
 IN THE SUPREME COURT OF OHIO

 STATE *ex rel.* THE BANK OF NEW YORK
 MELLON,

Relator,

v.

STEVEN E. MARTIN,

Respondent.

Case No. 14-1690

**Original Action in Mandamus and
 Prohibition**

 RELATOR'S MEMORANDUM IN OPPOSITION TO
 RESPONDENT JUDGE MARTIN'S MOTION TO DISMISS

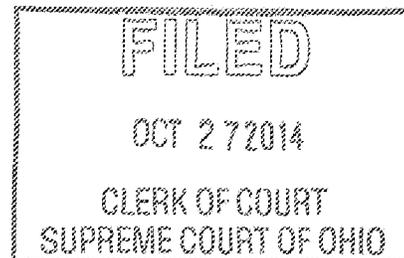
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**RELATOR’S MEMORANDUM IN OPPOSITION TO
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INTRODUCTION

Relator, The Bank of New York Mellon (“BNYM”), opposes Respondent Judge Martin’s Motion to Dismiss (“Martin Motion”).¹ Judge Martin argues that (1) BNYM waived its jurisdictional defense by failing to assert it in its answer, and (2) in any event, BNYM is—or, at least, may be—subject to personal jurisdiction in Ohio. Neither argument provides a basis to dismiss this petition.²

As to the first point, Judge Martin’s Motion clearly demonstrates the dramatic change in the rules governing personal jurisdiction that resulted from the U.S. Supreme Court’s decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014). Before *Daimler*, all parties proceeded on the theory that the trial court could properly exercise *general* jurisdiction over BNYM given the total contacts it has with the State, unrelated to the conduct alleged in this lawsuit. In Western & Southern’s complaint at the trial court, for example, the sole jurisdictional allegation was that

¹ In a subsequent submission, BNYM will oppose the motion by intervenor respondents Western & Southern *et al.*

² The standards for mandamus and prohibition are not disputed. *Compare* Martin Motion 3, with BNYM Mem. 10, 22-23.

“BNY Mellon transacts business within the state”—a quintessential *general* jurisdiction allegation. Affidavit of Christopher Houpt Ex. 1 (Compl.) ¶ 15. At oral argument on BNYM’s *forum non conveniens* motion (filed before *Daimler*), Judge Martin spontaneously observed that BNYM could not dispute jurisdiction because “they do business here in Ohio.” Houpt. Aff. Ex. 3 (Kane Aff.) Ex. 1 at 28:16 (Trans. of Oct. 22, 2013 Hearing). Indeed, BNYM did not challenge jurisdiction because its extensive contacts with the State, prior to *Daimler*, supported a finding of general jurisdiction.

Now, however, there is no *attempt* to even argue that general jurisdiction is available against BNYM. This dramatic change in theory—which is mirrored by Western & Southern’s own shift in position—demonstrates definitively that *Daimler* has substantially altered the law. In these circumstances, BNYM did not waive its jurisdictional defense by failing to raise it in its motion to dismiss. In fact, Judge Martin does not dispute that, if *Daimler* constitutes a change in law, BNYM was entitled to raise a personal jurisdiction defense when it did.

Judge Martin’s second contention—that BNYM is still subject to personal jurisdiction after *Daimler*—is also incorrect. Instead of general jurisdiction, Judge Martin’s Motion now relies on *specific* jurisdiction, based on an issue that Judge Martin failed to mention or rely on below. According to the Motion, BNYM is subject to personal jurisdiction in Ohio because the Master Servicer of the trusts (Bank of America, not BNYM) brought foreclosure actions against residential properties in Ohio. This argument fails for two, separate reasons. First, those foreclosure actions have nothing to do with the allegations in this suit. In the complaint at issue here, Western & Southern argues that BNYM mismanaged the trusts by, among other things, failing to sue Countrywide and failing to declare certain trusts in default. Western & Southern’s claims are *not* that BNYM somehow erred in bringing (or failing to bring) foreclosure proceedings. Western &

Southern's claims thus do not "arise out of or relate to" the foreclosure actions. Separately, foreclosure actions are not conducted by BNYM in the State at all. As Western & Southern's complaint makes clear, foreclosure actions are brought by an independent party, the Master Servicer (here, Bank of America). Both reasons defeat the last-ditch effort to assert jurisdiction over BNYM following *Daimler*.

ARGUMENT AND AUTHORITIES

I. Because *Daimler* Changed The Law, BNYM Did Not Waive A Personal Jurisdiction Defense.

Judge Martin first argues that BNYM waived its personal jurisdiction defense. Pointing to Rule 12(H), *Shah v. Simpson*, 10th Dist. Franklin No. 13AP-24, 2014-Ohio-675, ¶ 15, and other authority, he contends that, when a defendant files a motion to dismiss pursuant to Rule 12, but fails to include a personal jurisdiction defense, the argument is waived.³ Martin Motion 4-5.

We agree: in the usual course, a personal jurisdiction defense *is* waived when a defendant files a Rule 12 motion to dismiss that does not raise the argument. But Judge Martin ignores the crux of BNYM's argument: this waiver rule applies only to personal jurisdiction defenses that are "then available." *See* BNYM's Memorandum in Support of its Petition for a Writ of Mandamus and Prohibition ("BNYM Mem.") 17-19 (citing Civ.R. 12(G)). Judge Martin does not dispute our showing that, when a change in law creates a new jurisdictional defense, it is not waived. *Id.*

³ Judge Martin's position is a bit unclear in one respect: he initially contends, correctly, that if a defendant files a Rule 12 motion to dismiss, the inquiry critical to waiver is whether the jurisdictional defense was contained in *that* motion. Martin Motion 4. Later, however, Judge Martin suggests that a defendant could separately raise a jurisdictional defense in an answer, even if it was not included in the motion to dismiss. *Id.* at 5. That is incorrect: as Rule 12(H) and *Shah* make plain, a jurisdictional defense is waived if a defendant elects to file a Rule 12 motion to dismiss and omits a personal jurisdiction defense. Because BNYM filed a Rule 12 motion to dismiss but did not raise a personal jurisdiction defense, the defense was waived unless, as we contend, *Daimler* changed the law.

The U.S. Court of Appeals for the Second Circuit endorsed that position in this very context last month, when it held that *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), was such a change in law that it permitted a party to assert a jurisdictional defense for the first time *on appeal*.⁴ *Gucci Am., Inc. v. Weixing Li*, — F.3d —, 2014 WL 4629049, at *10 (2d Cir. Sept. 17, 2014). That court explained that, “[a]lthough the Bank appeared in the district court and did not argue there that the court lacked personal jurisdiction, we ... conclude that its objection to the exercise of general jurisdiction has not been waived.” *Id.* at *11. This is because “a party cannot be deemed to have waived objections or defenses which were not known to be available at the time they could first have been made.” *Id.* (quotation omitted). And *Daimler* fits that mold perfectly: while the defendant in *Gucci* had no personal jurisdiction defense prior to *Daimler*, it did after the case, causing the Second Circuit to order the action dismissed as to that defendant. *Id.* Judge Martin provides no response to this on-point decision of the Second Circuit.

Judge Martin overlooks how *Daimler* significantly restricted the reach of personal jurisdiction over an out-of-state corporation, which is perhaps understandable given that he no longer even argues a general jurisdiction theory. Indeed, Judge Martin’s Motion only mentions *Daimler* to say that it “involved a claim that a German company participated in human rights abuses that allegedly occurred in Argentina.” Martin Motion 6. Martin’s Motion neglects key elements of *Daimler*.

First, the fact that *Daimler* was a German company was irrelevant, because the plaintiffs conceded that “*Daimler*’s own contacts with California were, by themselves, too sporadic to justify the exercise of general jurisdiction.” *Daimler*, 134 S.Ct. at 748. Instead, the plaintiffs relied

⁴ Although *Gucci* is a federal decision, “[t]he Ohio Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure” (*Adomeit v. Baltimore*, 39 Ohio App.2d 97, 101, 316 N.E.2d 469, 473-74 (Ohio App. 8th Dist. 1974), and are therefore useful in interpreting the Ohio rules.

exclusively on contacts of its U.S. subsidiary, Mercedes Benz USA (“MBUSA”). The Supreme Court held that it was “error . . . to conclude that Daimler, *even with MBUSA’s contacts attributed to it*, was at home in California.” *Id.* at 750 (emphasis added). Likewise, the location of the alleged human rights abuses played no part in the decision, because “[p]laintiffs have never attempted to fit this case into the *specific* jurisdiction category.” *Id.* at 758. Thus, it is irrelevant that the defendant was from a foreign country and that its alleged conduct occurred outside the United States. The Supreme Court had already found that “it was . . . error” to find jurisdiction *before* the Court commented on “the transnational context of this dispute.” *Id.* at 762.⁵

Second, Judge Martin’s Motion overlooks the *Daimler* holding, which did far more than “focus on the caveat that personal jurisdiction cannot ‘offend the traditional notions of fair play and substantial justice.’” Martin Motion 6. As noted before, the touchstone for general jurisdiction in Ohio before *Daimler* was whether a defendant’s contacts with a state were “continuous and systematic.” *See* BNYM Mem. 19-20 (citing cases); *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶ 46. Applying the pre-*Daimler* test that general jurisdiction is appropriate “when the activities of the company within the state are systematic and continuous,” an appellate court in this State found general jurisdiction over a company whose employees regularly visited Ohio, sent communications to the State, made and received payments here, and engaged in “extensive” other activities in the state. *Mellino Consulting, Inc. v. Synchronous Mgmt. Sarasota, Inc.*, 8th Dist. Cuyahoga No. 87894, 2007-Ohio-541, ¶¶ 30, 36-43. “Systematic and continuous activities” had been the approach of virtually every

⁵ In fact, that transnational context was thought to be a reason *supporting* jurisdiction. “The Court of Appeals [had] emphasized, as supportive of the exercise of general jurisdiction, plaintiffs’ assertion of claims under the Alien Tort Statute . . . and the Torture Victim Protection Act of 1991.” *Daimler*, 134 S.Ct. at 762 (citations omitted).

court (in Ohio and elsewhere): courts assessed whether the amalgamation of the defendant's contacts with the forum rendered it at home there.

Daimler quoted and then expressly rejected the “systematic and continuous activities” legal standard. Noting that “*Goodyear [Dunlop Tires Operations, S.A. v. Brown, — U.S. —, 131 S.Ct. 2846 (2011)] did not hold that a corporation may be subject to general jurisdiction only in a forum where it is incorporated or has its principal place of business,” Daimler considered whether it could look beyond those bases, as Ohio courts consistently had done. Daimler, 134 S.Ct. at 761. The Daimler plaintiffs had asked the Supreme Court to rule that general jurisdiction is available “in every State in which a corporation ‘engages in a substantial, continuous, and systematic course of business.’” *Id.* (quoting plaintiffs’ brief). In other words, they asked the Supreme Court to adopt, virtually verbatim, the prevailing Ohio standard (which, to be sure, prevailed in nearly every court). The Court’s response, not mentioned in Judge Martin’s Motion or in his opinion below, was unambiguous: “That formulation, we hold, is unacceptably grasping.” *Id.* at 761.*

In place of this standard, the Supreme Court adopted a clear, bright-line rule: a company is subject to general jurisdiction only where it is “incorporated” and where it has “its principal place of business.” *Daimler*, 134 S.Ct. at 761.⁶ Thus, because MBUSA is incorporated in New Jersey and has its principal place of business there, the Court found there was no general juris-

⁶ As we will explain more fully in the opposition to Western & Southern’s motion, the Court did “not foreclose” (though it did not endorse either) “the possibility that in an *exceptional case*, see, e.g., *Perkins*, ... a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State.” *Daimler*, 134 S.Ct. at 761 n.19. And as we described earlier (BNYM Mem. 14), in *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), the company’s “principal, if temporary, place of business” was the forum state, since its permanent principal place of business had been overrun by an invading army. The Court’s recognition of an exception to its broad rule in truly unusual cases does not undermine the broad rule that the Court announced.

diction over MBUSA. *Id.* at 761-62. The Court reached this conclusion despite recognizing that MBUSA has “has multiple California-based facilities,” including a regional headquarters, and further that California accounts for 10% of MBUSA’s sales. *Id.* at 752. It was not that these contacts were insufficient—according to the Court, these contacts were *irrelevant*. *Id.* at 761-62. The Court’s repudiation of the prior approach to general jurisdiction—including that used by *Mellino Consulting*—could not be more plain.

Daimler thus substantially changed the law, which courts have recognized. The Ninth Circuit recently recited the rule of *Daimler* in unambiguous terms: “[t]he two places where a corporation is ‘essentially at home’ and therefore subject to general jurisdiction are its place of incorporation and its principal place of business.” *Lightfoot v. Cendant Mortgage Corp.*, — F.3d —, 2014 WL 4922246, at *8 (9th Cir. Oct. 2, 2014). Following *Daimler*, additional contacts are irrelevant. Another court squarely held that, in *Daimler*, “the U.S. Supreme Court modified the ‘continuous and systematic’ standard in its analysis of general jurisdiction.” *Chambers v. Weinstein*, N.Y. Sup. No. 157781, 2014 WL 4276910, at *15 (Aug. 22, 2014).⁷ No party has cited any pre-*Daimler* decision that limited the exercise of general jurisdiction, in the usual court, to a company’s place of incorporation or principal place of business.

A recent district court decision is particularly instructive. In *Federal Home Loan Bank of Boston v. Ally Financial, Inc.*, D. Mass. No. 11-cv-10952, 2014 WL 4964506 (Sept. 30, 2014),

⁷ The swift and nearly unanimous reaction of academic commentators and practitioners confirms that *Daimler* dramatically altered the law with respect to personal jurisdiction. And the commentary runs deep: some, for example, have observed that *Daimler* “will have a deep and wide-ranging impact on civil litigation in the coming decades.” Charles Rhodes IV & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. Davis L. Rev. —, manuscript at 1 (forthcoming 2014), online at <http://ssrn.com/abstract=2439827/> (Haupt Aff. Ex. 8). Others explain that, after *Daimler*, “doing business jurisdiction has been wiped off the jurisdictional map.” Tanya J. Monestier, *Where Is Home Depot “At Home”?* *Daimler v. Bauman and the End of Doing Business Jurisdiction*, 66 Hastings L.J. —, manuscript at 43 (forthcoming 2014), online at <http://ssrn.com/abstract=2423438>.

the court had denied a motion to dismiss for lack of personal jurisdiction but then reversed course after *Daimler*, finding that the U.S. Supreme Court changed the law. As *Ally Financial* explained, “[p]rior to the Supreme Court’s decision in *Daimler*, an inquiry into whether general jurisdiction could be exercised over out-of-state corporate defendants hinged on the plaintiff’s ability to assert that the defendant’s in-state activities were adequately substantial.” *Id.* at *2. But “[t]he *Daimler* decision requires a tighter assessment of the standard than perhaps was clear from *Goodyear*.” *Id.* Instead of the “holistic consideration of ‘a corporation’s activities in their entirety, nationwide and worldwide’” that was used in *Goodyear*, *Daimler* requires the court to assess whether the defendant was incorporated in the state, had its principal place of business there, or the case was somehow “exceptional.” *Id.*

In sum, the disagreement over waiver is not about whether BNYM was subject to jurisdiction before *Daimler*—it was, and this is common ground. The dispute is about whether BNYM is subject to general jurisdiction *now*. We argued in our petition that it is not, and on that point, Judge Martin’s Motion is silent. Indeed, no one argues that, following the Supreme Court’s decision in *Daimler*, an Ohio court may exercise *general* jurisdiction over BNYM. Nor could anyone: because BNYM is neither incorporated in Ohio nor has its principal place of business here, general jurisdiction is unavailable. This conclusively demonstrates that the law changed and that no waiver occurred.

II. There Is No Specific Jurisdiction Over BNYM With Respect To This Litigation.

Judge Martin’s other point—that Western & Southern’s assertion that foreclosures have occurred in Ohio in BNYM’s name could provide a theory of *specific* jurisdiction—is also patently wrong. As we noted above, in rejecting BNYM’s motion in the Litigation, Judge Martin relied on general jurisdiction—that BNYM had “quite extensive” “contacts in Ohio,” regardless

of their relationship to this suit. Houpt Aff. Ex. 5 at 2. Now, for the first time, Judge Martin's Motion relies on Western & Southern's allegations (which were made in Western & Southern's briefs to the trial court, not in its complaint) that BNYM, "in carrying out its duties as trustee, is and has been accessing Ohio Courts in order to foreclose on defaulted loans that make up the mortgage backed securities at the heart of the underlying suit." Martin Motion 6.

The new argument on jurisdiction raised by Judge Martin's Motion is incorrect. *First*, no discovery is necessary to resolve the issues presented here, because Judge Martin proposes to accept the allegations in the complaint as true. *Second*, BNYM's purported involvement in Ohio mortgage foreclosures is irrelevant to *specific* jurisdiction, because the foreclosures have nothing to do with the claims that Western & Southern asserts in this lawsuit.

1. Judge Martin's Motion asserts that the relief BNYM seeks is premature "until discovery is completed and factual disputes are resolved." Martin Motion 5. This is a considerable change from the basis of his ruling below, which states definitively that "there is no legal basis for the Motion" because "the defendant has quite extensive contacts in Ohio." Houpt Aff. Ex. 5 at 2.

The notion that discovery is required is inconsistent with the practice of accepting the plaintiffs' allegations as true. Martin Motion 6. It is well established that a "trial court may determine jurisdiction *without* ordering discovery or holding an evidentiary hearing" by assuming the plaintiff's allegations as true and construing competing inferences in the plaintiff's favor. *Enquip Techs. Grp., Inc. v. Tycon Technoglass, S.r.l.*, 2d Dist. Greene No. 2010-CA-23, 2010-Ohio-6100, ¶ 34 (emphasis added). If a plaintiff's jurisdictional allegations, even if true, are insufficient to satisfy the due process limitations on jurisdiction, a court properly dismisses the suit without first taking discovery. *See, e.g., Fraley v. Estate of Oeding*, 138 Ohio St.3d 250, 2014-

Ohio-452, 6 N.E.3d 9, ¶¶ 11, 28; *Kopas v. MTR Gaming Group*, 11th Dist. Portage No. 2013-cv-233, 2014-Ohio-1157, ¶¶ 8, 12). That is our contention here: even assuming, as true, Western & Southern's belated allegations regarding foreclosure actions, they are simply insufficient, as a legal matter, to establish personal jurisdiction over BNYM. And this rule makes practical sense: it would be an inefficient use of the court's and the parties' resources to hold a trial, only to determine after the fact that no trial ever should have occurred because due process forbids the court to bind the defendant to its judgment.

In the trial court, BNYM introduced affidavit evidence (which was incorporated in this proceeding) demonstrating that Western & Southern's allegations do not relate to conduct by BNYM in Ohio. In responding to this showing, Western & Southern pointed in its memoranda in the trial court to foreclosure actions occurring in Ohio. Even if we assume *arguendo* that Western & Southern foreclosure contentions are true, as shown below, they are *legally irrelevant* because they are not the basis of the claims. Accordingly, BNYM does not "den[y]" an "allegation" relating to foreclosure litigation. Martin Motion 6.

2. Judge Martin also errs in suggesting that foreclosure actions in Ohio, brought in the name of the trusts, could support the exercise of *specific* jurisdiction. Specific jurisdiction is appropriate only when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Goodyear*, 131 S. Ct. at 2853. Specific jurisdiction necessarily "depends on an 'affiliatio[n] between the forum *and the underlying controversy*,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 2851 (emphasis added). In short, the suit must "'arise out of or relate to'" activities in the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Here, Western & Southern's claims

in this Litigation do not “arise out of or relate to” the foreclosure lawsuits for at least two reasons.

First, the claims in this Litigation have nothing to do with foreclosures in Ohio. Aside from the plaintiffs’ addresses, the word “Ohio” does not even appear in the Complaint. What Western & Southern actually asserts is that BNYM mismanaged New York trusts in which the plaintiffs chose to invest. In particular, Western & Southern asserts that BNYM failed to exercise due care in administering the trusts, that it did not avoid conflicts of interest, that it did not provide certain notices, and that it did not obtain complete documentation of certain mortgage loans.

Western & Southern does not allege in the Litigation that BNYM was negligent in bringing (or failing to bring) foreclosure actions. In fact, there is no allegation that BNYM acted or failed to act in connection with any foreclosure anywhere. Because Western & Southern’s claims in the Litigation have nothing to do with Ohio foreclosures, the Ohio foreclosures cannot be a basis for *specific* jurisdiction.

A Missouri court rejected the assertion of personal jurisdiction over BNYM in materially identical circumstances. *See Commerce Bank v. The Bank of New York Mellon*, Mo. Cir. No. 1316-CV2844 (June 25, 2014) (Haupt Aff. Ex. 9). There, a Missouri investor sued BNYM on practically identical claims. The court held that “Defendant’s alleged conduct giving rise to Plaintiffs’ claims did not occur in Missouri, but elsewhere, including New York.” *Id.* at 3. “Because the claims alleged are entirely unrelated to Defendant’s activities in Missouri, this argument for specific jurisdiction fails.” *Id.* The Missouri court specifically rejected, as irrelevant, the contention that foreclosure actions occurred in Missouri in the trusts’ names: “The allegation that Defendant may have to bring a foreclosure proceeding in this state is an insufficient basis upon

which to establish specific jurisdiction, especially in light of the fact that Defendant would merely be a nominal party without authority to control or manage the foreclosure litigation.” *Id.* at 3.

Second, it is no surprise that Western & Southern does not base its claims on BNYM’s management of Ohio foreclosures, because those allegations would be contradicted by the agreements governing the securities at issue in the Litigation (agreements that Western & Southern incorporated into its pleadings). As the Complaint concedes, the contracts make foreclosure, and all other borrower contact, the province of the Master Servicer, not the Trustee. PSA § 3.01 (“The Master Servicer shall represent and protect the interests of the Trust Fund . . . in any claim, proceeding or litigation regarding a Mortgage Loan.”).⁸ The contracts also state expressly that the trustee shall not “have any responsibility or liability for any action or failure to act by the Master Servicer” and shall not “be obligated to supervise the performance of the Master Servicer.” *Id.* § 3.03. Western & Southern admits as much: “The *servicer’s* duties include monitoring delinquent borrowers, foreclosing on defaulted loans, . . . and managing and selling foreclosed properties.” Houpt Aff. Ex. 1 (Compl.) ¶ 26 (emphasis added); *see also id.* ¶¶ 65-67 (alleging that federal agency found that “*Bank of America* [the servicer] . . . tried to cover up that the Covered Trusts do not have legal title sufficient to foreclose . . . by engaging in improper foreclosure practices”) (emphasis added); *id.* ¶ 70 (citing “extensive review of foreclosure proceedings commenced by *Bank of America and its affiliates*”) (emphasis added).

⁸ The Pooling and Servicing Agreements are the governing contracts for the pools of residential mortgage loans held by the Trusts. Western & Southern attached, as Exhibit C to its Complaint, a PSA that is alleged to be representative of those governing the other trusts. Houpt Aff. Ex. 1 (Compl.) ¶ 6. Cites in this brief to “PSA” are to Exhibit C to Exhibit 1 to the Houpt Affidavit.

Thus, the belated assertion in Judge Martin's Motion that the claims in the Litigation arise out of Ohio foreclosures is inaccurate and undermined by Plaintiff's complaint. Judge Martin properly did not rely on that theory below, and it cannot create jurisdiction now.

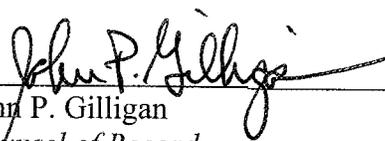
3. Finally, Judge Martin's reliance on *Barriere v. Juluca*, S.D. Fla. No. 12-23510-CV, 2014 WL 652831 (Feb. 19, 2014), is misplaced. That case found *general* jurisdiction proper. *Id.* at *8-9. But because none of the Respondents argue general jurisdiction here, *Barriere* is irrelevant. In any event, *Barriere* is squarely contrary to *Daimler*, as it found general jurisdiction based on the presence of an in-forum sales office over a foreign corporation organized under the laws of Anguilla and having its principal place of business there. *Id.* Because *Barriere* undertook precisely the inquiry that *Daimler* forbade, and came to the opposite conclusion on almost identical facts, it is unsurprising that *Barriere* has been rejected as an "outlier" that is "at odds" with post-*Daimler* law. See *Gonzales v. Seadrill Americas, Inc.*, S.D. Tex. No. 3:12-cv-308, 2014 WL 2932241, at *3 (June 27, 2014). The error in *Barriere*, like the error by Judge Martin, is understandable, however, given the dramatic change in what had been firmly established rules of jurisdiction. This case presents an opportunity for this Court to provide guidance to lower courts on the revised standard.

Because the claims in this case relate to conduct wholly outside Ohio, specific jurisdiction is unavailable. And following *Daimler*, general jurisdiction is unavailable, as all seem to acknowledge. For these reasons, this Court should find that Ohio patently and unambiguously lacks personal jurisdiction over BNYM in this case.

CONCLUSION

The Court should deny the motion of Respondent Martin to dismiss BNYM's petition for writ of mandamus and prohibition.

Respectfully submitted,



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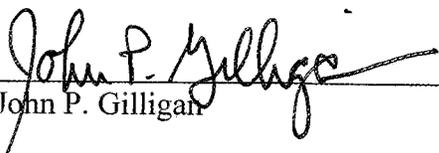
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following this
27th day of October, 2014 via electronic mail:

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