by one, can lead to grasping behavior by everyone, to the collective detriment of the common good. It is one thing for every state to be able to exercise personal jurisdiction in situations when corporations face causes of action arising out of specific contacts in those states; it is another for every major corporation to be subject to the general jurisdiction of all fifty states.

Id. (also noting that *Daimler* “rejected the notion that a corporation that does business in many states can be subject to general jurisdiction in all of them” and holding that Delaware should be prudent and proportionate in exercising jurisdiction over foreign corporations).

Missouri corporations are entitled to the same protections and certainty afforded corporations incorporated or headquartered in sister states. A corporation that makes Missouri its home should not be expected to defend a lawsuit in California, for example, based on a tort that occurred in Indiana, any more than Relator should be expected to defend a lawsuit here for alleged injuries arising from work in Indiana. Therefore, this Court should make its preliminary writ permanent and prohibit Respondent from exercising personal jurisdiction over Relator, in accordance with the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

In her ruling, Judge Dolan did not state whether Missouri can exercise general or specific jurisdiction over NSRC in this case. Nor did she state whether consent by registering as a foreign corporation and designating an agent for service of process in Missouri is a valid basis for exercising personal jurisdiction over NSRC. However, there is no specific jurisdiction in this case because Plaintiff provided no evidence that any of his claims arose out of NSRC's activities in the State of Missouri, there is no general jurisdiction in this case because NSRC is neither incorporated in Missouri nor has its principal place of business in Missouri, and there is no consent jurisdiction because, in light of *Daimler*, the exercise of jurisdiction based on "consent by registration" violates due process.

The circumstances thus require that the Court's temporary Writ of Prohibition be made permanent, preventing the Twenty-First Judicial Circuit of St. Louis County, Missouri from exercising personal jurisdiction over Relator in this case and requiring Respondent to enter an order dismissing the underlying case against Relator for lack of personal jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the information required by Rule 55.03.
2. This brief complies with the limitations contained in Rule 84.06(b).
3. Per Rule 84.06(c), the word count of this brief is 9,474, as determined by Microsoft Word 2010.
4. The brief was prepared using “Times New Roman” font in 13 point size, in Microsoft Word 2010.

/s/ Kurt E. Reitz

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on registered counsel via the Missouri Courts E-filing System on June 2, 2016, and the undersigned further certifies that he has signed the original and is maintaining the same pursuant to Rule 55.03(a).

/s/ Kurt E. Reitz_____