

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.)	
McSHANE CIRCUIT JUDGE, CIRCUIT)	Circuit Court of St. Louis County
COURT OF ST. LOUIS COUNTY,)	No. 17SL-CC04092
MISSOURI,)	
)	Division 2
Respondent.)	
)	

RELATOR’S BRIEF

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 INDUSTRIES, INC.**

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF FACTS	2
POINT RELIED ON	4
I. 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.	4
ARGUMENT.....	5
A. Standard of Review	6
B. Respondent erred in exercising personal jurisdiction over PPG because Plaintiff’s claim does not arise out of an activity by PPG covered by Missouri’s Long-Arm Statute and because Plaintiff’s claim against PPG does not arise out of PPG’s contacts with Missouri.	7
1. Missouri’s Long-Arm Statute does not authorize jurisdiction over PPG.....	8
2. The exercise of specific jurisdiction over PPG violates its rights under the Fourteenth Amendment’s Due Process Clause because Plaintiff’s claim is not connected to PPG’s activity in Missouri.	13
3. Jurisdictional discovery is not warranted.	18
CONCLUSION	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Andra v. Left Gate Property Holding, Inc.</i> , 453 S.W.3d 216 (Mo. 2015)	8
<i>Barron v. Pfizer, Inc.</i> , No. 4:15-CV-584 CAS, 2015 WL 5829867 (E.D. Mo. Oct. 6, 2015).....	13
<i>BNSF Ry. Co. v. Tyrrell</i> , 137 S. Ct. 1549 (2017).....	3
<i>Bristol-Myers Squibb Co. v. Superior Court of Cal.</i> , 137 S. Ct. 1773 (2017).....	4, 16, 17
<i>Bryant v. Smith Interior Design Group, Inc.</i> , 310 S.W.3d 227 (Mo. 2010)	11, 12
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	7, 13
<i>Conway v. Royalite Plastics, Ltd</i> , 12 S.W.3d 314 (Mo. 2000)	7
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014).....	3, 13
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915 (2011).....	15
<i>Johnson v. Arden</i> , 614 F.3d 785 (8th Cir. 2010)	4, 8, 9, 10, 11, 12
<i>Myers v. Casino Queen Inc.</i> , 689 F.3d 904 (8th Cir. 2012)	11, 12
<i>State ex rel. Bayer Corp. v. Moriarty</i> , 536 S.W.3d 227 (Mo. 2017)	3
<i>State ex rel. City of Blue Springs v. Nixon</i> , 250 S.W.3d 365 (Mo. 2008)	7

State ex rel. Heart of Am. Council v. McKenzie,
484 S.W.3d 320 (Mo. 2016), *reh’g denied* 7

State ex rel. Kmart v. Holliger,
No. WD 54687, 1998 WL 327185 (Mo. App. W.D. 1998)..... 13

State ex rel. Missouri Pub. Def. Comm’n v. Waters,
370 S.W.3d 592 (Mo. 2012) 6

State ex rel. Norfolk S. Ry. Co. v. Dolan,
512 S.W.3d 41 (Mo. 2017) 1, 2, 4, 6, 7, 11, 14, 15, 16, 17

Osage Homestead, Inc. v. Sutphin,
657 S.W.2d 346 (Mo. App. E.D. 1983) 7

Zippo Mfg.Co. v. Zippo Dot Com, Inc.,
952 F. Supp. 1119 (W.D. Pa. 1997)..... 4, 8, 9, 10, 11

Constitutional and Statutory Provisions

U.S. Const. amend. XIV, § 1 7

Mo. Const. Art. V, § 4.1 2

Mo. Rev. Stat. § 530.020 2

Mo. Rev. Stat. § 506.500 8, 13, 18

JURISDICTIONAL STATEMENT

This case involves an issue of personal jurisdiction. Relator/Defendant PPG Industries, Inc. (“PPG”) seeks to clarify this Court’s ruling in *State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (Mo. 2017), as it relates to a negligent misrepresentation claim. In this case, Plaintiff Hilboldt Curtainwall, Inc. (“Plaintiff”) alleges that the Court has personal jurisdiction over PPG solely based on a statement on PPG’s passive website concerning a company based in Georgia, Finishing Dynamics, LLC (“FD”). There is no other alleged basis for personal jurisdiction over PPG, a company incorporated and headquartered in Pennsylvania. Plaintiff did not claim that PPG ever specifically directed marketing materials to Plaintiff in Missouri. Plaintiff was not PPG’s customer. Plaintiff did not enter into a contract with PPG or buy any product from PPG. Plaintiff did not claim PPG’s product was defective. PPG did not perform any work in Missouri in this case. PPG did not ship its product to Plaintiff located in Missouri. Instead, PPG shipped its product to FD, located in Georgia.

Accordingly, PPG filed a Motion to Dismiss for Lack of Personal Jurisdiction. Respondent, the Honorable Maura B. McShane, Circuit Judge of the Twenty-First Judicial Circuit of St. Louis County, Missouri (“Respondent”), however, denied PPG’s Motion to Dismiss. In doing so, the trial court erroneously asserted personal jurisdiction over PPG and this assertion was a usurpation of judicial power.

PPG requests that this Court issue a permanent writ to Respondent, prohibiting the trial court from exercising personal jurisdiction over PPG.

This Court has jurisdiction over these proceedings under Article V, Section 4.1 of the Missouri Constitution, which grants the Supreme Court “general superintending control over all courts and tribunals” and the authority to “issue and determine original remedial writs.” Missouri Revised Statutes § 530.020 also grants this Court “power to hear and determine proceedings in prohibition.” Mo. Rev. Stat. § 530.020.

This proceeding gives the Court an opportunity to apply its ruling in *State ex rel. Norfolk Southern Railway v. Dolan* to a tort claim asserted in a business setting, and to confirm that the Court’s requirement that the plaintiff’s cause of action arise under a foreign defendant’s in-state activities for purposes of specific jurisdiction exists regardless of the nature or theory of the claim at issue.

STATEMENT OF FACTS

PPG is incorporated and headquartered in Pennsylvania. Petition ¶ 2 (A036); 2015–2016 Biennial Registration Report (A060) (listing Pittsburgh, Pennsylvania address for PPG’s “principal place of business or corporate headquarters”). Plaintiff alleged a single cause of action against PPG: negligent misrepresentation. Petition (A038–40).

Plaintiff did not claim that it was PPG’s customer. Indeed, Plaintiff alleged that PPG sold its product to FD, a coatings application company based in Georgia. Petition ¶¶ 3, 13 (A036, A038). Plaintiff did not claim that PPG’s product was defective. Plaintiff did not claim that PPG sought out Plaintiff to make a deal. Plaintiff did not claim that PPG ever specifically directed marketing materials to Plaintiff in Missouri. Plaintiff merely alleged that PPG made a general statement on its website that FD was an

“Approved Extrusion Applicator” and that FD was “approved to apply [PPG’s] Duranar [and other] coatings.” Petition ¶¶ 16, 20 (A038–39). Plaintiff alleged it was damaged by PPG, “because FD [*not* PPG] failed to properly clean and/or pretreat the aluminum extrusions and/or failed to properly apply the coatings to the aluminum extrusions for the Project, leading to a failure of the coating to properly adhere to the aluminum extrusion.” *Id.* ¶ 24 (A039). Plaintiff made no allegations that its claim against PPG is related to alleged conduct or actions taken by PPG within or directed at the State of Missouri.

Given PPG’s lack of claim-related contacts in Missouri, PPG moved to dismiss the Petition for lack of personal jurisdiction. Motion to Dismiss (A050–52). In its motion and supporting Memorandum of Law, PPG argued that the Petition did not set forth any legal basis for general personal jurisdiction, noting that PPG was neither incorporated nor headquartered in Missouri. Motion to Dismiss, at p. 1 (A050); Memorandum of Law, at p. 3 (A055). PPG further explained that “the mere fact that [PPG’s] website was accessible in Missouri is insufficient to confer personal jurisdiction over PPG.” Memorandum of Law, at p. 6 (A058).

Plaintiff filed a written response conceding that “Hilboldt has not pled or suggested that PPG is subject to general jurisdiction in the State of Missouri” given recent decisions by the United States and Missouri Supreme Courts. Memorandum in Opposition, at p. 1 (A062) (citing *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017), and *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227 (Mo. 2017)). Plaintiff, however, argued that the exercise of jurisdiction over

PPG was constitutional because PPG: 1) had filed 37 actions in Missouri state courts in 30 years; 2) registered with the Missouri Secretary of State; 3) has 63 retail stores in Missouri; 4) includes two Missouri companies on its website's list of approved applicators of PPG's coating (neither of which Plaintiff hired); and 5) has sales agents who "routinely" visit Missouri. *Id.* at pp. 2–4 (A063–65).

Respondent heard oral argument on PPG's Motion to Dismiss on January 18, 2018, before denying it in an order on January 29, 2018. Order (A090–92).

PPG sought a writ of prohibition from the Missouri Court of Appeals, Eastern Division, which that court denied on February 22, 2018. Order (A093).

PPG sought a writ of prohibition in this Court on March 5, 2018. Writ Petition and Suggestions in Support (A001–32). On May 1, 2018, this Court entered a preliminary writ of prohibition commanding Respondent to "take no further action" in the case except to "file a written return to the petition." Preliminary Writ of Prohibition (A102). Plaintiff filed an answer and return to the writ on May 30, 2018. Answer & Return (A103–09).

POINT RELIED ON

- I. 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.**

Bristol-Myers Squibb Co. v. Superior Court of Cal., 137 S. Ct. 1773 (2017)

State ex rel. Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41 (Mo. 2017)

Johnson v. Arden, 614 F.3d 785 (8th Cir. 2010)

Zippo Mfg.Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997)

ARGUMENT

Relator PPG is entitled to an order prohibiting Respondent from exercising personal jurisdiction over it because Missouri Courts lack specific jurisdiction over foreign corporate defendants not domiciled in Missouri (*i.e.*, headquartered or having their principal place of business in the State) where, as here, the plaintiff's cause of action against the defendant does not arise from or relate to any of the defendant's in-state activities.

Respondent disregarded this established rule and grounded jurisdiction over PPG instead in the company's activities in Missouri entirely unconnected to this case. Plaintiff's alleged basis for personal jurisdiction is solely based on a statement on PPG's passive website concerning a company based in Georgia, FD. There is no other alleged basis for personal jurisdiction over PPG, a company incorporated and headquartered in Pennsylvania. Plaintiff did not order PPG's product from the PPG website. Plaintiff did not claim that PPG ever directed the marketing materials at issue specifically to Plaintiff in Missouri. Plaintiff was not PPG's customer. Plaintiff did not enter into a contract with PPG or buy any product from PPG. Plaintiff did not claim PPG's product was defective. PPG did not perform any work in Missouri in this case. Nor did PPG ship its product to Plaintiff located in Missouri.

Respondent disregarded these facts in the Order denying PPG's Motion to Dismiss. This is clearly evident because Respondent's Order conducts a lengthy analysis of PPG's contacts with Missouri that are wholly unrelated to Plaintiff's cause of action. Specifically, Respondent's Order relies on contacts unconnected to the instant case, such as PPG's litigation history in Missouri, its registration with the Secretary of State and presence of retail stores here, sales representatives' personal visits to Missouri to promote PPG's products, and general advertisements in the State. While such analysis might be relevant to a claim of general jurisdiction, "Hilboldt has not pled or suggested that PPG is subject to general jurisdiction in the State of Missouri." Memorandum in Opposition, at pg. 1 (A062). The relevance of PPG's Missouri contacts unrelated to the cause of action was specifically rejected in this Court's recent decision in *State ex rel. Norfolk Southern Railway*, 512 S.W.3d 41. Moreover, even if Hilboldt had pled that PPG is subject to general jurisdiction in the State of Missouri, general jurisdiction would not be appropriate in the instant case because PPG was not incorporated in Missouri, does not have its principal place of business in Missouri, and does not have contacts with Missouri "so extensive and all-encompassing" that Missouri has become another home state to PPG. *See id.* at 44.

A. Standard of Review

"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; (2) to remedy an excess of authority's jurisdiction or abuse of discretion where the lower court

lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.” *State ex rel. Missouri Pub. Def. Comm’n v. Waters*, 370 S.W.3d 592, 603 (Mo. 2012). Further, prohibition is an appropriate remedy to prevent unnecessary, inconvenient and expensive litigation. *State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 324 (Mo. 2016), *reh’g denied*, May 3, 2016; *State ex rel. City of Blue Springs v. Nixon*, 250 S.W.3d 365, 369 (Mo. 2008).

A writ of prohibition should issue here because Respondent erroneously exercised personal jurisdiction over PPG, in violation of its due process rights. The body of law that PPG asks the Court to apply is not novel or complex, and its application to this case is straightforward, making Respondent’s usurpation of judicial power “clearly evident.” *State ex rel. Norfolk S. Ry.*, 512 S.W.3d at 45. The Court thus should issue a permanent writ of prohibition directing Respondent to take no further action against PPG in this case except to dismiss it for lack of personal jurisdiction.

B. Respondent erred in exercising personal jurisdiction over PPG because Plaintiff’s claim does not arise out of an activity by PPG covered by Missouri’s Long-Arm Statute and because Plaintiff’s claim against PPG does not arise out of PPG’s contacts with Missouri.

The plaintiff has the burden to establish the court’s valid exercise of personal jurisdiction over the defendant. *Osage Homestead, Inc. v. Sutphin*, 657 S.W.2d 346, 350 (Mo. App. E.D. 1983). The right to be free from the improper exercise of personal jurisdiction is a fundamental liberty interest protected by the due process clause of the federal Constitution’s Fourteenth Amendment. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.13 (1985); U.S. Const. amend. XIV, § 1. In evaluating this issue, the

court must consider whether plaintiff has established specific personal jurisdiction based on the Missouri long-arm statute and the requirements of both federal and state due process. *Conway v. Royalite Plastics, Ltd*, 12 S.W.3d 314, 318 (Mo. 2000). Given the allegations in the Petition, unambiguous Missouri law, and the requirements of due process, Respondent cannot exercise personal jurisdiction over PPG in this matter.

1. Missouri’s Long-Arm Statute does not authorize jurisdiction over PPG.

The mere fact that PPG posted general statements to its passive website, which was accessible in Missouri, is insufficient to confer specific personal jurisdiction over PPG. 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. *See* Mo. Rev. Stat. § 506.500.1(3) (A110). Plaintiff’s only alleged basis for satisfying the Missouri long-arm statute is that PPG committed a tort within the State of Missouri by making a statement on its website, which was accessible in Missouri. *See* Petition ¶ 20 (A039) (“PPG made these representations in the course of PPG’s business and through its marketing materials including, but not limited to, its website.”).

When a website is the basis for personal jurisdiction, courts analyze the interactive nature of the defendant’s website under the *Zippo* test to determine whether there is sufficient basis for specific jurisdiction. *See Johnson v. Arden*, 614 F.3d 785 (8th Cir. 2010) (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)); *see also Andra v. Left Gate Property Holding, Inc.*, 453 S.W.3d 216, 228 (Mo. 2015) (holding that because a “substantial number of the contacts between [plaintiff] and

[defendant] existed outside of the Internet and within the traditional realm of mail and telephone communications,” the court declined to assess whether the out-of-state defendant’s use of the eBay website to sell plaintiff a vehicle and make misrepresentations about that vehicle was sufficient to confer personal jurisdiction over the out-of-state defendant). Respondent erred in not applying *Zippo*.

Zippo holds that when a plaintiff alleges the defendant’s website as the basis for personal jurisdiction, “the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet.” *Zippo*, 952 F. Supp. at 1124. There is a spectrum of activity, one end of which involves “situations where a defendant clearly does business over the Internet.” *Id.* “If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.” *Id.* At the other end of the spectrum “are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions.” *Id.* A so-called “passive Web site,” which does little more than “make information available to those who are interested in it,” does not authorize personal jurisdiction based on the site. *Id.*

In *Johnson*, the Eighth Circuit applied the *Zippo* test to determine whether a federal court in Missouri had personal jurisdiction over a Colorado resident, Kathleen Heineman. 614 F.3d at 796. Plaintiffs, cat breeders and residents of Missouri, filed suit against Ms. Heineman, alleging she damaged plaintiffs by posting defamatory statements,

including detailed statements that plaintiffs physically abused cats, on a website. *Id.* In holding that the website was not “interactive” enough to confer specific personal jurisdiction based on standards set forth in *Zippo*, the *Johnson* court found:

The www.ComplaintsBoards.com site lands on the ‘mere posting’ end of the scale. Although InMotion represents www.ComplaintsBoard.com as an ‘interactive’ website, users may actually only post information. There is no interaction between users and a host computer; the site merely makes information available to other people. The website’s accessibility in Missouri alone is insufficient to confer personal jurisdiction.

Id.

Here, Plaintiff has made no allegations nor presented any facts demonstrating that PPG’s website is “interactive.” Plaintiff did not allege that it ordered PPG’s product from PPG’s website or that Plaintiff entered into a contract with PPG through PPG’s website. Nor did it allege that PPG shipped its product to Plaintiff located in Missouri. Plaintiff simply alleges that PPG posted information to a website. Petition ¶¶ 15–20 (A038–39). This information merely included statements that FD was an “approved” applicator of certain PPG products, that PPG’s product was “highly resistant to chalking, fading, chipping, and peeling when properly applied by an approved applicator,” and that PPG’s product would meet the AAMA Standard 2605 when properly applied. Petition ¶¶ 15–20 (A038–39). General statements on a passive website are insufficient to support the exercise of specific personal jurisdiction. *See Johnson*, 614 F.3d at 796; *Zippo Mfg.*, 952 F. Supp. at 1124.

In its Answer in this Court, Plaintiff agrees that *Johnson* was correctly decided. Answer ¶ 20 (A107–08) (“The Eighth Circuit correctly held . . .”). It attempts to distinguish *Johnson* by claiming, without any further explanation, that “PPG’s contacts with Missouri are far more extensive and substantial than just the commission of the tortious act itself.” *Id.* But this Court has explicitly held that for specific jurisdiction a defendant’s contacts with Missouri are completely irrelevant if the cause of action does not arise out of those contacts. *See State ex rel. Norfolk S. Ry.* 512 S.W.3d at 48 (“But [specific] jurisdiction would only exist over claims that are related to those [Missouri] contacts Unrelated suits can be brought in the forum only where the forum has general jurisdiction.”). As outlined below, Respondent’s analysis in the trial court’s Order rested entirely on PPG’s contacts with Missouri that were unrelated to Hilboldt’s cause of action. Moreover, *Johnson*’s core holding is that posting information on a passive website accessible to those in the forum state “is insufficient to confer personal jurisdiction.” 614 F.3d at 796. Yet that is all Plaintiff can show PPG did here.

Instead of applying the *Zippo* test, Respondent erroneously relied on two cases: *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227 (Mo. 2010) and *Myers v. Casino Queen Inc.*, 689 F.3d 904 (8th Cir. 2012). *Bryant* and *Myers*, however, are both inapplicable to the instant matter as neither involved the maintenance of a website.

In *Bryant*, the Court held that defendant’s actions were covered by the long-arm statute because the defendants “visited Missouri to negotiate with” plaintiff and “made telephone calls and sent emails and fraudulent or misleading documents into Missouri

with the intent to defraud [plaintiff] and to conceal the true nature of [defendant's] commission charges.” 310 S.W.3d at 229. *Myers* involved negligence and premises liability claims against the Casino Queen, when plaintiff was beaten and robbed in Missouri by two individuals that followed him from the Casino Queen, located in Illinois, into Missouri. 689 F.3d at 908. In holding that there was personal jurisdiction over the Casino Queen, the court found that “Casino Queen’s actions prior to [plaintiff’s] injuries indicate it could foresee, and took steps to prevent against, the kind of injuries that Myers suffered.” *Id.* at 911. Neither *Bryant* nor *Myers* involved the maintenance of a website.

Given that there was no interaction between Plaintiff and PPG through the website and that the website merely involved posting of information by PPG, there is no sufficient basis for exercising specific personal jurisdiction. The mere fact that this website was accessible in Missouri is insufficient to confer specific personal jurisdiction over PPG. Respondent erred by failing to undertake this analysis.

Respondent also erred in rooting the trial court’s specific jurisdiction holding on the finding that “it was reasonably foreseeable that PPG’s alleged negligent actions would have consequences in Missouri.” Order, at p. 3 (A092). In *Johnson*, the court held that, “absent additional contacts, mere effects in the forum are insufficient to confer personal jurisdiction.” 614 F.3d at 797. Ultimately, the *Johnson* court held that “posting on the internet from Colorado an allegedly defamatory statement including the name ‘Missouri’ in its factual assertion does not create the type of substantial connection between [defendant] and Missouri necessary to confer specific personal jurisdiction.” *Id.*

Here, PPG's mere posting of information to its website, without any connection to the Plaintiff located in Missouri, does not create the type of substantial connection to confer specific personal jurisdiction. Consequently, there is no basis for a Missouri court to assert specific personal jurisdiction over PPG in this case.

2. The exercise of specific jurisdiction over PPG violates its rights under the Fourteenth Amendment's Due Process Clause because Plaintiff's claim is not connected to PPG's activity in Missouri.

There is no connection between Plaintiff's claim and PPG's connections with Missouri. PPG is a company incorporated and headquartered in Pennsylvania. It has no contractual relationship with Plaintiff and it did not ship any product to Plaintiff in Missouri. Respondent's exercise of specific personal jurisdiction over PPG thus fails to satisfy due process requirements.

Exercise of specific personal jurisdiction over a non-resident corporation satisfies due process only when suit arises out of or relates to the defendant's contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *see also Daimler*, 134 S. Ct. at 754 ("Adjudicatory authority of this order, in which the suit arises out of or relates to the defendant's contacts with the forum is today called 'specific jurisdiction.'"). Further, by the express provisions of Missouri's long-arm statute, Mo. Rev. Stat. § 506.500, "long-arm jurisdiction over a non-resident defendant only exists if some portion of the defendants' contacts with Missouri gives rise to the action asserted." *State ex rel. Kmart v. Holliger*, No. WD 54687, 1998 WL 327185, at *4 (Mo. App. W.D. 1998), *overruled on other grounds by State ex rel. K-Mart Corp. v. Holliger*, 986 S.W.2d

165, 169 (Mo. 1999); *see also Barron v. Pfizer, Inc.*, No. 4:15-CV-584 CAS, 2015 WL 5829867, at *1 (E.D. Mo. Oct. 6, 2015) (noting that “specific jurisdiction is appropriate only if the injury giving rise to the lawsuit occurred within or had some connection to the forum state, meaning that the defendant directed its activities at the forum state and the claim arose out of or relates to those activities”).

Respondent erred in finding there was constitutionally allowable specific jurisdiction over PPG because there is no connection between PPG and Missouri as it relates to Plaintiff’s claim. The individual bases for Respondent’s decision, taken alone and combined, fail to show a constitutional basis for the exercise of personal jurisdiction over PPG. Simply put, none of the contacts between PPG and Missouri relate to Plaintiff’s claim in this case, and all of Respondent’s bases for satisfying the due process clause pertain to PPG’s Missouri contacts that are unrelated to the Plaintiff or Missouri. PPG addresses each of Respondent’s bases for decision below.

In finding that PPG had “extensive” contacts with Missouri, Respondent first noted that “PPG has repeatedly been a Plaintiff/Petitioner in the Missouri courts,” relying on a Case.net report showing 37 such cases since 1974. Order at p. 3 (A092). But this Court has already rejected this “jurisdiction by past litigation” theory as a basis for specific jurisdiction. *See State ex rel. Norfolk S. Ry.*, 512 S.W.3d at 45. Specifically, *Norfolk Southern* held:

The prior suits against Norfolk that Parker cites were suits based on specific jurisdiction because they concerned injuries that occurred in Missouri or arose out of Norfolk's activities in Missouri. Considerations of convenience may also have

made venue appropriate in particular Missouri courts for those suits. Nonetheless, the minimum contacts that suffice to provide specific jurisdiction over such a particular Missouri-related lawsuit do not also confer general jurisdiction over a particular company for a non-Missouri-related lawsuit.

Id. Thus, Respondent's reliance on PPG's past litigation in Missouri was error.

Respondent also noted that "PPG is registered to do business in Missouri and has several retail stores here." Order, at p. 3 (A092). This contact, unrelated to Plaintiff's claim against PPG, is irrelevant. *Norfolk Southern* explicitly holds that a foreign corporation's registration in Missouri "does not provide an independent basis for broadening Missouri's personal jurisdiction to include suits unrelated to the corporation's forum activities when the usual bases for general jurisdiction are not present." 512 S.W.3d at 52.

In addition, Respondent noted that "PPG products are used in Missouri." Order, at p. 3 (A092). But as with the past lawsuits, registration, and stores in Missouri, the fact that PPG's products are sold and used in Missouri cannot support jurisdiction over PPG here on a claim unrelated to those products. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011) ("[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."). Plaintiff does *not* allege that PPG's coating product is defective; it claims instead that a third party (FD) improperly applied that product. The Missouri Supreme Court has previously rejected jurisdiction based merely on the fact that a company does business in Missouri. *See Norfolk S. Ry.*, 512 S.W.3d at 48–49 (holding that Defendant's 400 miles

of rail lines in Missouri, generation of \$232 million in revenue in Missouri, and 590 employees in Missouri, do not subject Defendant to personal jurisdiction in Missouri where the claims did not arise from that activity). Further, Plaintiff’s claim is unconnected to any of PPG’s Missouri retail stores. Anything that happened in those stores and their presence in Missouri does not advance Plaintiff’s jurisdictional argument.

Respondent relied also on the fact that “PPG advertises in Missouri.” Order, at p. 3 (A092). The only advertisement in the record is the PPG website. Petition ¶ 20 (A039). But that website, although generally accessible to visitors nationwide (as *all* websites are), was not directed to Missouri specifically.¹ Respondent also cited to affidavits from employees of two companies—Architectural Systems, Inc. and Coatings Unlimited Inc. Order, at p. 3 (A092). Those companies, however, are not mentioned in the Petition and have no relation to the underlying cause of action against PPG. The affidavits merely state that PPG “routinely visits our office in [St. Louis / Monett] to make sales calls, discuss projects and review PPG products.” Thompson Affidavit ¶ 5 (A086); Beckwith Affidavit ¶ 5 (A088). (Notably, the affidavit from Plaintiff’s Chairman Jane Hilboldt does not allege that PPG made similar visits to Plaintiff in Missouri. Hilboldt Affidavit (A084–85).) Such visits cannot support jurisdiction here

¹ Plaintiff has observed that the website listed two Missouri companies as “Approved Extrusion Applicators.” But Plaintiff hired neither of these two companies. It hired a Georgia-based company instead, thereby severing any potential “connection” between Plaintiff’s claim and the website for purposes of specific jurisdiction. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781.

because PPG's activities towards others cannot give rise to a claim by Plaintiff unrelated to that activity. *See State ex rel. Norfolk S. Ry.*, 512 S.W.3d at 48–49.

Finally, Respondent relied on the fact that “PPG routinely visits Missouri to promote the use of its products.” Order, at p. 3 (A092). However, this activity forms no part of Plaintiff's claim against PPG. It is similar in kind to Norfolk's substantial business activity in Missouri (400 miles of rail lines, generation of \$232 million in revenue, and 590 employees), which, again, was not enough to authorize suit against the company in Missouri based on claims unrelated to that activity. *See State ex rel. Norfolk S. Ry.*, 512 S.W.3d at 47, 48–49.

In this case, Respondent's finding of specific jurisdiction resembles a finding of general jurisdiction. Nowhere in the opinion did Respondent make any connection between Plaintiff's claim and PPG's activities in Missouri. The United States Supreme Court has cautioned against analysis in which “the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims.” *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017). Here, Respondent failed to identify *any* connection between Plaintiff's claim and PPG's Missouri-based activities. Order, at p. 3 (A092). The U.S. Supreme Court has rejected Respondent's approach to specific personal jurisdiction, “which resembles a loose and spurious form of general jurisdiction.” *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

Respondent's failure to connect the claim to any Missouri-based activities by PPG also resembles the fundamental error this Court corrected in *Norfolk Southern*. There, this Court held that the mere fact that a foreign defendant engages in the same "type" of activity both inside and outside Missouri is insufficient to support a basis for personal jurisdiction. 512 S.W.3d at 49. "To say this same conduct confers specific jurisdiction over suits the facts of which have no relationship to the forum state," this Court cautioned, "would be to turn specific jurisdiction on its head." *Id.* Here, allowing the exercise of specific personal jurisdiction over PPG when none of its Missouri connections are related in any way to Plaintiff's claim would violate the precedent established by this Court in *Norfolk Southern*. Thus, this Court should issue a writ of prohibition directing Respondent to take no further action against PPG except to dismiss the single claim against it for lack of personal jurisdiction.

3. Jurisdictional discovery is not warranted.

Plaintiff asserts that it "should be permitted to conduct [jurisdictional] discovery so that it may present a more complete analysis of PPG's contacts with the State of Missouri." Answer ¶ 24 (A108). There is no need for jurisdictional discovery in this case. Plaintiff conceded in his Memorandum in Opposition to PPG's Motion to Dismiss that "Hilboldt has not pled or suggested that PPG is subject to general jurisdiction in the State of Missouri."² Plaintiff's Memorandum in Opposition, at p. 1 (A062).

² Interestingly, in its Answer and Return to the Writ, Plaintiff maintains it never conceded the lack of general jurisdiction over PPG. Answer ¶ 13 (A106–07). Yet this is wholly inconsistent with the position it has taken in its Petition and its Memorandum in

Plaintiff’s Petition alleges only specific jurisdiction, under which its claim must arise from PPG’s in-state contacts. Petition ¶ 4 (A037). Plaintiff best knows which facts supply the basis for its claim against PPG, and whether those facts include PPG’s in-state activities. Nothing Plaintiff could learn in discovery that it does not already know would support its bid for specific jurisdiction. It knows those facts already, and has pleaded them. Indeed, Plaintiff has never—either in the lower courts or before this one—identified a single category of documents or question it would pose in an interrogatory or deposition that, if answered, would shed light on whether PPG’s in-state activities create specific jurisdiction. Nor has it set forth any *theory* of personal jurisdiction that more facts might establish.

CONCLUSION

Respondent’s Order exercising specific personal jurisdiction over PPG relies entirely on PPG’s activities in Missouri that are *wholly unrelated to Plaintiff’s claim*. PPG is a company incorporated and headquartered in Pennsylvania. Plaintiff did not enter into a contract with PPG and is not PPG’s customer. PPG performed no work on Plaintiff’s construction project based in Missouri. Simply put, PPG has not directed any activity toward Plaintiff located in Missouri. *Norfolk Southern* reaffirms that claims, like this one, lacking any connection to a foreign defendant’s activity directed towards Missouri cannot support the exercise of specific jurisdiction. Respondent erred in

Opposition to the Motion to Dismiss. Petition ¶ 4 (A037) (“This Court has jurisdiction over PPG under Mo. Rev. Stat. § 506.500 because PPG committed a tortious act in this state.”); Plaintiff’s Memorandum in Opposition, at p. 1 (A062) (“Hilboldt has not pled or suggested that PPG is subject to general jurisdiction in the State of Missouri.”).

denying PPG's Motion to Dismiss for Lack of Personal Jurisdiction. This Court should grant PPG's Petition and issue a Permanent Writ of Prohibition directing Respondent to take no further action against PPG in this case except to dismiss it for lack of personal jurisdiction.

Dated: June 27, 2018.

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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 **5,676** 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/ William J. Gust

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 27, 2018**, and the undersigned further certified that he has signed the original and is maintaining the same pursuant to Rule 55.03(a)

/s/ William J. Gust