

SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel.)	
PPG INDUSTRIES, INC.)	
)	No. SC97006
Relator,)	
)	Missouri Court of Appeals
v.)	Eastern District No. ED106348
)	
THE HONORABLE MAURA B.)	St. Louis County Circuit Court
MCSHANE, CIRCUIT JUDGE,)	Cause No. 17SL-CC04092
CIRCUIT COURT OF ST. LOUIS)	
COUNTY, MISSOURI,)	
)	
Respondent.)	

RESPONDENT’S BRIEF

Steven M. Cockriel, #33724
Philip J. Christofferson, #50134
COCKRIEL & CHRISTOFFERSON, LLC
3660 South Geyer Road, Suite 320
St. Louis, Missouri 63127-1223
314-821-4200
314-821-4264 Fax
scockriel@cockriel.com
pchristofferson@cockriel.com

Attorneys for Respondent
The Honorable Maura B. McShane, Circuit Judge,
Circuit Court of St. Louis County, Missouri

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STATEMENT OF ADDITIONAL FACTS

Relator PPG Industries, Inc. (“PPG”) has mischaracterized the allegations in Plaintiff Hilboldt Curtainwall, Inc.’s (“Hilboldt”) Petition and has omitted key facts in its Statement of Facts to this Court.

Hilboldt was a subcontractor to Alberici Constructors, Inc. on a construction project for Monsanto in Chesterfield, Missouri. (Petition, ¶ 7 (A037)). Hilboldt’s work included supplying various “curtainwalls”, i.e. non-structural exterior wall systems – in this case, comprised in part of glass panels that are joined together by, among other things, coated aluminum extrusions. (Petition, ¶ 8 (A037)).

The specifications for the project required Hilboldt to use aluminum extrusions that had been coated with PPG’s Duranar Sunstorm Extrusion Coating, and the specifications required that the coating meet American Architectural Manufacturers Association (“AAMA”) Standard 2605, “Voluntary Specification – Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels”. (Petition, ¶¶ 9-11 (A037-A038)).

Hilboldt’s claim against PPG is for negligent misrepresentation, based upon PPG’s designation of Finishing Dynamics, LLC (“FD”) as an “Approved Extrusion Applicator” of the specified Duranar Sunstorm Extrusion Coating. (Petition, ¶ 15 (A038).) Per PPG, this designation meant that:

- FD would “have the required equipment and facilities to apply PPG coatings in accordance with PPG’s recommendations. They are known to work with

Duranar and Coraflon products ... [and] are approved to apply our Duranar [and other] coatings.” (Petition, ¶ 16 (A038)).

- FD would properly clean and pretreat the aluminum extrusions and properly apply the PPG coatings to the aluminum extrusions. (Petition, ¶ 19 (A039)).

It is these misrepresentations upon which Hilboldt relied to state its cause of action against PPG.

PPG also mischaracterizes Hilboldt’s arguments at the trial court in response to Relator’s Motion to Dismiss. The litany of contacts between Relator and the State of Missouri included in Hilboldt’s response¹ (set forth below) were intended to show that Relator has minimum contacts with the State of Missouri sufficient to meet the requirements of due process. While most of the delineated contacts did not give rise to Hilboldt’s causes of action, the contacts are nevertheless relevant to the minimum contacts / due process analysis that this Court must undertake. These contacts include:

- PPG has been the Plaintiff or Petitioner in 37 cases filed in the state courts in Missouri. (A064, A067-078.)
- PPG is registered in and authorized to do business in the State of Missouri. (A064, A079-083.)
- PPG has at least 63 retail stores in the State of Missouri. (A064, A084.)

¹ Plaintiff’s Memorandum in Opposition to PPG Industries, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction, p. 3 (A064).

- PPG has two approved Missouri-based applicators of the coating at issue in this case. (A064, A084-085.)
- PPG is (or was at the time) advertising 15 jobs in the State of Missouri. (A065, A085.)
- PPG’s representatives routinely visit Missouri to promote the use of its products in Missouri. (A065, A086-089.)²

² Based upon the language in the Project Specification and standard industry practices, Hilboldt strongly believes that PPG provided at least some portion of the extrusion coating specification (requiring the use of PPG’s coating and a PPG-authorized and approved applicator), but Hilboldt has not been provided the opportunity to undertake discovery on this point.

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STANDARD OF REVIEW

“Prohibition is an original proceeding brought to confine a lower court to the proper exercise of its jurisdiction.” *State ex rel. Lebanon Sch. Dist. R-III v. Winfrey*, 183 S.W.3d 232, 234 (Mo. banc 2006). “The extraordinary remedy of a writ of prohibition is available: (1) to prevent the usurpation of judicial power when the trial court lacks authority or jurisdiction” *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 230 (Mo. banc 2017).

As PPG acknowledges (p. 6 of its Brief), a writ of prohibition is an extraordinary remedy. Accordingly, “prohibition is only proper ‘when usurpation of jurisdiction ... is clearly evident.’” *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 45 (Mo. banc 2017), quoting *State ex rel. Tarrasch v. Crow*, 622 S.W.2d 928, 937 (Mo. banc 1981).

ARGUMENT

Relator’s Point Relied On: “Relator PPG is entitled to an order prohibiting Respondent from exercising personal jurisdiction over it because Missouri Courts lack specific jurisdiction over corporate defendants not domiciled in Missouri where, as here, the plaintiff’s cause of action against the foreign defendant does not arise from or relate to any of the defendant’s in-state activities.”

A. PPG is not entitled to a permanent writ of prohibition because Respondent properly found that the court had specific jurisdiction over PPG, in that plaintiff’s cause of action against PPG arises from PPG’s misrepresentations that plaintiff received and relied upon in Missouri, and that caused damage to plaintiff in Missouri; and PPG has minimum contacts with Missouri sufficient to satisfy due process.

This Court’s prior pronouncements on personal jurisdiction, including application of Missouri’s long-arm statute, were properly applied by Respondent to deny PPG’s motion to dismiss and find that the court had specific jurisdiction over PPG.

“Specific jurisdiction requires consideration of the ‘relationship among the defendant, the forum, and the litigation.’” *Norfolk*, [*supra*], 512 S.W.3d at 48, quoting *Andra 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.” *Daimler* [*AG v. Bauman*, 134 S.Ct. 746 (2014)] at 749 (alterations in original). “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 (2017), quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). “For this reason, ‘specific jurisdiction is confined to adjudication of

issues deriving from, or connected with, the very controversy that establishes jurisdiction.” *Id.*, quoting *Goodyear*, 564 U.S. at 919.

State ex rel. Bayer Corp. v. Moriarty, 536 S.W.3d 227, 233 (Mo. banc 2017).

In paragraph 4 of its Petition (A037), Hilboldt alleged that Respondent had specific jurisdiction over PPG under Missouri’s long-arm statute applicable to tort actions, *R.S.Mo.* § 506.500.1(3). The long-arm statute provides for specific jurisdiction based upon a defendant’s tortious acts in this state or, under *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227 (Mo. banc 2010), based upon tortious acts outside this state that cause actionable consequences within the state.

In this case, specific jurisdiction is based on PPG’s misrepresentations which were received by Hilboldt in Missouri, relied upon by Hilboldt in Missouri, and which caused injury to Hilboldt in Missouri. These misrepresentations were made on PPG’s website.

This Court has previously held that “extraterritorial³ acts that produce consequences in this State, such as fraud, are subsumed under the tortious act section of the long-arm statute”, *R.S.Mo.* § 506.500.1(3). *Bryant*, 310 S.W.3d at 232, citing *Longshore v. Norville*, 93 S.W.3d 746, 752 (Mo. App. E.D. 2002) and *Schwartz & Assoc. v. Elite Line, Inc.*, 751 F. Supp. 1366, 1369 (E.D. Mo. 1990). See also *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.2d 216, 225 (Mo. banc 2015) (“[F]raudulent acts that create consequences in the forum state fall under [R.S.Mo.] section 506.500.”).

³ For purposes of this discussion, Hilboldt assumes that PPG’s website is not physically “present” in Missouri even though it can be viewed here.

Thus, for specific jurisdiction purposes, PPG’s misrepresentations constitute contact with Hilboldt in the State of Missouri – and it is this contact that forms the basis of Hilboldt’s lawsuit. As such, Respondent’s finding of specific jurisdiction over PPG in this case satisfies the requirements of the recent decisions by the United States Supreme Court on personal jurisdiction because Hilboldt’s action against PPG arises out of PPG’s contacts with Missouri.

Therefore, as long as PPG also has minimum contacts with this State sufficient to meet the requirements of due process, specific jurisdiction is established.

In its Response to PPG’s Motion to Dismiss, Hilboldt set forth a myriad of contacts between PPG and the State of Missouri to establish that PPG has sufficient minimum contacts with the State of Missouri to satisfy due process.

Nothing more is required for PPG to be subject to personal jurisdiction in Missouri.

Throughout this lawsuit, PPG has repeatedly misstated the nature of Hilboldt’s cause of action, and the nature of Respondent’s Order denying PPG’s Motion to Dismiss. For instance, PPG asserts: “Respondent erred in holding that the maintenance of PPG’s website ‘constitutes the ‘commission of a tortious act’ within this state’ under the Missouri long-arm statute.” (Brief, p. 8.) PPG asserts that “a website is the basis for personal jurisdiction” in this case. (*Id.*) And PPG asserts that *Bryant* and other cases cited by Hilboldt are “inapplicable to the instant matter as [none] involved the maintenance of a website.” (*Id.* at 11.)

But Hilboldt’s claim does not arise from the mere existence or “maintenance of a website”. Hilboldt’s claim is based upon multiple affirmative misrepresentations made by PPG on its website, as set forth in Hilboldt’s Petition (¶¶ 15-27, A038-040). These misrepresentations were received by Hilboldt in Missouri, relied upon by Hilboldt in Missouri, and caused damage to Hilboldt in Missouri. The fact that these misrepresentations were made on a website – rather than, say, in a letter mailed to Missouri by PPG, or in a telephone call to Missouri initiated by PPG – does not change the jurisdictional analysis.

This case is therefore nothing like *State ex rel. Norfolk Southern Ry. Co. v. Dolan*, 512 S.W.3d 41 (Mo. 2017). *Norfolk Southern* was a personal injury (FELA) case, where the plaintiff was an Indiana resident who was injured in Indiana after working for the defendant railroad for decades in Indiana, but who then filed suit against the railroad in Missouri. The plaintiff argued that specific jurisdiction was proper because the railroad maintained tracks and offices in this state – even though there was no connection between those facilities and the plaintiff’s claim.

This Court concluded that the railroad was not subject to specific jurisdiction, since neither the claimed injury nor the tortious acts (*i.e.* those acts related to plaintiff’s employment in Indiana that led to the cumulative trauma injury in Indiana) occurred in Missouri.

Here, Hilboldt’s injury occurred in Missouri and was the direct consequence of PPG’s tortious acts (thereby satisfying the long arm statute under *Bryant*), and PPG has minimum contacts with the State of Missouri sufficient to otherwise satisfy due process.

Thus, unlike the claimant in *Norfolk Southern*, Hilboldt's claim does arise out of PPG's contacts with the state of Missouri – i.e., PPG's misrepresentations that caused damage to Hilboldt in Missouri.

In order for PPG to prevail in this writ, this Court must overrule *Bryant* – a case decided by this Court in 2010, and cited positively by this Court in *Norfolk Southern* in 2017 – and hold that actions taken outside of Missouri which produce actionable consequences in Missouri, “such as fraud,” are no longer “subsumed under the tortious act section of the long-arm statute.”

In other words, PPG asks this Court to tell Missouri residents, who are injured in Missouri, by the extraterritorial tortious acts of a defendant with a myriad of contacts with Missouri (which clearly are substantial enough that PPG could anticipate being haled into court in Missouri), that those residents no longer have access to Missouri courts for relief. Instead, they must travel to PPG's backyard of Pennsylvania in order to seek relief for PPG's misrepresentations – even though those residents (like Hilboldt) presumably have no connection whatsoever with the state of Pennsylvania, and even though their claims (like Hilboldt's) have no connection with the state of Pennsylvania.

That is simply not the law in Missouri. This Court made clear in *Bryant* that Missouri courts may exercise specific jurisdiction in cases where the defendant's tortious actions – even if undertaken outside the state of Missouri – produce actionable consequences within the state, so long as minimum contacts between the defendant and the State of Missouri sufficient to satisfy due process are also present.

In reaching this conclusion, this Court cited *Longshore v. Norville*, 93 S.W.3d 746 (Mo. App. E.D. 2002), where the defendant was a Florida resident who had undertaken a scheme with several other Florida residents to defraud a Missouri resident. The defendant was not present in Missouri, and his only contact with the state was the mailing of a letter into Missouri – *after* the tort had been committed – revealing the fraud. The court held that the defendant was subject to specific jurisdiction in Missouri because the plaintiff had “sufficiently alleged the commission of an extraterritorial tort with damage occurring in Missouri,” and the mailing of a single letter satisfied the “minimum contacts” analysis. 93 S.W.3d at 753.

Here, Hilboldt has likewise alleged that PPG’s misrepresentations caused actionable consequences in Missouri. It is these allegations which formed the basis for Respondent’s conclusions that “[u]nder the broad construction afforded to the phrase ‘commission of a tortious act’ in Missouri’s long-arm statute, the Court finds HCI sufficiently pled that PPG committed a tortious act in Missouri”, and that “[s]ince it was reasonably foreseeable that PPG’s alleged negligent actions would have consequences in Missouri, jurisdiction is proper in this Court.” (See January 29, 2018 Order Denying Relator’s Motion to Dismiss, pp. 2-3 (A091-092).)

In addition to satisfying the long-arm statute, Hilboldt must also demonstrate that PPG has sufficient “minimum contacts” with the State of Missouri to satisfy due process. “When evaluating minimum contacts, the focus is on whether ‘there be some act by which the defendant purposefully avails itself of the privilege of conducting activities

within the forum State, thus invoking the benefits and protections of its laws.’’ *Bryant*, 310 S.W.3d at 232, quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1957).

To determine whether sufficient minimum contacts exist, Missouri courts generally⁴ 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. E.D. 2006).

The multitude of other contacts between PPG and the state of Missouri that were discussed in Hilboldt’s Response to PPG’s Motion to Dismiss (A027-054) – and which were set forth in Respondent’s Order denying PPG’s Motion to Dismiss – are not intended to establish “general jurisdiction”, as PPG seems to believe. Rather, those contacts are obviously relevant to the required due process analysis – to determine whether PPG has sufficient minimum contacts with the State of Missouri for jurisdiction to attach. As Respondent’s Order stated: “After considering the nature, quality, and quantity of PPG’s contacts with the forum state and the relation of the cause of action to

⁴ Review of these five factors is not “required” in specific jurisdiction cases, but is often used as a “tool to assist [courts] in resolving the ultimate issue whether the defendant has purposely availed itself of the privilege of doing business in this state such that it reasonably could anticipate being haled into court here.” *Bryant*, 310 S.W.3d at 233 n. 4.

these contacts, the Court finds [that] PPG’s extensive contacts with Missouri satisfy due process.” (January 29, 2018 Order Denying Relator’s Motion to Dismiss, p. 3 (A092).)

If the mailing of a single letter into Missouri was sufficient to establish minimum contacts in *Longshore*, then surely the nature, quality, and quantity of PPG’s contacts with Missouri – filing 37 lawsuits in this state; being registered to do business in this state; operating at least 63 retail stores within this state; advertising jobs within this state; maintaining approved applicators for its product in this state; and routinely having sales representatives visit this state to promote its products – is sufficient to establish minimum contacts here.

The fourth and fifth factors enumerated in *Schuerman* also favor a finding of specific jurisdiction here. Hilboldt is a small, family-owned corporation incorporated in Missouri, with its sole place of business in Missouri. This State has a clear and compelling interest in providing a forum for Hilboldt and other residents that are injured in Missouri. And most of the witnesses and evidence in this case will be based in Missouri, as Missouri is where the underlying project is based; where the coated extrusions were delivered for incorporation into the project, and ultimately determined to be unusable; and where Hilboldt incurred damages in having to obtain and install new coated extrusions. (And notably, this case has no relationship at all to PPG’s “home” base in Pennsylvania – aside from PPG’s incorporation in that state.)

Clearly, all of PPG’s contacts with the State of Missouri demonstrate that it “reasonably could anticipate being haled into court here.”

B. *Zippo* is inapplicable, because Hilboldt's cause of action is not based on the mere existence of PPG's website, and because long-arm jurisdiction is established under R.S.Mo. § 506.500.1(3) and *Bryant*.

Nearly all of PPG's analysis rests upon a case decided by the federal court for the Western District of Pennsylvania when the Internet was in its infancy, *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997). PPG relies on *Zippo* to argue that Missouri's long-arm statute does not authorize jurisdiction over PPG. In so doing, PPG asks this Court to view this case through the prism of a claim based solely on the existence of a website, such as the trademark infringement claim present in *Zippo* – rather than as the misrepresentation claim Hilboldt actually pled here – and to ignore this Court's holding in *Bryant*.

First, and most obviously, this Court has never held that *Zippo* is the law in Missouri.

More importantly, this Court has already held in *Bryant* that extraterritorial tortious acts such as fraud, that produce actionable consequences in Missouri, are subsumed by and fall within the long-arm statute, R.S.Mo. § 506.500.1(3). Hilboldt has alleged precisely those facts: tortious acts (*i.e.* misrepresentations by PPG) which caused actionable consequences to Hilboldt in Missouri.

Under *Bryant*, *that is the end of the long arm inquiry*. The Court can proceed directly to the second part of the specific jurisdiction inquiry: whether PPG has minimum contacts with the State of Missouri sufficient to meet due process requirements.

In any event, the facts and holding of *Zippo* are simply not related to the facts presented in this case. *Zippo* was an Internet domain name dispute – a trademark

infringement suit. So *Zippo* did indeed turn solely on the “maintenance of a website,” because it was the existence of the website itself that allegedly infringed on the plaintiff’s trademark. The court found that it had specific jurisdiction over the out-of-state defendant based on the existence of contracts (subscriptions to the website) between the defendant and residents of Pennsylvania. Ultimately, the court held that the plaintiff’s trademark infringement claim arose out of the defendant’s forum-related conduct because a cause of action for trademark infringement “occurs where the passing off occurs” – and “both a significant amount of the alleged infringement and dilution, and resulting injury have occurred in Pennsylvania” because many of the defendant’s customers were located in Pennsylvania. *Zippo*, 952 F.Supp. at 1127.

This, however, is a misrepresentation case. It is not the mere maintenance or existence of the website that forms the basis for Hilboldt’s claim. It is PPG’s affirmative misrepresentations on that website – upon which Hilboldt relied in Missouri to its detriment in Missouri – that are at issue.

Hilboldt further submits that the “sliding scale” analysis presented in *Zippo* is simply nonsensical in the context of a misrepresentation claim.

If PPG’s misrepresentations had occurred on a telephone call to Hilboldt in Missouri, Respondent clearly could have asserted specific jurisdiction. (See, e.g., *Bryant*, *supra*, 310 S.W.3d at 233.)

If PPG had mailed the misrepresentations to Hilboldt in Missouri, Respondent clearly could have asserted specific jurisdiction. (See *id.*)

And PPG’s own Brief acknowledges that if PPG had made the very same misrepresentations on the very same PPG website, but that website was somehow more “interactive” (Relator’s Brief, p. 10), Respondent could have asserted personal jurisdiction.

It defies logic and common sense that PPG should somehow *avoid* the jurisdiction of Missouri courts simply because the misrepresentations appeared on a website that didn’t have an “Order Here” button. Hilboldt’s claims do not arise out of its purchase of a PPG product because there is no suggestion that the actual coating was defective – it was the application of the coating by FD that caused the problems. That is why Hilboldt’s claim arises out of PPG’s misrepresentations about FD and its other “Approved Extrusions Applicators”. These misrepresentations led to Hilboldt contracting with one of PPG’s “Approved Extrusion Applicators” – and this ultimately caused Hilboldt to incur millions of dollars in damages in Missouri.

Interestingly, *Zippo* itself acknowledges that in modern commerce, there is no principled basis for treating Internet interactions differently from more traditional interactions: “Traditionally, when an entity intentionally reaches beyond its boundaries to conduct business with foreign residents, the exercise of specific jurisdiction is proper. Different results should not be reached simply because business is conducted over the Internet.” *Zippo*, 952 F.Supp. at 1124, citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

Likewise, in *Bryant*, this Court cited with approval the words of the First Circuit in *Murphy v. Erwin-Wasey, Inc.*, 469 F.2d 661, 664 (1972): “We would be closing our eyes

to the realities of modern business practices were we to hold that a corporation subjects itself to the jurisdiction of another state by sending a personal messenger into that state bearing a fraudulent misrepresentation but not when it follows the more ordinary course of employing the United States Postal Service as its messenger.”

The same reasoning holds true forty-six years later, regardless of the advancement in technology: this Court would be closing its eyes to the reality of modern business practice were it to hold that a corporation subjects itself to jurisdiction by mailing misrepresentations to potential customers in Missouri, or by making misrepresentations in a telephone call into Missouri, but not when it follows the “more ordinary course” (in 2018) of employing a website as its messenger.

In addition, *Zippo* has been criticized by commentators and, increasingly, by courts that recognize the state of the Internet in 2018 is unrecognizable when compared to the state of the Internet in 1997, when *Zippo* was decided. As one commentator recently noted: “While *Zippo* was an admirable effort to bring order to the chaos, two decades hence its sliding scale is obsolete. Even the humblest blogs are interactive in the sense that readers can post comments and email the blogger. Big distributors like Amazon have achieved a level of interactivity unimaginable when *Zippo* was written.” Dr. Patrick Borchers, *Extending Federal Rule of Civil Procedure 4(K)(2): A Way to (Partially) Clean Up the Personal Jurisdiction Mess*, 67 Am. U.L. Rev. 413, 437-438 (Dec. 2017).

But even if the *Zippo* sliding scale is adopted by this Court, Hilboldt submits that PPG’s website is indeed “interactive” – so Respondent could properly assert specific jurisdiction over PPG for statements made on its website. Because Respondent’s ruling

was in Hilboldt's favor, no discovery has occurred with respect to jurisdictional issues (see Section D, *infra*). But a review of PPG's current website, which is available to any Internet user at www.ppgideascales.com⁵ (and the same content appears again at ppgmetalcoatings.com), reveals a number of "interactive" features that go far beyond a merely "passive" website. For example, customers can request samples of PPG's products through the "Request Samples" link at the top of the homepage.⁶ Customers can click on the "Contact Us" link to submit questions or concerns about PPG products.⁷ Customers can "share" the website to their Twitter or Facebook accounts.⁸ And, of

⁵ For purposes of this brief, the website was visited and the links herein verified on July 12, 2018 – but because a website can be altered with a few clicks of a mouse, it is possible that additional interactive features were present at the time Hilboldt visited and viewed the misrepresentations at issue herein. See Section D, *infra*.

⁶ Clicking this link directs the user to sampleorder.ppgmetalcoatings.com, from which the user can establish a free account and order samples of PPG products – including the Duranar Sandstorm product that Hilboldt was required to use on the subject project.

⁷ Clicking this link directs the user to <http://www.ppgideascales.com/en-US/Contact-Us.aspx>.

⁸ These "share" buttons appear on several pages on PPG's website. See, e.g., <http://www.ppgideascales.com/en-US/Metal-Coatings/Where-to-Buy.aspx>.

course, by clicking “Where To Buy”⁹, customers can view PPG’s list of “approved applicators”¹⁰ who, allegedly, “have the required equipment and facilities to apply PPG coatings in accordance with PPG's recommendations” and “are known to work with Duranar and Coraflon products ... [and] are approved to apply our Duranar [and other] coatings” – two of the very misrepresentations that Hilboldt relied upon in this case. If “interactivity” is deemed to be the touchstone of specific jurisdiction for cases involving misrepresentations on websites, PPG’s website meets that test.

C. PPG’s substantial contacts with the State of Missouri demonstrate that the assertion of specific jurisdiction meets due process requirements.

PPG also argues that the litany of contacts between PPG and the State of Missouri do not establish that due process is met, because none of those contacts are directly connected to Hilboldt’s claim against PPG.

Once again, Hilboldt did not demonstrate these contacts in order to satisfy the long-arm statute, or to assert a claim of general jurisdiction – so PPG’s entire argument on this point (see its Brief, pp. 13-18) is a red herring.

Rather, Hilboldt set forth these contacts to demonstrate that PPG has “minimum contacts” with the State of Missouri that are sufficient to satisfy due process, as required

⁹ Clicking this link directs the user to <http://www.ppgideascape.com/en-US/Metal-Coatings/Where-to-Buy.aspx>.

¹⁰ <http://www.ppgideascape.com/en-US/Metal-Coatings/Where-to-Buy/Approved-Extrusion.aspx>.

by cases dating back to *International Shoe Co. v. State of Washington*, 32 U.S. 310 (1945), and as discussed by this Court as recently as *Andra, supra* at 228 – wherein the Court noted that “courts since *International Shoe* have looked at whether a defendant purposefully avails itself of the ‘privilege of conducting activities within a state’ through ‘systematic and continuous’ contacts.” In *Andra*, this Court examined the “totality of contacts between [defendant] and Missouri” and concluded they were “sufficient for Missouri to assert personal jurisdiction over [defendant] as well as satisfy due process and comply with traditional notions of fair play and substantial justice.” *Id.* at 232.

D. In the alternative, Hilboldt should be permitted to pursue additional discovery on the issue of PPG’s contacts with the State of Missouri and the “interactivity” of its website.

In its response to PPG’s Motion to Dismiss for Lack of Personal Jurisdiction, Hilboldt requested in the alternative that it be permitted to conduct limited discovery on the issue of specific jurisdiction. Because Respondent denied the Motion to Dismiss, no further discovery was taken on the jurisdictional issue. Now that this Court has issued its Preliminary Writ, at a minimum, Hilboldt should be permitted to conduct that discovery so that it may present a more complete analysis of PPG’s contacts with the State of Missouri – and the “interactivity” of its website – to this Court. It would be patently unfair for Hilboldt to be denied an opportunity to conduct this discovery, particularly because a writ of prohibition is only proper when “usurpation of jurisdiction is clearly evident.” *Norfolk, supra* at 45.

This discovery might reveal, among other things, that PPG’s contacts with the State of Missouri are so extensive that general jurisdiction would indeed be proper,

notwithstanding that PPG is incorporated in Pennsylvania, under the “exceptional case” test set forth in *Daimler* and *Bayer, supra*. It might reveal other ways in which PPG’s website was indeed “interactive” at the time of its misrepresentations to Hilboldt (see section B, *supra*, for examples of the current website’s interactivity). And it might reveal, as Hilboldt strongly suspects, that PPG provided at least some portion of the extrusion coating specifications that required the use of PPG’s coating for the Project.

CONCLUSION

Respondent properly found that the court had specific jurisdiction over PPG, because Hilboldt’s cause of action against PPG arose from PPG’s misrepresentations that plaintiff received and relied upon in Missouri, and that caused damage to Hilboldt in Missouri – satisfying the long-arm statute under *Bryant*. PPG has a myriad of contacts with Missouri that are otherwise sufficient to satisfy due process. Thus, Respondent’s Order denying PPG’s Motion to Dismiss was correctly issued, and this Court’s preliminary Writ should be quashed.

COCKRIEL & CHRISTOFFERSON, LLC

By: /s/ Steven M. Cockriel
Steven M. Cockriel, #33724
Philip J. Christofferson, #50134
3660 South Geyer Road, Suite 320
St. Louis, Missouri 63127-1223
314-821-4200
314-821-4264 Fax
scockriel@cockriel.com
pchristofferson@cockriel.com

Attorneys for Respondent The Honorable Maura B.
McShane, Circuit Judge, Circuit Court of St. Louis
County, Missouri

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 5,230 as determined by Microsoft Word 2016.
4. The brief was prepared using Times New Roman font in 13 point size, in Microsoft Word 2016.

/s/ Steven M. Cockriel

CERTIFICATE OF SERVICE

The undersigned certifies that I filed a copy of the foregoing pleading using Missouri's Electronic Filing system on July 17, 2018, and said system will provide notification of the filing and access to the pleading to all counsel of record; and that he has signed an original and is maintaining the same pursuant to Rule 55.03(a).

/s/ Steven M. Cockriel