

March 6, 2017

Via DELIVERY METHOD

[REDACTED]

Re: *In the Matter of* [REDACTED]
[REDACTED]

Dear Judge [REDACTED]:

Please accept this letter brief in lieu of a more formal brief in support of Defendant's notice of motion to dismiss for lack of jurisdiction.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant shall rely upon the attached certification and supporting documentation in support of the history and statement of facts.

LEGAL ANALYSIS

POINT I

**DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED BECAUSE
NEW JERSEY DOES NOT HAVE SUBJECT MATTER JURISDICTION OR
PERSONAL JURISDICTION TO HEAR THIS MATTER**

Subject matter jurisdiction is an Article III and a statutory requirement and functions as a restriction on judicial power. Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxies de Guinee, 456 U.S. 694, 702 (1982). Subject matter jurisdictional limitations keep the courts within the bounds of the Constitution and, therefore, "subject-matter delineations must be policed by the courts on their own initiative even at the highest level." Ruhrgas A.G. v. Marathon Oil, 526 U.S. 574, 583 (1999). The issue of whether a court has subject matter jurisdiction involves a threshold determination as to whether the court is legally authorized to decide the question presented. Gilbert v. Gladden, 87 N.J. 275, 280-81 (1981). Subject matter jurisdiction refers to the power of a court to hear and determine cases of the class to which the proceeding in question

belongs. Petersen v. Falzarano, 6 N.J. 447, 454 (1951). It rests only on the Court's having been granted such power by the Constitution or by valid legislation and cannot be vested by the parties' agreement. State v. Osborn, 32 N.J. 117, 122 (1960). If there is no subject matter jurisdiction, then consideration of the cause of action is "wholly and immediately foreclosed." Petersen v. Falzarano, *supra*, 6 N.J. at 454.

Subject matter jurisdiction is not more fundamental than personal jurisdiction. Ruhrgas A.G., *supra*, 526 U.S. at 584. A state's in personam jurisdiction does not extend beyond its own borders. A&M Trading Corp. v. Pennsylvania R. Co., 13 N.J. 516, 525 (1953). If a Court does not have personal jurisdiction, the court is "powerless to proceed to an adjudication." *Id.* Personal jurisdiction is a restriction on judicial power "as a matter of individual liberty." *Id.* Consequently, a party can insist that this limitation be observed or a party can forego that right and consent to the court's exercise of judicial authority. *Id.* The requirement that a Court have personal jurisdiction flows not from Article III but from the Due Process Clause thus restricting the Court's authority not as a matter of sovereignty but as a matter of individual liberty. Insurance Corp. of Ireland, *supra*, 456 U.S. at 702. Therefore, the test for personal jurisdiction requires that "the maintenance of the suit . . . not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 703 (*citing* International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

If a cause of action is pursued against a non-resident defendant, then the courts must determine whether the non-resident has sufficient contacts with the forum state. In World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980), the United States Supreme Court held:

[A] state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

Although the minimum-contacts test centers on the defendant's relationship with the forum state, the sufficiency of the contacts for jurisdictional purposes depends on the "relationship among the defendant, forum, and the litigation..." Charles Gendler & Co. Inc. v. Telecom Equipment Corp., 102 N.J. 460 (App. Div. 1996) (citing Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).

A defendant may be subject to either the general or specific jurisdiction of the forum state, and the adequacy of a defendant's contacts with the forum state is dependent upon whether personal jurisdiction is general or specific. See Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414 (1984). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile..." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011). "[T]he domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning." McCann v. Newman Irrevocable Trust, 458 F.3d 281, 286 (2006) (quoting Vlandis v. Kline, 412 U.S. 441, 454 (1973)). In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction." Goodyear Dunlop Tires Operations 564 U.S. at 919.

With regards to the courts exercising in personam jurisdiction over non-residents who were served within the state, while no black letter law applies, historically Supreme Court precedent reflects that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny". Burnham v. Superior Court of California, 495

U.S. 604, 629 (1990) (*citing Shaffer*, 433 U.S. at 212). In *Burnham* the Supreme Court reviewed this question, which resulted in a plurality decision. In terms of numbers, Justice Brennan's approach prevails, with three other Justices firmly behind him. As past precedent would reflect, in Justice Brennan's opinion "all rules of jurisdiction, even ancient ones, must satisfy contemporary notions of due process". *Burnham*, 495 U.S. at 630. "...[T]he minimum-contacts analysis developed in *International Shoe* ... represents a far more sensible construct for the exercise of state-court jurisdiction than the patchwork of legal and factual fictions that has been generated from the decision in *Pennoyer v. Neff*. *Burnham*, 495 U.S. at 630.

Here, New Jersey does not have jurisdiction over [REDACTED] and for New Jersey to exercise jurisdiction over these issues would violate his due process rights. Although, [REDACTED] [REDACTED] happened to be served in New Jersey, in the interest of justice, it is not sufficient to give New Jersey Court's jurisdiction over this matter.

New Jersey Courts cannot exercise general jurisdiction over [REDACTED] because he is domiciled in the state of Florida. [REDACTED] residence in [REDACTED]. This is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning. This intention is reflected in the fact that for the past several years, prior to [REDACTED] when the first alleged incident in this litigation occurred, [REDACTED] [REDACTED] has been residing in Florida. Additionally, he has been filing his Federal and State Tax Returns in Florida and his driver's license indicates his Florida address as his residence. [REDACTED] [REDACTED] is only in New Jersey temporarily when he is needed to return to New York for any business obligations.

New Jersey Court's cannot exercise specific jurisdiction over [REDACTED] because his minimum contacts with New Jersey are not issues deriving from, or connected with this litigation.

Unfortunately, [REDACTED] was served with this Complaint on [REDACTED], while he was temporarily in New Jersey retrieving any mail. However, unlike Burnham, New Jersey has nothing to do with this litigation. The alleged insurance fraud occurred when [REDACTED] landed in Miami airport or LiGuardia airport. At no point did [REDACTED] contacts with New Jersey give rise to the State's allegation. [REDACTED]

Since the New Jersey Court's lack general jurisdiction and specific jurisdiction over [REDACTED], New Jersey exercising personal jurisdiction over these issues would violate his due process rights.

POINT II

DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED BECAUSE THE DOCTRINE OF FORUM NON CONVENIENS APPLIES

New Jersey courts perform an analysis related to the doctrine of forum *non conveniens*. Kurzke v. Nissan Motor Corp., 164 N.J. 159 (2000). Under the doctrine of forum *non conveniens*, a court may decline jurisdiction "whenever the ends of justice indicate that trial in the forum" selected by the applicant would be "inappropriate." Id.; Civic Southern Factors Corp. v. Bonat, 65 N.J. 329, 332-33 (1974); Semanishin v. Metropolitan Life Ins. Co., 46 N.J. 531, 533 (1966). It comes into play "where a weighing of all of the many relevant factors, of which residence is but part, decisively establishes that there is available another forum where trial will best serve the convenience of the parties and the ends of justice. . . ." Civic Southern, 65 N.J. at 333 (*quoting Gore v. United States Steel Corp.*, 15 N.J. 301, 311 (1954)). The doctrine's purpose is to prevent harassment or injustice, although it cannot be invoked to destroy a claimant's opportunity to be heard. Id. The doctrine may be applied to protect citizens from the unjustifiable burden imposed on them when controversies with no connection to the state are allowed to proceed to trial.

Semanishin, 46 N.J. at 533. The court will consider public interest factors: 1) the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin, (2) the imposition of jury duty on members of a community having no relation to the litigation, (3) the local interest in the subject matter such that affected members of the community may wish to view the trial and (4) the local interest in having localized controversies decided at home. The courts also consider private interest factors: (1) the relative ease of access to sources of proof, (2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses, (3) whether a view of the premises is appropriate to the action and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive, including the enforceability of the ultimate judgment. Id.

Here, the doctrine of forum *non conveniens* bars the from pursuing an action against [REDACTED] in New Jersey. New Jersey has virtually no connection to [REDACTED] or to this litigation. [REDACTED] currently resides and is domiciled in Florida. Since there is criminal investigation currently underway in Florida, State of Florida v. Barry William Defendant, Case No.: F12-29970A, it is inconvenient to require [REDACTED] to retain separate civil counsel in New Jersey to possibly have a trial on the underlying issues of the State's application.

Notably, if in fact these issues are unable to be resolved, significant discovery and litigation would be involved since the witnesses will be out-of-state. Additionally, [REDACTED] would need to be continuously filing applications with the Florida Court for permission to travel to New Jersey so he can adequately prepare his defense for this litigation. This would create an unnecessary burden on [REDACTED] and may cause foreseeable delays that may burden New Jersey Courts and the Prosecutor's Office.

Arguably, Florida is a more convenient forum that would be able to address the issues in a more expeditious manner.

We thank Your Honor for your consideration.

Respectfully submitted,

[Redacted signature]

By: _____

[Redacted signature]

[Redacted]
cc: [Redacted]
[Redacted]