

**IN THE SUPREME COURT OF MISSOURI**

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**SC96977**

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**CEDAR CREST APARTMENTS, LLC and PETERSON PROPERTIES, INC.,  
d/b/a THE PETERSON COMPANIES  
Relators**

**vs.**

**THE HONORABLE JACK GRATE  
Respondent**

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**Appeal from the Circuit Court of Jackson County  
State of Missouri  
The Honorable Jack Grate**

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**RELATORS' BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF PROHIBITION**

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**ORAL ARGUMENT REQUESTED**

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## **JURISDICTIONAL STATEMENT**

This is an Original Petition for Writ of Prohibition to the Missouri Supreme Court requesting that this Court issue a permanent writ to Respondent preventing the Sixteenth Judicial Circuit of Jackson County, Missouri, and the Honorable Jack Grate from exercising personal jurisdiction over Cedar Crest Apartments, LLC and Peterson Properties, Inc. d/b/a The Peterson Companies.

This Court has jurisdiction over 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.

## STATEMENT OF FACTS

On August 25, 2017, Plaintiff, Lincoln Rene Aquiriano Martinez, (appearing by and through Barry D. Martin, Conservator, hereinafter, “Plaintiff”) filed a lawsuit in the Circuit Court of Jackson County, Missouri, Case No. 1716-CV20519 against Defendants KCP&L, Inc.; Steven Busser; Kevin Bryant; Ellen Fairchild; Cedar Crest Apartments, LLC (“Cedar Crest”); Peterson Properties, Inc. d/b/a The Peterson Companies (“Peterson Properties”); J.A. Peterson Enterprises, Inc. (“Enterprises”); and James A. Peterson (hereinafter “Underlying Lawsuit”). (A1-A12). The Underlying Lawsuit concerns personal injuries allegedly sustained by Plaintiff on August 31, 2015 while working at an apartment complex located at 6510 W. 91st Street, Overland Park, Johnson County, Kansas (hereinafter, the “subject premises”). (A1-A12, ¶¶ 14, 17). Plaintiff alleges that he sustained personal injuries as a result of an electrical shock that occurred when a 32-foot ladder he was moving became charged with high electrical voltage due to arcing and/or contact with an overhead power line on the subject premises located in the state of Kansas (hereinafter, the “incident”). (A5, ¶ 17).

Pertinent to Relators Cedar Crest and Peterson Properties, Plaintiff - who was a Kansas resident at the time of his claimed injuries and who is now a conservatee under a Kansas conservatorship - alleges in Counts III and IV (incorrectly denominated again as Count III, hereinafter referred to as “Count IV”) that Relators are liable to him under theories of premises liability and negligence, respectively. (A9-A11, ¶¶ 37-47). Specifically, in Count III, Plaintiff claims that Relators “owned and/or controlled and/or maintained” the property located in Kansas where the alleged injury occurred at the time

of the incident, and “knew or by using ordinary care should have known” that “there was an inadequate amount of space between the overhead power line and the Plaintiff’s workspace, creating an unreasonable risk of harm.” (A9, ¶¶ 35-37). In Count IV, Plaintiff claims that Relators breached their “duty to exercise reasonable care to employ competent and careful contractors to do work” at the Kansas property by “[employing] a contractor that was not competent to work in close proximatey [*sic*] to overhead power lines” resulting in Plaintiff’s alleged injuries. (A10-A11, ¶¶ 42-44).

Plaintiff’s Petition acknowledges that Relator Peterson Properties is a foreign corporation organized under the laws of the State of Kansas. (A3, ¶ 8; A62-A67). Plaintiff’s Petition additionally alleges that Relator Cedar Crest “is a foreign limited liability company formed under the State of Kansas.” (A3, ¶ 6; A85). The principal place of business for both Relators is Johnson County, Kansas. (A62-67; A85). Cedar Crest and Peterson Property own no real property in Missouri. (A47, ¶ 3). Cedar Crest does not employ any personnel. (A47, ¶ 4). Peterson Properties employs personnel, but only in the State of Kansas. (A47, ¶ 5). Peterson Properties does not employ any personnel in Missouri. (A47, ¶ 5). Peterson Properties’ employees are based in Kansas and report to an office or location in Kansas to perform their job duties. (A47, ¶6). Therefore, to the extent that Plaintiff claims any of Relators’ employees were involved in the incident alleged in the Underlying Lawsuit, such individuals would be employed by Peterson Properties, are based in Kansas and report to an office or location in Kansas to perform their job duties. (A47, ¶ 6).

On December 22, 2017, Defendants Cedar Crest and Peterson Properties filed a Motion to Dismiss Counts III and IV, and attached Suggestions in Support of their Motion,



contesting the trial court's jurisdiction. (A13-A50). In their Motion to Dismiss, Defendants requested the dismissal of Relators Cedar Crest and Peterson Properties for lack of personal jurisdiction because Relators are foreign entities with their principal place of business outside the state of Missouri, do not meet the requirements of the Missouri long-arm statute and are without the types of minimum Missouri contacts necessary to support jurisdiction and satisfy due process considerations. (A13-A50). In support of their Motion, Relators attached the Affidavit of James Peterson<sup>1</sup>, providing further support for the jurisdictional deficiencies pertaining to Relators Cedar Crest and Peterson Properties. (A47-A48).

On January 10, 2018, Plaintiff filed his Suggestions in Opposition to Defendants' Motion to Dismiss. (A51-A70). In opposition to Defendants' Motion, Plaintiff alleged that he has met his burden of making a prima facie demonstration of personal jurisdiction against Relators with the allegations stated in his Petition by: (a) "stat[ing] sufficient facts to support a reasonable inference that Defendants engaged in one of the enumerated activities in the long-arm statute" and (b) "sufficiently alleg[ing] that the nature, quality, quantity, and relevance of Defendants' contacts [] satisfy due process." (A53-A54).

On January 16, 2018, Defendants' filed a Reply in Support of their Motion to Dismiss. (A71-A82). In their Reply in Support, Relators noted that "the jurisdictional allegations contained in Plaintiff's petition do not satisfy Plaintiff's burden of making a

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<sup>1</sup> James Peterson is the President of Peterson Properties and Enterprises, who is managing-member of Cedar Crest. (A47, ¶ 2).

‘prima facie showing that the trial court has personal jurisdiction’ as required in response to [their] Motion” to Dismiss. *Id.*

On January 18, 2018, Respondent summarily denied Defendants’ Motion to Dismiss. (A83). Respondent’s Order denying the Motion to Dismiss did not make any findings as to whether Relators were subject to general or specific jurisdiction. Instead, Respondent’s Order stated only “The Defendants’ Motion to Dismiss is DENIED”. (A83).

Relators filed a Petition for Writ of Prohibition with the Missouri Court of Appeals, Western District, on January 31, 2018. The Court of Appeals denied Relators’ Petition for Writ of Prohibition the following day, on February 1, 2018. (A86).

Relators filed the present Petition for Writ of Prohibition with this Court on February 15, 2018, with accompanying Suggestions in Support. On April 3, 2018, this Court issued its Preliminary Writ of Prohibition. The Preliminary Writ required Respondent to respond to Relators’ Petition within 30 days, and commanded Respondent to take no further action in the underlying proceeding.

Plaintiff filed his Answer and Return to Relators’ Petition on May 2, 2018. While the Answer states that it is the Answer of Plaintiff, Relator presumes that the Answer was intended to be filed on behalf of Respondent. As discussed herein, Relators claim that Respondent exceeded his authority in denying Defendants’ Motion to Dismiss as it pertains to Relators because the Circuit Court of Jackson County, Missouri cannot exercise personal jurisdiction over Relators. As a result, this Court must make its Preliminary Writ of Prohibition permanent, prohibiting the Respondent from exercising jurisdiction over

Relators, and require the Respondent to dismiss Plaintiff's claims against Relators based on lack of personal jurisdiction.

**POINTS RELIED ON**

**POINT I**

**I. RELATORS ARE ENTITLED TO A PERMANENT WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND RESPONDENT THE HONORABLE JACK GRATE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK SPECIFIC JURISDICTION OVER RELATORS IN THAT THE ALLEGATIONS IN THE UNDERLYING PETITION DO NOT ARISE FROM OR RELATE TO RELATORS' ACTIVITIES IN MISSOURI AND RELATORS' CONTACTS WITH MISSOURI DO NOT SATISFY DUE PROCESS.**

*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)

*State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227 (Mo banc 2017)

*State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (Mo banc 2017)

**II. RELATORS ARE ENTITLED TO A PERMANENT WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND RESPONDENT THE HONORABLE JACK GRATE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK GENERAL JURISDICTION OVER RELATORS IN THAT RELATORS ARE NOT INCORPORATED IN MISSOURI, ORGANIZED UNDER MISSOURI LAW, DO NOT HAVE A**

**PRINCIPAL PLACE OF BUSINESS IN MISSOURI, AND CANNOT BE  
REGARDED AS “ESSENTIALLY AT HOME” IN MISSOURI.**

*BNSF Railway Co. v. Tyrell*, 137 S.Ct. 1549, 198 L.Ed. 2d 36 (2017)

*Daimler AG v. Bauman*, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014)

*State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227 (Mo banc 2017)

*State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (Mo banc2017)

## ARGUMENT

### STANDARD OF REVIEW GOVERNING ALL POINTS

Prohibition is a discretionary writ that issues to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power. *See State ex rel. McDonald's Corp. v. Midkiff*, 226 S.W.3d 119, 122 (Mo. banc 2007). The essential function of a writ of prohibition is to confine a lower court within its proper jurisdiction and prevent it from acting without or in excess of its jurisdiction. *State ex rel. Kubatazky v. Holt*, 483 S.W.2d 799, 804 (Mo. App. 1972). Prohibition is generally allowed to avoid useless suits and thereby minimizes inconvenience, and to grant relief when proper under the circumstances at the earliest possible moment in the course of litigation. *State ex rel. Hamilton v. Dalton*, 652 S.W.2d 237, 239 (Mo.App.E.D.1983). A writ of prohibition is the appropriate remedy when an error of law cannot be remedied adequately by appeal and will cause unnecessary, inconvenient and expensive litigation. *State ex rel. Police Retirement System of St. Louis v. Mummert*, 875 S.W.2d 553, 555 (Mo. banc 1994).

A writ of prohibition should issue here because in the present matter it is appropriate and necessary to prevent Respondent from exceeding his authority and exercising personal jurisdiction over Relators, in contravention to Relators' due process rights. The *Daimler AG v. Bauman*, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), court unequivocally held that non-resident defendants have due process rights that must be considered when exercising jurisdiction over such defendants. Under *Daimler*, and the recent Missouri Supreme Court

cases applying *Daimler*, including *State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (2017), and *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227 (2017), the Missouri Circuit Court lacks personal jurisdiction over Relators to hear cases that have no relation to or contacts with the state of Missouri. Respondent's exercise of personal jurisdiction over Relators is contrary to Missouri law, inconsistent with previous decisions from the US Supreme Court, this Court and other Missouri courts on the same issue, violates Relators' due process protections under the Missouri and US Constitutions, and will cause irreparable harm to Relators that cannot be remedied on appeal.

A. Standard Governing Personal Jurisdiction.

“When a defendant raises the issue of lack of personal jurisdiction in a motion to dismiss, the burden shifts to the plaintiff to make a *prima facie* showing that the trial court has personal jurisdiction, *Mello v. Giliberto*, 73 S.W.3d 669, 676 (Mo. Ct. App. 2002). “When a motion to dismiss for lack of personal jurisdiction is made on a matter not appearing on the record,” the trial court is not required to deem all facts alleged in the Petition as true, but rather, may hear [the motion] on affidavits presented by the parties, or the court may direct the matter be heard wholly or partly on oral testimony or deposition.” *Consol. Elec. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 775 (Mo. Ct. App. 2006) (citing *Chromalloy American Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 4 (Mo. banc 1997) and Mo. Sup. Ct. R. 55.28). As a result, the jurisdictional allegations contained in Plaintiff's Petition do not satisfy Plaintiff's burden of making a “prima facie showing that the trial court has personal jurisdiction” as required in response to Defendants' Motion. *See Mello*, 73 S.W.3d at 676; *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072–73

(8th Cir. 2004) (“The plaintiff’s ‘prima facie showing’ must be tested, not by the pleadings alone, but by the affidavits and exhibits presented with the motions and in opposition thereto”) (citing *Jet Charter Serv., Inc. v. W. Koeck*, 907 F.2d 1110, 1112 (11th Cir.1990) (“When a defendant raises through affidavits, documents or testimony a meritorious challenge to personal jurisdiction, the burden shifts to the plaintiff to prove jurisdiction by affidavits, testimony or documents”). The plaintiff bears the burden of proving facts that support the existence of jurisdiction. *Consolidated Elect. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 775 (Mo. Ct. App. 2006). As a threshold matter, the jurisdictional inquiry must be conducted for each individual defendant. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (“Each defendant’s contacts with the forum State must be assessed individually”).

B. Specific vs. General Jurisdiction.

The Supreme Court’s decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) lead 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). 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. *Id.* (citing *International Shoe*, 306 U.S. at 318). Respondent did not specifically rule on whether Relators are subject to either specific or general jurisdiction, but a review of the pertinent law on personal jurisdiction shows that neither are applicable to Relators in this matter.



**I. RELATORS ARE ENTITLED TO A PERMANENT WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK SPECIFIC JURISDICTION OVER RELATORS IN THAT THE ALLEGATIONS IN THE UNDERLYING PETITION DO NOT ARISE FROM OR RELATE TO RELATORS' ACTIVITIES IN MISSOURI AND RELATORS' CONTACTS WITH MISSOURI DO NOT SATISFY DUE PROCESS.**

“Specific jurisdiction requires consideration of the ‘relationship among the defendant, the forum, and the litigation.’” *State ex re. Norfolk Southern Railway, Co. v. Dolan*, 512 S.W. 3d 41, 48 (Mo. banc 2017), quoting *Ands v. Left Gate Prop. Holding, Inc.*, 453 S.W. 3d 216, 226 (Mo. banc 2015). It encompasses only those “cases in which the suit arise[s] out of or relate[s] to the defendant’s contacts with the forum.” *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W. 3d 227 (2017) quoting *Daimler AG v. Bauman*, 134 S.Ct. 746, 749 (2014). “In other words, 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.’” *Bristol-Myers Squibb Co. v. Superior Court of Cal. San Francisco Cnty.*, 137 S.Ct. 1773, 1780, 198 L.Ed. 2d 395 (2017), quoting, *Goodyear Dunlop Tires Operations S.A. v. Brown*, 564 U.S. 915, 919, 131 S.Ct. 2846, 180 L.Ed. 2d 796 (2011). For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or

connected with, the very controversy that establishes jurisdiction. *Bayer*, 536 S.W. 3d at 233.

To exercise specific personal jurisdiction over non-resident Relators Cedar Crest and Peterson Properties, Plaintiff must establish that: (1) the suit arose from activities specified in Missouri's long-arm statute; and (2) the non-resident defendant had sufficient minimum contacts with Missouri to satisfy due process. *Consolidated Elect.*, 185 S.W.3d at 776; *see also Chromalloy American Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 4 (Mo. banc 1997). A court must first determine whether the long-arm statute confers jurisdiction and, if it does, the court then decides the due process question. *See id.* "If either element is lacking, the Missouri court lacks jurisdiction over the defendant" and must dismiss the action as it pertains to him. *State ex. Rel. Career Aviation Sales, Inc. v. Cohen*, 952 S.W.2d 324, 325 (Mo. Ct. App. 1997). Applying this analysis in the instant action makes clear that this Court does not have specific personal jurisdiction over Relators Cedar Crest and Peterson Properties.

A. Missouri's Long-Arm Statute is Not Satisfied.

For a non-resident defendant to be subject to specific personal jurisdiction in Missouri, the plaintiff's claim against that defendant must arise out of the activities enumerated in the Missouri long-arm statute. *See Chromalloy*, 955 S.W. 2d at 4 (Mo. banc 1997). The Missouri long-arm statute, §506.500 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 the foreign corporation within the state).

The plain language of Missouri’s long-arm statute makes it clear that personal jurisdiction over a foreign corporation or person exists only where such non-resident transacts business, makes a contract, or commits a tort in Missouri, *and the cause of action*

arises from one of those specific acts. See R.S.Mo. § 506.500(1)-(3)(*emphasis added*);<sup>2</sup> see also, *Bayer*, 536 S.W. 3d 233-234. Here, Plaintiff’s Petition in the Underlying Lawsuit does not allege any activities that occurred in Missouri that give rise to Plaintiff’s claims against Relators. In his Petition, Plaintiff combines his allegations against Relators Cedar Crest and Peterson Properties with the allegations against all Defendants and generally alleges jurisdiction over Relators is proper under the long-arm statute because “Defendants transact business within the State of Missouri, make contracts within the State of Missouri, make contracts with citizens from the State of Missouri, and/or solicit customers in and from Missouri, constituting the transaction of business in Missouri.” (A4, ¶ 12).

Despite making conclusory allegations that Relators (and all other Defendants) transact business and make contracts in Missouri, Plaintiff’s allegations contain no facts relating to the alleged “business” conducted by Cedar Crest or Peterson Properties in Missouri, and additionally fail to allege any facts demonstrating or supporting any contract made by Relators in Missouri. Moreover, and *most importantly*, Plaintiff advances no allegations that his premises liability or negligence claims against Relators arise from Relators’ alleged transaction of business, entering of contract, or committing a tort in Missouri. See R.S.Mo. § 506.500 (providing that doing any of the enumerated acts subjects a foreign defendant “to the jurisdiction of the courts of [Missouri] as to any cause of action

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<sup>2</sup> R.S.Mo. § 506.500 sets out additional circumstances subjecting a foreign corporation or person to the jurisdiction of Missouri courts, none of which Plaintiff has alleged are applicable here. See Exhibit A, ¶ 12.

arising from the doing of any such acts. . .”) (*emphasis added*). Instead, Plaintiff’s alleged claims against Relators arise from conduct that occurred in Kansas, not in Missouri, and concern injuries sustained in Kansas, not Missouri. (A1-A12, ¶¶ 17-24, 37-47). As such, even if Relators transact any sort of business or make contracts in Missouri (which is expressly denied and not supported with any facts or evidence), because Plaintiff’s claims against Relators in the Underlying Lawsuit do not arise out of any such conclusively alleged business transactions or contracts in Missouri, the long-arm statutes does not apply.

#### 1. Transaction of Business Prong

Under the “transacts business” prong of the long-arm statute, “[a] person or firm transacts business by visiting Missouri or sending its product or advertising [there].” *Flooring Sys., Inc. v. Beaulieu Grp., LLC*, 187 F. Supp. 3d 1091, 1095 (E.D. Mo. 2016). “A single transaction may confer jurisdiction, *if* that is the transaction that gives rise to the suit.” *Id.* (citing *Chromalloy*, 955 S.W.2d at 4 (*emphasis added*)). In this action, Plaintiff does not, and cannot, allege any purported “transaction of business” by Relators Cedar Crest of Peterson Properties that occurred in Missouri and gives rise to his claims for personal injuries. First, because these entitites do not transact business in Missouri. Second, because Plaintiff, a resident of Kansas at the time of his injury, claims that he was “electrocuted” while “attempting to move a 32-foot ladder” on the premises owned by Relators in Johnson County, Kansas, clearly an incident that occurred in Kansas. (A4-A5, ¶¶ 15, 17).

Missouri’s long-arm statute explicitly limits the jurisdiction of the Missouri courts over a non-resident defendant by dictating that such non-resident defendant only subjects

itself “to the jurisdiction of the courts of [Missouri] as to any cause of action *arising from* ... [t]he transaction of any business within [Missouri]”. R.S.Mo. § 506.500 (*emphasis added*). Notably, the subject premises at issue is located in Johnson County, Kansas, and not in Missouri. (*See* Exhibit A, at ¶ 14). Because Plaintiff’s cause of action does not *arise from* any purported transaction of business in Missouri, the transacting business prong of the long-arm statute is not satisfied. *See Norfolk*, 512 S.W.3d at 48-49 (holding that “[o]nly if the instant suit arises out of the [the defendant’s] contacts with Missouri does Missouri have specific jurisdiction,” and finding that Plaintiff “pleaded no facts alleging the injury arose from [the defendant’s] Missouri activities); *Cunningham v. Subaru of Am., Inc.*, 620 F. Supp. 646, 647 (W.D. Mo. 1985) (Noting that, “although the defendant may have conducted business in Missouri it was not subject to jurisdiction under the ‘transacting business’ clause of the longarm statute *because the cause of action did not arise from that business*”) (citing *Nollman v. Armstrong World Indus.*, 603 F.Supp. 1168, 1171 (E.D.Mo.1985) (*emphasis added*)). Here, there is no specific allegation of any business transaction by these defendants occurring in Missouri, let alone one giving rise to Plaintiff’s claims as required by Missouri’s long-arm statute.

## 2. Contract Prong

Under the ‘contract prong’ of the long-arm statute, “a contract is made where the last act necessary to form a binding contract occurs.” *Johnson Heater Corp. v. Deppe*, 86 S.W.3d 114, 119 (Mo. Ct. App. 2002). “For purposes of long-arm jurisdiction, a contract is made where acceptance occurs.” *Id.* Notably, other than generally alleging that

Defendants<sup>3</sup> “make contracts within the State of Missouri [and] make contracts with citizens from the State of Missouri,” Plaintiff’s Petition contains no other allegations regarding the existence of any contract, let alone a contract that was made in Missouri *and* gives rise to Plaintiff’s claims against Relators.

Relators deny that any contract ever existed between the parties, but, to the extent a court would conclude otherwise, acceptance necessarily occurred in Kansas where any oral statements between Relators and Plaintiff would have occurred. More critically, to the extent Plaintiff accepted any offer (which again, Relators deny), Plaintiff did so by performing the duties he was allegedly hired to perform, which Plaintiff claims were performed at the ‘premises’ located in Johnson County, Kansas. (A4, ¶ 14). Thus, any contract would have been made (and performed) in Kansas, not Missouri. Therefore, to the extent that Plaintiff’s personal injury claims arise out of an alleged contract, that contract was made in Kansas, not in Missouri. Plaintiff has not presented any facts suggesting otherwise. As such, the contract prong of the long-arm statute is not satisfied. *See N.C.C. Motorsports, Inc. v. K-VA-T Food Stores, Inc.*, 976 F. Supp. 2d 993, 1000 (E.D. Mo. 2013) (“Plaintiff has not demonstrated that the lease was a Missouri contract because Plaintiff fails to meet its burden to establish acceptance of the lease, the last act necessary to [its]

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<sup>3</sup> Collectively referring to all Defendants in the underlying lawsuit including KCP&L, Inc., Steven Busser, Kevin D. Bryant, Ellen E. Fairchild, Cedar Crest Apartments, LLC, J.A. Peterson Enterprises, Inc., and Peterson Properties, Inc., d/b/a The Peterson Companies, and James A. Peterson.

form[ation,] occurred in Missouri”) (internal quotations and citation omitted). Because Plaintiff fails to meet the requirements of the long-arm statute, specific personal jurisdiction does not exist. Accordingly, Respondent does not have jurisdiction over Relators. This Court should therefore make its preliminary writ permanent.

B. Due Process.

Beyond the inapplicability of Missouri’s long-arm statute to Cedar Crest and Peterson Properties, Relators also lack sufficient contacts with Missouri such that the exercise of specific personal jurisdiction over them would be fundamentally unfair and would violate due process. Due process requires that a defendant have certain minimum contacts with the state, so that maintaining the suit does not offend traditional notions of fair play and substantial justice. *Johnson Heater Corp.*, 86 S.W.3d at 120. Thus, if the long-arm statute is satisfied, Missouri courts then assess whether a non-resident defendant has sufficient minimum contacts with the forum to satisfy due process. *Capitol Indem. Corp. v. Citizens Nat. Bank of Fort Scott, N.A.*, 8 S.W.3d 893, 899 (Mo. App. 2000).

To determine whether sufficient minimum contacts exist, Missouri courts look to five factors: “1) the nature and quality of the contacts; 2) the quantity of those contacts; 3) the relationship of the cause of action to those contacts; 4) the interest of Missouri in providing a forum for its residents; and 5) the convenience to the parties.” *Consol. Elec. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 776 (Mo. App. 2006). The first three factors are given primary importance. *Id.* Notably, the analysis of these first three factors demonstrates the due process violation. Regardless, before examining these factors it is important to note that because the long-arm statute is not satisfied (*see supra*, pp. 17-23),



the Court need not even reach the due process analysis. *State ex rel. Career Aviation Sales, Inc.*, 952 S.W.2d at 327. However, like the long arm statute, the due process analysis is also dispositive of the jurisdictional issue in this matter. That is, Relators Cedar Crest and Peterson Properties contacts with Missouri are insufficient to satisfy due process.

In this action, Plaintiff cannot identify any conduct by Relators Cedar Crest or Peterson Properties in or directed toward Missouri that is meaningfully related to the claims asserted in his Petition. As a result, sufficient minimum contacts are lacking. Specifically, Plaintiff alleges that Relator Cedar Crest “is a foreign limited liability company formed under the State of Kansas.” (A3, ¶ 6). Relator Peterson Properties is alleged to be a “foreign corporation formed under the State of Kansas.” (A3, ¶ 8). Relators Cedar Crest and Peterson Property own no real property in Missouri. (A48, ¶ 3). Relators employ personnel in the State of Kansas, but not Missouri. (A48, ¶ 4). Relators’ employees are based in Kansas and report to an office or location in Kansas to perform their job duties. (A48, ¶ 6). Moreover, at the time of his alleged injuries, Plaintiff was a resident of Kansas. (A48, ¶ 7). Plaintiff’s conservator is a resident of Kansas. (A1, ¶ 1). Plaintiff’s guardian is also a Kansas resident. (A1, ¶ 1). As a result, the nature and quality of Relators contacts with Missouri are non-existent, and do not rise to the level necessary to satisfy due process. *See Norfolk*, 512 S.W.3d at 46 (finding that, despite the fact that the Defendant “owns or operates some 400 miles of track, generates approximately \$232 million in revenue, and employs some 590 people in Missouri” and has “appointed a registered agent in Missouri” personal jurisdiction does not exist where “Missouri contacts are insufficient to establish general jurisdiction over [Defendant] in Missouri”).

As Relators' contacts within the State of Missouri are non-existent, it follows that the "quantity of those contacts" as contemplated under the second factor of the due process analysis weighs against jurisdiction. Moreover, any contacts that Relators may be said to have with Missouri bear absolutely no relationship to the present cause of action so that the third factor under the due process framework, "the relationship of the cause of action to those contacts" weighs heavily against a finding of sufficient minimum contacts. *Consol. Elec. & Mechanicals, Inc.*, 185 S.W.3d at 776. Plaintiff does not allege he performed any work in Missouri, but instead, claims to have been injured while working at the 'premises' located in Johnson County, Kansas. (A4-A5, ¶¶ 14, 17). Similarly, Relators' alleged acts or omissions at issue that give rise to Plaintiff's cause of action all took place in Kansas. (A1-A12, ¶¶ 38-40, 42-44). In short, all of the facts that form the basis of Plaintiff's claims against Relators and all of the harm allegedly resulting therefrom occurred in Kansas, not Missouri. Accordingly, there is no relationship between the cause of action and any contact Relators Cedar Crest and Peterson Properties may have with Missouri.

Next, it should be noted that Plaintiff, at the time his alleged injuries were sustained, was a resident of Kansas, not Missouri.<sup>4</sup> (A48, ¶ 7). Moreover, Plaintiff's Conservator and Guardian are also both residents of Kansas. (A1, ¶ 1). Plainly, the fourth factor – "the interest of the forum state in proving a forum *for its residents*" – also weighs heavily against minimum contacts here because Plaintiff was a resident of Kansas when his cause of action

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<sup>4</sup> Additionally, because Plaintiff's conservator and guardian were appointed by a Kansas court, under Kansas law, Plaintiff must be a resident of Kansas. See K.S.A. 59-3058.

accrued and such action is now pursued by Plaintiff's conservator, a Kansas resident. Missouri has no interest in providing a forum for Plaintiff's claims against Relators. *Mead v. Conn*, 845 S.W.2d 109, 113 (Mo. Ct. App. 1993) ("Because [plaintiffs] are not Missouri residents, the Missouri courts have no interest in providing a forum for [them]").

Lastly, the fifth factor considering "the convenience to the parties" weighs against minimum contacts. *Consol. Elec. & Mechanicals, Inc.*, 185 S.W.3d at 776. Missouri is an inconvenient forum for the parties and likely witnesses, as well as the Court, as Relators Cedar Crest and Peterson Properties are Kansas entities, their alleged acts or omissions and Plaintiff's alleged injuries were all sustained at the 'subject premises' in Kansas.

Because Missouri's long-arm statute is not satisfied, and because Relators lack sufficient minimum contacts with Missouri to satisfy due process requirements, specific personal jurisdiction does not exist. As a result, this Court must issue a Permanent Writ of Prohibition prohibiting Respondent from exercising jurisdiction over Relators.

**II. RELATORS ARE ENTITLED TO AN ORDER PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK GENERAL JURISDICTION OVER RELATORS IN THAT RELATORS ARE NOT INCORPORATED IN MISSOURI, ORGANIZED UNDER MISSOURI LAW, DO NOT HAVE A PRINCIPAL PLACE OF BUSINESS IN MISSOURI, AND CANNOT BE REGARDED AS “ESSENTIALLY AT HOME” IN MISSOURI.**

“When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising ‘general jurisdiction’ over the defendant.” *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 231 (Mo. 2017), quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). The United States Supreme Court made clear in *Daimler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746, 761 n.19, 187 L.Ed.2d 624 (2014), that a defendant cannot be subject to general jurisdiction in a state where it is neither incorporated nor has its principal place of business, unless it is an “exceptional case” rendering the corporation “essentially at home in the forum.” *Id.* at 754. In other words, a state may have general jurisdiction over a foreign entity that has not located its principal place of business there only if the state is a “surrogate” for place of formation or the home office such that the foreign entity is ‘essentially at home’ in that state.” *State ex rel. Norfolk S. Railway, Co. v. Dolan*, 512 S.W.3d 41, 48 (Mo. banc 2017).

It is undisputed in the present case that Relator Peterson Properties is a foreign corporation formed under the laws of the state of Kansas. (A3, ¶8) Likewise, Relator Cedar Crest is a foreign limited liability company formed under the laws of the state of Kansas (A3, ¶6). The principal place of business for both Peterson Properties and Cedar Crest is Johnson County, Kansas. As such, Missouri can only have general jurisdiction over Relators if Relators are “essentially at home” in Missouri. See *Norfolk*, 512 S.W.3d at 48. That is, in *Daimler* and *Goodyear Dunlop Tires v. Brown*, 131 S.Ct. 2846 (2011), the United States Supreme Court drastically altered the due process analysis applicable to a State’s assertion of general personal jurisdiction over a foreign corporation such as Relators. *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.” *Daimler*, 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, the foreign corporation was not subject to personal jurisdiction in California because plaintiff’s claims had no connection with California). The *Daimler* Court made clear that simply doing business in a forum does not constitute an “exception case” allowing general personal jurisdiction in a forum other than the corporation’s formal place of incorporation or principal place of business. *Id.* at 761, n.18 (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 critical question following *Daimler* is not whether a foreign corporation has some in-state contacts or a business presence, but whether, within the entire context of the corporation's national and global activities, the contacts with the forum State are enough to subject the corporation to suit 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.* 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”). The business in the forum state must be such that it renders the forum state the “nerve-center” of activities thereby rendering the Defendant at “home” in that state. *Norfolk*, 512 S.W. 3d at 48. Moreover, the *Daimler* Court affirmed the black letter law regarding general personal jurisdiction announced 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. *Id.* at 760, 761 n. 19.<sup>5</sup>

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<sup>5</sup> The *Daimler* Court provides *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) as an example of an “exceptional” case. In *Perkins*, 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

Courts applying *Daimler* have rejected attempts to deviate from its holding and consistently 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., BNSF Railway Co. v. Tyrell*, 137 S.Ct. 1549, 198 L.Ed. 2d 36 (2017) (In-state business does not suffice to permit the assertion of general jurisdiction over claims that are unrelated to any activity occurring in the forum state. The activities must be “so substantial and of such a nature as to render that corporation at home in that state.”); *Norfolk*, 512 S.W. 3d 41 (finding that despite Defendant owning or operating 400 miles of track, generating \$232 million in revenue, and employing 590 people in Missouri, Defendants’ Missouri activities were “not of the nature that makes Missouri its *de facto* principal place of business and therefore Missouri did not have general jurisdiction over Defendant); *Bayer Corp.*, 536 S.W. 3d 227 (holding that the transaction of substantial business in the state of Missouri is insufficient to provide general jurisdiction in Missouri); *Neeley v. Wyeth LLC, et al.*, 2015 WL 1456984 at \*2 (E.D. Mo. Mar. 30, 2015) (concluding that foreign defendants’ contacts do not qualify as an “exceptional case” under the “tighter” standard presented in *Daimler*); *Smith v. Union Carbide Corp.*, Case No. 1422-CC00457, 2015 WL 191118 at \*2-3 (Mo. Cir. Court, Jan. 12, 2015) (holding that Delaware corporation was not subject to general jurisdiction for asbestos lawsuit filed in Missouri); *Brown v. CBS Corp.*, 19 F. Supp. 3d 390, 396-400 (D. Conn. May 14, 2014) (finding no

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“[w]ere 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.

personal jurisdiction despite the fact that the 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, paid taxes in Connecticut and maintained Connecticut workers' compensation coverage).

This is not a case of "exceptional circumstances" rendering Relators subject to general personal jurisdiction outside of the state(s) of incorporation, formation and principal place of business. Plaintiffs' Petition contains no allegations suggesting exceptional circumstances. Plaintiff has presented no evidence or facts triggering the "exceptional circumstances" exception. Rather, the evidence and all factors in this case negate the application of general jurisdiction by a Missouri court over Relators. Relators do not transact business in Missouri. The Affidavit of James Peterson establishes that neither Cedar Crest nor Peterson Properties own any real estate in Missouri, nor do Relators employ any personnel in Missouri. (*See* Peterson Affidavit, at ¶¶ 3-4). The *Daimler* Court did not find that case to rise to the level of an "exceptional circumstance" subjecting Daimler to general personal jurisdiction in California despite its subsidiary's sale of more than 10% of all new Mercedes-Benz passenger cars in the state, 134 S.Ct. at 752, accordingly this Court likewise should find no "exceptional circumstances."

Here, Plaintiff cannot demonstrate that Relators' activities in Missouri are so continuous and systematic as to render Missouri its home state. In his Petition, Plaintiff generally alleges that "defendants transact business within the state of Missouri ... and/or solicit customers in and from Missouri, constituting the transaction of business in



Missouri.” Additionally, in Plaintiff’s Suggestions in Opposition to Relators’ Petition for Writ of Prohibition, Plaintiffs allege that “general jurisdiction exists over Peterson Properties because it has maintained its presence in Missouri since August 31, 1979 and has solicited business in Missouri since that time. Since 1979, Peterson Properties has been registered to conduct business in Missouri.” In other words, Plaintiff has attempted to argue that Relator Peterson Properties’ compliance with Missouri’s registration statutes is the equivalent of “maintaining a presence and soliciting business in Missouri” but more so that such presence and solicitation of business is sufficient to make Peterson Properties “at home” in Missouri. First, only Peterson Properties is registered to do business in Missouri. Cedar Crest is not. Accordingly, this argument has no application to Cedar Crest. Moreover, the registration to do business in Missouri is not the equivalent of actually conducting business in the state. Instead, registration merely makes it permissible for the party to conduct business in the state. Furthermore, as the cases cited above make clear, the transaction of business in the state of Missouri is not sufficient to make a party “at home” in the state required to trigger general jurisdiction. See *Tyrell*, 137 S.Ct. 1549; *Norfolk*, 512 S.W. 3d 41; and *Bayer Corp.*, 536 S.W. 3d 227. The business transacted must be of sufficient quality, kind and character to make Missouri its home state, much like the principal place of business. Plaintiff has failed to demonstrate any “exceptional circumstances.”

If Plaintiff’s position is followed, every corporation even *alleged* to do business in Missouri would be subject to personal jurisdiction here, even if no business is actually conducted in Missouri at all (let alone business giving rise to Plaintiff’s claims). (*See* A54-

A55 (Plaintiff claims that he “merely need[s] to *state* sufficient facts to support a reasonable inference that the Defendants engaged in one of the enumerated activities in the long-arm statute” and “*allege*[] that the nature, quality, quantity, and relevance of the Defendants’ contacts [] satisfy[ies] due process” to make a prima facie demonstration of personal jurisdiction) (emphasis added)). This result is not supported by *Daimler*, 134 S. Ct. at 760-61 (“Plaintiff 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”). *Daimler* stands for the proposition that a court cannot exercise general jurisdiction over a foreign corporation based on *continuous business contacts* with the State. *See id.* It defies logic that general personal jurisdiction could be established over a business with *no* such contacts.

Plaintiff has failed to demonstrate that Relators transact business in Missouri, much less that its business in Missouri is sufficient to render Relators “at home” in Missouri. Allowing the Missouri courts to exercise personal jurisdiction over Relators is contrary to U.S. Supreme Court precedent in *Daimler* and *Tyrell*, Missouri Supreme Court precedent in *Bayer* and *Norfolk*, and other United States and Missouri cases, and violates Relators due process rights. As such, Relators request a writ from this Court preventing Respondent from exercising personal jurisdiction over Relators’ Cedar Crest and Peterson Properties.

## CONCLUSION

Before a case can proceed against a party it must be demonstrated that the court has jurisdiction over the party. In this case, the Missouri courts lack personal jurisdiction over Relators Cedar Crest and Peterson Properties. Relators are Kansas entities, organized under the laws of Kansas with their principal place in Kansas. Accordingly, in the absence of “exceptional circumstances,” the Missouri courts do not have general jurisdiction over Relators. Plaintiff has failed to demonstrate any “exceptional circumstances,” likely because no such circumstances exist. Additionally, the Missouri courts do not have specific personal jurisdiction over Relators as Relators do not transact business, make contracts and have not committed a tort in Missouri. Moreover, Plaintiff’s claims arise out of Relators’ business, contracts, and/or torts in Kansas, not Missouri. The Missouri court’s exercise of personal jurisdiction over Relators violates Relators’ due process. Finally, the court’s exercise of jurisdiction will result in irreparable harm, and significant expense if not remedied immediately. The facts and circumstances of this case, therefore, require this Court to make its Preliminary Writ of Prohibition permanent, prohibiting the 16th Judicial Circuit of Jackson County, and the Honorable Jack Grate, from exercising jurisdiction over Relators in this case and requiring Respondent to enter an order dismissing Relators from the Underlying Lawsuit for lack of personal jurisdiction.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that copies of this Relators' Brief were served this 1<sup>st</sup> day of June, 2018, through the electronic filing system pursuant to Supreme Court Rule 103.08 on:

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**RULE 84.06(c) CERTIFICATION**

Undersigned counsel for Appellant hereby certifies that this Brief contains the information required by Rule 55.03. Additionally, this Brief complies with the limitations contained in Rule 84.06(b), in that it contains 7,283 words counted using Microsoft Word.

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