

<p>COLORADO SUPREME COURT 2 East 14th Ave., Denver, Colorado 80203</p>	
<p>On Petition for Rule to Show Cause under C.A.R. 21 to the District Court City & County of Denver, Colorado, Case No. 2015CV32019 Judge Michael J. Vallejos</p>	
<p>In Re: JOHN SCOTT MAGILL and SUZANNA MAGILL Respondents-Plaintiffs</p> <p>v. FORD MOTOR COMPANY; MARK POLUNCI; AND DOES 1 THROUGH 20, INCLUSIVE</p> <p>Petitioners-Defendants</p>	
<p><i>Attorneys for amicus curiae</i> <i>The Chamber of Commerce of the United States of America</i></p> <p>Daniel D. Domenico, Atty. Reg. #32038 Kittredge LLC 3145D Tejon Street Denver, Colorado 80211 720-460-1432 ddomenico@kittredgellc.com</p> <p>Michael Francisco, Atty. Reg. #39111 MRDLaw 3301 West Clyde Place Denver, Colorado 80211 303-325-7843 michael.francisco@MRDLaw.co</p>	<p>Case Number: 15SA332</p>
<p align="center">AMICUS BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITION FOR RULE TO SHOW CAUSE</p>	

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 3,892 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

____/s____ Michael Francisco ____

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE	1
REASONS TO GRANT THE WRIT	2
I. The U.S. Constitution Bars Colorado from Exercising General Personal Jurisdiction over the Defendant in this Case.	2
A. The district court’s decision failed to respect <i>Daimler</i> ’s Due Process limits on general jurisdiction.	4
B. <i>Daimler</i> is indistinguishable from this case.	9
C. The Defendant’s activity in Colorado does not qualify as “exceptional” and thus does not make it “at home” for purposes of general jurisdiction.	12
II. Allowing general jurisdiction on the basis of doing business in the state would harm Colorado.	15
III. This Court’s exercise of jurisdiction under Rule 21 is necessary and proper.	17
CONCLUSION.....	18

TABLE OF AUTHORITIES

Page

Cases

<i>Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.</i> , 751 F.3d 796 (7th Cir. 2014)	12
<i>Archangel Diamond Corp. v. Lukoil</i> , 123 P.3d 1187 (Colo. 2005)	3
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985)	3, 7, 8
<i>Catholic Diocese of Green Bay v. Doe 119</i> , 131 Nev. Adv. Op. 29 (2015)	12
<i>Daimler AG v. Bauman</i> , 134 S.Ct. 746 (2014)	passim
<i>Fed. Home Loan Bank of Boston v. Ally Fin., Inc.</i> , 2014 WL 4964506 (D. Mass. Sept. 30, 2014)	12
<i>Fulbright & Jaworski v. Eighth Judicial Dist. Court</i> , 131 Nev. Adv. Op. 5 (2015)	12
<i>Goettman v. N. Fork Valley Rest.</i> , 176 P.3d 60 (Colo. 2007)	17
<i>Goodyear Dunlop Tires Operations, SA. v. Brown</i> , 131 S.Ct. 2846 (2011)	passim
<i>Gucci Am., Inc. v. Weixing Li</i> , 768 F.3d 122 (2d Cir. 2014)	4

TABLE OF AUTHORITIES

	Page
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408 (1984)	3
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77 (2010).....	8
<i>Int’l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)	2, 3, 17
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770 (1984).....	13
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 133 S.Ct. 2586 (2013)	10
<i>Leaffer v. Zarlengo</i> , 44 P.3d 1072 (Colo. 2002).....	17
<i>Lightfoot v. Cendant Mortg. Corp.</i> , 769 F.3d 681 (9th Cir. 2014).....	11
<i>Martinez v. Aero Caribbean</i> , 764 F.3d 1062 (9th Cir. 2014).....	4
<i>Monkton Ins. Servs., Ltd. v. Ritter</i> , 768 F.3d 429 (5th Cir. 2014)	4
<i>Neeley v. Wyeth LLC</i> , 2015 WL 1456984 (E.D. Mo. Mar. 30, 2015).....	12
<i>Oasis Legal Finance Grp. v. Coffman</i> , 2015 CO 63 (Nov. 16, 2015)	1

TABLE OF AUTHORITIES

	Page
<i>People ex rel. Salazar v. Davidson</i> , 79 P.3d 1221 (Colo. 2003)	17
<i>Perkins v. Benguet Consol. Mining Co.</i> , 342 U.S. 437 (1952)	13
<i>Ratliff v. Cooper Labs., Inc.</i> , 444 F.2d 745 (4th Cir. 1971)	11
<i>S. Pac. Co. v. Denton</i> , 146 U.S. 202 (1892)	10
<i>Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.</i> , 552 U.S. 148 (2008)	15
<i>Walden v. Fiore</i> , 134 S.Ct. 1115 (2014)	16
<i>Wilson v. Humphreys (Cayman) Ltd.</i> , 916 F.2d 1239 (7th Cir. 1990)	10
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980)	8

Other Authorities

Dep't of Comm. & President's Counsel of Economic Advisers, "Foreign Direct Investment in the United States" (Oct. 2013)	16
SelectUSA, "Foreign Direct Investment into Colorado" (Fact Sheet)	16

TABLE OF AUTHORITIES

Page

U.S. Chamber Institute for Legal Reform, 2015 Lawsuit Climate Survey: Ranking the States (September 2015).....	15
---	----

INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation, representing 300,000 direct members and indirectly three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. One of the Chamber’s most important responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. The Chamber routinely advocates for the interests of the business community in courts across the nation by filing amicus curiae briefs in cases involving issues of vital concern, including the *Goodyear* and *Daimler* cases that provide the legal rules that govern the disposition of the core jurisdictional issue presented by the petition in this case. (See *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014); *Goodyear Dunlop Tires Operations, SA. v. Brown*, 131 S.Ct. 2846 (2011).). The Chamber has also participated in cases before this Court as amicus curiae. See, e.g., *Oasis Legal Finance Grp. v. Coffman*, 2015 CO 63 (Nov. 16, 2015).

Many Chamber members conduct business in states other than their state of incorporation and principal place of business, including Colorado. Chamber members therefore have a substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be

subjected to general personal jurisdiction by a state’s courts. Plaintiffs’ effort to expand general jurisdiction in Colorado beyond the bounds permitted by the U.S. Constitution is not simply unconstitutional and a clear departure from guidance given in the recent *Daimler* decision—it is also bad policy, which would impose substantial costs on Colorado’s economy and its courts.

REASONS TO GRANT THE WRIT

I. THE U.S. CONSTITUTION BARS COLORADO FROM EXERCISING GENERAL PERSONAL JURISDICTION OVER THE DEFENDANT IN THIS CASE.

“The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal’s authority to proceed against a defendant.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2853 (2011). Under the “canonical opinion in this area,” *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), a State may exercise personal jurisdiction over an out-of-state defendant “if the defendant has certain minimum contacts with [the State] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Daimler*, 134 S.Ct. at 754 (quoting *Goodyear*, 131 S.Ct. at 2853). This limitation on a court’s authority “protects [the defendant’s] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’ ” *Burger King Corp. v.*

Rudzewicz, 471 U.S. 462, 471–72 (1985) (quoting *Int’l Shoe*, 326 U.S. at 319).

Applying these due process principles, the Supreme Court has recognized “two categories of personal jurisdiction,” *Daimler*, 134 S.Ct. at 754, general and specific. First, central to this case, there is “general or all-purpose jurisdiction.” *Goodyear*, 131 S.Ct. at 2851. Jurisdiction of this sort is permissible “where a foreign corporation’s ‘continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.’” *Daimler*, 134 S.Ct. at 754 (emphasis added) (quoting *Int’l Shoe*, 326 U.S. at 318). The second form of personal jurisdiction, “specific jurisdiction,” may be exercised when “the suit ‘aris[es] out of or relate[s] to the defendant’s contacts with the forum.’” *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

Colorado recognizes this basic framework of personal jurisdiction, including, of course, the Supreme Court’s limits on general jurisdiction. *See, e.g., Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1194 (Colo. 2005) (noting general jurisdiction requires a “more stringent minimum contacts” test and requires a plaintiff to show “continuous and systematic general business contacts”). The court below did not rely on specific

jurisdiction; it held instead that Colorado courts have general jurisdiction over the Defendant. In doing so, it erred in a manner that, if not corrected by this Court, would have unfortunate consequences far beyond this particular case.

A. The district court’s decision failed to respect *Daimler*’s Due Process limits on general jurisdiction.

Under *Daimler*, a state has general jurisdiction over a corporation in only a very narrow set of circumstances. General jurisdiction is limited to a state where the corporation is (1) incorporated, or (2) headquartered, or (3) in the “exceptional” circumstance in which the State has become a “surrogate” for the company’s place of incorporation or headquarters. *Daimler*, 134 S.Ct. at 756 & n.8. Under this clear rule, a mere showing that a company maintains “substantial,” “continuous,” or “systematic” contacts with the forum state is insufficient to satisfy the requirements for general jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment. The *Daimler* rule has been recognized and applied by courts across the country.¹

¹ See, e.g., *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014); *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014); *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 135 (2d Cir. 2014).

The court below rejected this binding precedent and instead opted to find general jurisdiction based on such common business practices as registration to do business in the state, the presence of a registered agent, and product sales within the state. Order at p.9. This was precisely the type of expansive assertion of general jurisdiction that the Supreme Court rejected in *Daimler*.

Daimler's holding is unambiguous: general jurisdiction over a corporation is virtually always restricted to its "place of incorporation and principal place of business." 134 S.Ct. at 760. The Supreme Court based this rule on the broad reach of general jurisdiction, which empowers a court to adjudicate "any and all claims against" a defendant, "wherever in the world the claims may arise." *Id.* at 751. General jurisdiction for that reason is available only where a defendant "is fairly regarded as at home." *Id.* at 760 (quoting *Goodyear*, 131 S.Ct. at 2853-54).

Individuals are "at home" in their place of "domicile." *Id.* Corporations may do business in many places, but they are only "at home" in either their place of incorporation or their principal place of business. *Id.* The court below misunderstood the "at home" concept in *Daimler* as permitting jurisdiction based on "continuous and systematic affiliations with Colorado," Order at 9. At the Plaintiffs' urging, the district court so expanded the phrase "at home" as to create an exception that defeats the

rule. Like here, the *Daimler* plaintiffs asserted that general jurisdiction should be available “in every State in which a corporation ‘engages in a substantial, continuous, and systematic course of business.’ ” 134 S.Ct. at 761 (citation omitted). The Supreme Court squarely rejected that rule: “That formulation, we hold, is unacceptably grasping.” *Id.* As the Court explained, “[g]eneral jurisdiction ... calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.* at 762 n.20. In other words, it is not enough for a state court to focus on business activity within the same state; the relevant consideration must be include the overall activity of the corporation.

The proof is in the *Daimler* Court’s reasoning. The question was whether Daimler AG was subject to general jurisdiction in California. The *Daimler* plaintiffs argued that general jurisdiction was available based on the contacts between Daimler’s subsidiary Mercedes Benz USA (“MBUSA”) and California, which the Court assumed were properly attributable to Daimler. 134 S.Ct. at 760. MBUSA had a regional headquarters in that State, had multiple other facilities there, was “the largest supplier of luxury vehicles to the California market,” and made ten percent of its total nationwide sales of vehicles there. *Id.* at 752.

In rejecting the exercise of general jurisdiction, the Supreme Court did not examine whether these factors amounted to “continuous and systematic contacts;” instead, the Court found them irrelevant. The dispositive consideration was that “neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there.” *Daimler*, 134 S.Ct. at 761. This finding perfectly reflects the general rule.

The Court supported that bright-line rule with two principal reasons. First, it noted that a corporation’s place of incorporation and principal place of business, the two default forums for general jurisdiction, are “affiliations” that “have the virtue of being unique.” *Daimler*, 134 S.Ct. at 760. “[T]hat is, each ordinarily indicates only one place,” and that location is “easily ascertainable.” *Id.* Because these two locations are easy to ascertain and entirely unique it avoids confusion and “afford[s] plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.” *Id.*

A broader rule based on normal business activities “would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’ ” *Daimler*, 134 S.Ct. at 761–62 (quoting *Burger King*, 471 U.S. at 472). The Supreme Court described this as a “[s]imple

jurisdictional rule[.]” *Id.* at 760 (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)). It provides the “predictability,” *Burger King*, 471 U.S. at 471–72, and “foreseeability,” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), that is necessary for an assertion of jurisdiction to satisfy the basic due process requirement of “fair play and substantial justice.” 134 S.Ct. at 754.

Second, the Supreme Court reasoned in *Daimler* that the “simple rule” reflects the reality that “specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role” with respect to out-of-forum defendants. 134 S.Ct. at 755 (quoting *Goodyear*, 131 S.Ct. at 2854). As the “Court has increasingly trained on the relationship among the defendant, the forum, and the litigation” — i.e., specific jurisdiction — “general jurisdiction has come to occupy a less dominant place in the contemporary scheme.” *Id.* at 758 (quotation omitted). It “is one thing to hold a corporation answerable for operations in the forum State, [and] quite another to expose it to suit on claims having no connection whatever to the forum State.” *Id.* at 761 n.19.

By limiting general jurisdiction to the default forums of (1) state of incorporation and (2) state of the principal place of business, *Daimler* reinforced the importance of specific jurisdiction in a world of limited general jurisdiction. The legal issue here is not whether the Plaintiffs are

deprived of any forum to litigate against the Defendant, nor is it even whether Plaintiffs could establish that a Colorado court has specific jurisdiction to hear this lawsuit. *Daimler* shows it is critical to maintain a clear line of demarcation between general jurisdiction and specific jurisdiction. Because general jurisdiction exposes out-of-forum defendants to a far wider range of lawsuits, the Due Process limitations apply with more force. While this lawsuit may involve Plaintiffs and an incident in Colorado, the expansive general jurisdiction rule endorsed by the court below would expose the Defendant, and other companies with national reach, to lawsuits in Colorado from foreign plaintiffs for conduct that all occurred outside Colorado, as was the circumstance in *Daimler*.

B. *Daimler* is indistinguishable from this case.

In this case, the Plaintiffs argue that the Defendant, which is incorporated in Delaware and has its principal place of business in Michigan, is subject to general jurisdiction in Colorado because it sells products here and is registered to do business here. Order at 9. But the same is true of the Defendant and other national corporations in virtually every state in the Union. Such common activities cannot be used to create a back-door for any state to assert general jurisdiction based on normal business activity.

Most of the facts relied upon below were essentially indistinguishable from the plaintiffs’ primary argument in *Daimler* for jurisdiction. Both Daimler and Ford maintain business offices and market and sell vehicles in the state in question.² The other business activity relied upon by the Plaintiffs in this case fares no better. For example, registration to do business and having a registered agent are commonplace business practices that occur in almost any state where a large corporation has sales. *See* Order at 9 (relying on registration and registered agent for general jurisdiction). That activity is little more than re-stating commercial sales in a form—which was rejected by *Daimler* as creating general jurisdiction. 134 S.Ct. at 752.³ Likewise the court’s assertion that the Defendant has “actively

² *Compare* Order at 9 (“Ford aggressively markets and sells its vehicles by and through over thirty Ford dealerships throughout Colorado....Ford maintains several offices and businesses in Colorado...”), *with Daimler*, 134 S.Ct. at 752 (“MBUSA is the largest supplier of luxury vehicles to the California market.... MBUSA’s California sales account for 2.4% of Daimler’s worldwide sales.... MBUSA has multiple California-based facilities, including a regional office...”).

³ While not the focus of this case, any attempt to use business registration as a means to confer general jurisdiction would have grave Constitutional implications. The Supreme Court has long recognized that a state may not “require[e] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S.Ct. 2586, 2596 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)); *see also Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (it would be “constitutionally suspect” to

litigated, as both plaintiff and defendant” in Colorado courts falls well short of supporting general jurisdiction, as litigation may well have been based on specific jurisdiction, which would not, as a matter of law, confer general jurisdiction even in those unnamed and unspecified cases.

The district court also sought to distinguish *Daimler* because this case involves Colorado plaintiffs and events, but this line of argument misreads *Daimler* and has been repeatedly rejected across the country. *Daimler* recognizes that the very point of general jurisdiction is, as the very name implies, that it does not turn on specifics of the case in question, as does specific jurisdiction. 134 S.Ct. at 757–58. If indeed Colorado courts have general jurisdiction over the Defendant in this case, opportunistic plaintiffs will claim that Colorado courts by definition would have general personal jurisdiction over any non-Colorado defendant in any case. And, thus, courts have consistently held that *Daimler*'s rule applies to all assertions of general jurisdiction, including those involving U.S. companies. *See, e.g., Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681, 689 (9th Cir. 2014) (rejecting general jurisdiction over Fannie Mae, a U.S. entity); *Advanced Tactical Ordnance*

subject a corporation to general jurisdiction as a consequence of registering to do business in the state); *Ratliff v. Cooper Labs., Inc.*, 444 F.2d 745, 748 (4th Cir. 1971) (“The principles of due process require a firmer foundation than mere compliance with state domestication statutes.”).

Sys., LLC v. Real Action Paintball, Inc., 751 F.3d 796, 800 (7th Cir. 2014); *Fulbright & Jaworski v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 5 (2015) (Texas-based law firm); *Catholic Diocese of Green Bay v. Doe 119*, 131 Nev. Adv. Op. 29 (2015); *Fed. Home Loan Bank of Boston v. Ally Fin., Inc.*, 2014 WL 4964506 (D. Mass. Sept. 30, 2014); *Neeley v. Wyeth LLC*, 2015 WL 1456984, at *3 (E.D. Mo. Mar. 30, 2015). *Daimler*'s rule of general jurisdiction squarely applies to the Defendant in this case.

C. The Defendant's activity in Colorado does not qualify as "exceptional" and thus does not make it "at home" for purposes of general jurisdiction.

The limited exception to the general rule of jurisdiction acknowledges that a State that is not a corporation's (1) place of incorporation or (2) principal place of business may assert general jurisdiction over the corporation only if its relationship with the corporation is "exceptional." *Daimler*, 134 S.Ct. at 761 n.19. The Court gave critical guidance on what constitutes "exceptional" circumstances providing general jurisdiction in a forum outside the bright-line default. That standard is satisfied when the forum has become "a surrogate" for the "place of incorporation or head office." *Id.* at 756 n.8 (quotation omitted). The court's conclusion below that the Defendant is "at home" in Colorado and thus subject to general jurisdiction does not come anywhere close to satisfying this standard.

In *Daimler* the Supreme Court cited *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), as “the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.” 134 S.Ct. at 755–56 (quotation omitted). *Perkins* involved truly “exceptional facts” where the corporate defendant’s home forum, the Philippines, was occupied by the Japanese army during World War II, and the company moved its headquarters and corporate records to Ohio. *Id.* at 756 n.8. At the time of suit, Ohio was the company’s “principal, if temporary, place of business.” *Id.* at 756 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984)). The *Daimler* Court clarified, “No fair reader of the full opinion in *Perkins* could conclude that the Court meant to convey anything other than that Ohio was the center of the corporation’s wartime activities.” *Id.* at 756 n.8.

With such a high bar for “exceptional” circumstances, outside of *Perkins*, the Supreme Court has never again upheld general jurisdiction on this basis; instead, subsequent decisions all have rejected the assertion of general jurisdiction by States outside the corporation’s state of incorporation or principal place of business. *See id.* at 756–58 (discussing cases).

Colorado is not a “surrogate” for the Defendant’s principal place of business or place of incorporation. While the Defendant does indeed have

business operations in Colorado, it is a large international company and the activities identified by Plaintiffs and the district court are not materially different from dozens of other states where the Defendant carries on business activity. To be clear, both Michigan and Delaware are available as forums for general jurisdiction against the Defendant as the place of incorporation (Delaware) and principal place of business (Michigan). Claims from anywhere in the United States, including Colorado, can be brought in those forums. In other forums, the Defendant is subject to jurisdiction for suit only with respect to claims arising out of conduct tied to the forum state under specific jurisdiction.

To hold otherwise, as the district court did below, claiming general personal jurisdiction over the Defendant, will open the door to plaintiffs in other cases asserting aggressive claims of general jurisdiction over businesses with a similar level of commercial activity in Colorado. That is directly contrary to *Daimler*, which foreclosed such “exorbitant exercises of all-purpose jurisdiction,” *Id.* at 761. The “exceptional circumstances” basis of general jurisdiction cannot eviscerate *Daimler*’s general rule of jurisdiction, as would be the case if the Plaintiff’s arguments in this case carry the day.

II. ALLOWING GENERAL JURISDICTION ON THE BASIS OF DOING BUSINESS IN THE STATE WOULD HARM COLORADO.

The district court's expansion of general jurisdiction beyond the bounds permitted by *Daimler* is not only unconstitutional, but also bad policy. Such a broad assertion of general jurisdiction would impose substantial costs on Colorado's economy and Colorado's courts.

First, if out-of-state companies doing business in Colorado were subject to general jurisdiction in this State for claims that arise anywhere in the world, many companies will simply choose not to invest here. Surveys consistently show the litigation environment is an important factor in key business decisions. *See, e.g.*, U.S. Chamber Institute for Legal Reform, 2015 Lawsuit Climate Survey: Ranking the States (September 2015), at 3–4, *available at* <http://goo.gl/vsIfx1>. This is especially true of non-U.S. companies. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 164 (2008) (recognizing with an expansive rule, “[o]verseas firms ... could be deterred from doing business here”).

Investment in the State is critical to continued economic growth. An October 2013 study found that foreign direct investment “supports a host of benefits in the United States, notably good jobs and innovation led by research and development investment.” Dep’t of Comm. & President’s Counsel of Economic Advisers, “Foreign Direct Investment in the United

States” at 11 (Oct. 2013), *available at* <https://goo.gl/E0hDHi>. According to a Commerce Department report, “[s]ince 2003, 161 [Foreign Direct Investment] projects have been announced in Colorado and, if completed at their announced levels, these projects represent over \$10.44 billion in capital investment.” SelectUSA, “Foreign Direct Investment into Colorado” (Fact Sheet), *available at* <http://goo.gl/DB3nTh>.

Vastly expanding the reach of personal jurisdiction, such that these companies may be sued in Colorado on any claim arising anywhere in the country, will provide a substantial incentive for these and other companies to locate their operations elsewhere. It will therefore undermine Colorado’s efforts to attract investment from out-of-state businesses.

Second, Plaintiffs’ effort to permit the assertion of general jurisdiction over companies doing business in the State would have a predictable effect on the State’s judiciary: courts would be burdened with cases that have nothing to do with Colorado and are filed here as the result of forum-shopping. Colorado courts would be required to expend substantial resources adjudicating claims that have no connection to incidents occurring in Colorado or its residents. Of course, out-of-state companies are subject to specific jurisdiction when their “suit-related conduct ... create[s] a substantial connection with the forum State.” *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014). But plaintiffs and the district court did not rely

on that doctrine for jurisdiction in this case. Unjustified expansion of general jurisdiction therefore is not necessary to ensure that nonresident corporations may be held accountable for their in-forum conduct. Plaintiffs' expansive theory of general jurisdiction will significantly burden Colorado without providing any benefits to our State.

III. THIS COURT'S EXERCISE OF JURISDICTION UNDER RULE 21 IS NECESSARY AND PROPER.

This Court has recognized that relief under C.A.R. 21 is particularly appropriate when a trial court has proceeded in "excess of its jurisdiction." *Goettman v. N. Fork Valley Rest.*, 176 P.3d 60, 64 (Colo. 2007). This creates a situation where the Petitioner has no "adequate 'conventional appellate remedies'" to remedy the litigation proceeding without personal jurisdiction. *See People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1228 (Colo. 2003) (citing *Leaffer v. Zarlengo*, 44 P.3d 1072, 1077 (Colo. 2002)).

The denial of a Rule 12(b) motion to dismiss is not a final appealable order and absent relief from this Court, the Defendant could end up litigating in Colorado courts for years before an appellate court would have the opportunity to determine that the litigation should not have proceeded in the first instance. The Constitutional limits on general jurisdiction flowing from the Due Process Clause protect against the burdens of litigation in a forum without the minimum contacts and connection to the case at hand, *International Shoe*, 326 U.S. at 316, much of which would be

rendered moot if the traditional appellate path is followed. This Court should review the clear articulation of limited general jurisdiction in the Supreme Court's 2014 *Daimler* case and clarify that the district court in this case lacks general jurisdiction. The important clarification of jurisdiction would also serve the interest of future litigants and jurists who face the same threshold legal question in the future.

CONCLUSION

The petition for rule to show cause should be granted.

DATED: December 18, 2015

Kittredge LLC,

/s/

Daniel D. Domenico

MRDLaw

_____/s/_____

Michael Francisco

ATTORNEYS FOR THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **Amicus Brief of The Chamber of Commerce of the United States of America** upon the following parties or their counsel electronically via ICCES, or via electronic mail, on this 18th day of December, 2015, addressed as follows:

Bradly J. Holmes
Bradly J. Holmes, P.C.
9800 Mt. Pyramid Court, Suite 400
Englewood, CO 80112-2669
Email: holmeslaw@comcast.net

Todd A. Walburg (admitted pro hac vice)
Lieff Cabraser Heimann & Bernstein
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Email: twalburg@lchb.com

Edward C. Stewart, #23834
Theresa R. Wardon, #41510
Marissa S. Ronk, # 49181
WHEELER TRIGG O'DONNELL LLP
370 Seventeenth Street, Suite 4500
Denver, Colorado 80202-5647
Telephone: (303) 244-1800
Facsimile: (303) 244-1879
Email: stewart@wtotrial.com
wardon@wtotrial.com
ronk@wtotrial.com

Clerk of the Denver District Court
for the City and County of Denver
1437 Bannock Street
Denver, CO 80202
Case No. 2015CV32019

s/ Michael Francisco
