No. 121281

IN THE SUPREME COURT OF ILLINOIS

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, *Plaintiff-Appellee,* v. INTERSTATE WAREHOUSING, INC., *Defendant-Appellant.*	On Appeal from the Appellate Court of Illinois for the First Judicial District, No. 1-15-1876 There heard on appeal from the Circuit Court for Cook County No.: 14 L 7376 The Honorable John P. Callahan, Judge Presiding

APPELLANT'S ADDITIONAL BRIEF AND ATTACHED APPENDIX

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a roof collapse at a Michigan warehouse, plaintiff Aspen American Insurance Company filed suit in Illinois against defendant Interstate Warehousing, Inc. to recover damages allegedly suffered by Aspen's insured, Eastern Fish Company. (A36; SR8.) Interstate, an Indiana corporation with its principal place of business in Indiana, moved to dismiss for lack of personal jurisdiction pursuant to the United States Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. __, 134 S.Ct. 746 (2014). (A29; SR1.) The trial court denied the motion to dismiss (A27; SR49), and a divided appellate court (hearing the case pursuant to Supreme Court Rule 306(a)) affirmed (A2).

ISSUES PRESENTED FOR REVIEW

1. Is evidence that a defendant corporation advertises a warehouse location in Illinois and has been authorized to do business in this State sufficient, *prima facie*, to establish an "exceptional case" for the exercise of general, all-purpose personal jurisdiction outside of the State where the defendant is both incorporated and maintains its principal place of business?

2. For purposes of general personal jurisdiction, where the defendant is incorporated and maintains its principal place of business in Indiana, does plaintiff bear the burden of producing evidence demonstrating that the defendant's activities in Illinois are so substantial compared with its activities nationwide that defendant may properly be considered "at home" in this State?

STATEMENT OF JURISDICTION

The trial court denied Interstate Warehousing, Inc.'s motion to dismiss for lack of jurisdiction on June 8, 2015. (A27; SR49.) The appellate court granted leave to appeal, pursuant to Supreme Court Rule 306(a)(3) on September 11, 2015. The appellate court issued its opinion affirming the trial court on June 30, 2016 (A2), and denied Interstate's Petition for Rehearing on August 5, 2016.

Interstate filed a timely petition for leave to appeal to this Court on September 9, 2016, which this Court granted on November 23, 2016 (A28). This Court has jurisdiction over this appeal pursuant to Supreme Court Rule 315.

STATEMENT OF FACTS

Pursuant to a contract with defendant Interstate Warehousing, Inc. ("Interstate"), Eastern Fish Company stored food products at a warehouse in Grand Rapids, Michigan. (A37, A52; SR9, SR24.) Eastern's food products were damaged or destroyed when the roof of the Michigan warehouse collapsed. (A36, A55; SR8, SR27.) Plaintiff, Aspen American Insurance Co. sued as Eastern's subrogee. (A37; SR9.)

Interstate moved to dismiss the complaint, arguing that under *Daimler AG v. Bauman*, 571 U.S. __, 134 S. Ct. 746 (2014), the court lacked personal jurisdiction. (A29; SR1.) In support, Interstate provided the affidavit of its Treasurer and Chief Financial Officer establishing that: (1) Interstate is incorporated in the State of Indiana, where it also maintains its principal place of business (A61; SR34); (2) Interstate Warehousing of Illinois, LLC ("IW

Illinois"), is a limited liability company organized under Indiana law which also maintains its principal place of business in Indiana (A61; SR34); and (3) IW Illinois operates the Joliet warehouse where an Interstate employee was served with process in this case. (A62; SR35.)

Plaintiff argued that the exercise of jurisdiction was proper under the traditional "doing business" test. (A68–69; SR41-42.) In support, plaintiff attached a printout from the Illinois Secretary of State's website showing that Interstate has a designated agent for service of process and is authorized to transact business in Illinois. (A75; SR48.) In addition, letters from Interstate attached to the complaint list various warehouse locations, including the Joliet warehouse and warehouses in Indiana, Ohio, Colorado, Michigan, Tennessee, and Virginia. (A55, A67; SR27, SR40.)

At the hearing on Interstate's motion, the trial court asked about the square footage of the Joliet warehouse, how many employees Interstate's general manager supervises at that warehouse, what volume of business Interstate operates from the Joliet warehouse, and how many operational divisions exist at the Joliet warehouse. (SR56-57, SR60.) Interstate noted that plaintiff presented no evidence answering any of these questions. (SR56.) The trial court denied the motion to dismiss. (A27; SR65.)

A divided appellate court affirmed. The majority held that plaintiff established a *prima facie* case for personal jurisdiction through evidence that: (1) Interstate's website and letterhead advertise a warehouse in Illinois; (2) Interstate

has been authorized to do business in Illinois since 1988; and (3) an Interstate employee is employed as a general manager at the Joliet warehouse. (A18–19, ¶54.) The majority concluded that these contacts "were even more substantial" than contacts found sufficient to establish jurisdiction in *Alderson v. Southern Co.*, 321 Ill. App. 3d 832 (1st Dist. 2001). (A20, ¶56.) In addition, the majority found that because "the court received no evidence regarding the proportion of defendant's business derived from its contacts with Illinois, as compared to other states or countries," Interstate failed to satisfy its burden to demonstrate that its contacts with Illinois are too slim to support jurisdiction. (A21, ¶59.)

The dissent, in contrast, emphasized that, under *Daimler*, a corporation may be subjected to general jurisdiction in a state other than its place of incorporation or principal place of business only in an exceptional case. (A22, ¶66.) Noting the *Daimler* court's citation of *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), as the exemplar of an "exceptional case, the dissent found that plaintiff failed to make a "similarly compelling case" for the exercise of general jurisdiction here. (A23–24, ¶69.) Because the evidence did not establish that Interstate "has in any way adopted Illinois as a surrogate, *de facto*, or temporary home," the dissent would have found that plaintiff "failed to make even a *prima facie* showing of general jurisdiction." (A25–26, ¶72.)

ARGUMENT

I. The issue of general jurisdiction is reviewed *de novo.*

"It is settled that the plaintiff has the burden to establish a *prima facie* basis to exercise personal jurisdiction over a nonresident defendant." *Russell v. SNFA,* 2013 IL 113909, ¶28. Because the trial court decided the jurisdictional question solely on documentary evidence, without an evidentiary hearing, this Court's review is *de novo*. *Id.*

II. Aspen failed to establish a *prima facie* case for exercising general personal jurisdiction over Interstate.

"The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden v. Fiore*, 571 U.S. __, 134 S. Ct. 1115, 1121 (2014), citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 291 (1980). Subsequent to the Court's canonical opinion in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), two categories of personal jurisdiction have evolved: specific jurisdiction and general jurisdiction. *Daimler*, 134 S.Ct. at 754. "Specific" or "case-linked" jurisdiction exists where the case before the court arises out of the defendant's in-forum contacts. *Daimler*, 134 S.Ct. at 754. Specific jurisdiction is not at issue here. General, or all-purpose, jurisdiction refers to a court's authority over a defendant where the case before the court is unrelated to the defendant's forum activities. *Id.*

A. The "doing business" standard has been replaced by a test that looks to where a defendant corporation is "at home."

For decades following *International Shoe*, courts all across America—including this Court—held that general jurisdiction could be exercised over a non-resident corporation "doing business" within the forum state. *Cook Associates, Inc. v. Lexington United Corp.*, 87 Ill. 2d 190, 199 (1981); Tanya J. Monestier, *Where is Home Depot "At Home"?: Daimler v. Bauman and the End of Doing Business Jurisdiction*, 66 Hastings L.J. 233, 236 (2014). Continuous and systematic business contacts with the forum state were deemed necessary to meet this "doing business" standard. *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 102 Ill. 2d 342, 349 (1984). Beginning with its decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and more emphatically in *Daimler*, the United States Supreme Court has since made clear that the "doing business" standard, and the "continuous and systematic" contacts analysis upon which that standard relied, are inappropriate.

1. The *Goodyear* court established the "at home" test.

In *Goodyear*, the plaintiffs filed suit in North Carolina against Goodyear Tire and Rubber Company ("Goodyear USA"), an Ohio corporation, and three of Goodyear USA's foreign subsidiaries seeking to recovery for injuries incurred in a bus accident outside of Paris attributed to defects in a tire manufactured in Turkey by a subsidiary of Goodyear USA. *Goodyear*, 564 U.S. at 918. The foreign subsidiaries each challenged the personal jurisdiction of the North Carolina Court over them. *Id.* Finding that tires manufactured abroad by the

foreign subsidiaries "had reached North Carolina through 'the stream of commerce,'" the North Carolina Court of Appeals found that the subsidiaries had sufficient contacts with the State to render them subject to personal jurisdiction in North Carolina. *Id.* at 920.

The *Goodyear* court disagreed. The court began by acknowledging that, in *International Shoe*, it had recognized that what is now called "general jurisdiction" is appropriate where a defendant'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.'" *Id.* at 924, quoting *International Shoe*, 326 U.S. at 318. "For an individual," the *Goodyear* court elaborated, "the paradigm forum for the exercise of general jurisdiction is the individual's domicile." For a corporation, in contrast, the paradigm forum for the exercise of general jurisdiction "is an equivalent place, one in which the corporation is fairly regarded as at home." *Id.*

Under that standard, the *Goodyear* court emphasized, "[a] corporation's 'continuous activity of some sorts within a state... is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.'" *Id.* at 927, quoting *International Shoe*, 326 U.S. at 318. Instead, the court pointed to its decision in decision in *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). *Id.* at 928.

In *Perkins*, a Philippine mining corporation had ceased all activity in the Philippines during the Japanese occupation of that nation during World War II.

Id. at 928. To the extent the company conducted any business at all during that period, it did so in Ohio, where the corporation's president maintained his office at which he kept the company files and from which he supervised "'the necessarily limited wartime activities of the company.'" *Id.*, quoting *Perkins,* 342 U.S. at 447–448. Although the claims at issue did not arise from the company's Ohio activities, the United States Supreme Court upheld the exercise of personal jurisdiction in that State because "'Ohio was the corporation's principal, if temporary, place of business.'" *Id.*, quoting *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 779–780, n. 11 (1984).

The *Goodyear* court contrasted its decision in *Perkins* with its subsequent decision in *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408 (1984), as case at the opposite factual extreme. In *Helicopteros*, held that Texas could not exercise general jurisdiction over a Colombian corporation with contacts limited to "'sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from [a Texas enterprise] for substantial sums; and sending personnel to [Texas] for training." *Id.*, quoting *Helicopteros,* 466 U.S. at 416.

In finding the contacts of Goodyear USA's foreign subsidiaries with North Carolina insufficient to establish general jurisdiction under the principles established in *Perkins* and *Helicopteros*, the *Goodyear* court notably did not endorse the "doing business" standard but instead held that general jurisdiction

may only be exercised in a forum where the corporation is "essentially at home." *Id.* at 919. The defendant in *Perkins* was "at home" in Ohio because that forum was the defendant's principal (though temporary) place of business. The defendant in *Helicopteros* was not subject to general jurisdiction in Texas, and the Goodyear USA subsidiaries were not subject to personal jurisdiction in North Carolina, because they were not "at home" in those states.

2. *Daimler* clarified that, except in an exceptional case, a corporation is "at home" only in its place of incorporation or principal place of business.

Following *Goodyear*, some courts and commentators remained uncertain as to whether or to what extent the "doing business" standard for general jurisdiction, predicated on substantial, continuous business contacts, could be reconciled with the "at home" standard announced by the *Goodyear* court. See, e.g., *Hess v. Bumbo Intern. Trust*, 954 F. Supp. 2d 590, 596 (S.D. Tex. 2013)("*Goodyear* did not purport to announce new principles or change the law of personal jurisdiction....") See also Meir Feder, *Goodyear, "Home," and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. Rev. 671, 678–95 (2012) (arguing that "doing business" analysis is incompatible with *Goodyear's* "at home" standard); Todd David Peterson, *The Timing of Minimum Contacts After Goodyear and Mcintyre*, 80 Geo. Wash. L. Rev. 202 (2011) (arguing that *Goodyear* continues to allow general jurisdiction based on a "substantial volume of sales made directly into the forum state"); Camilla Cohen, *Goodyear Dunlop's Failed Attempt to Refine The Scope of General Personal Jurisdiction Goodyear*

Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), 65 Fla. L. Rev. 1405 (2013) (arguing that *Goodyear* "can easily be interpreted as adopting both a broad and narrow interpretation of the reach of general jurisdiction")

In *Daimler*, the court removed all uncertainty, explicitly rejecting both the "doing business" standard and the "substantial, continuous and systematic course of business" formulation typically invoked in applying a doing business standard. *Daimler*, 134 S.Ct. at 761, 762, n. 20. The court in *Daimler* addressed whether a California court could properly exercise jurisdiction over DaimlerChrysler Aktiengesellschaft (Daimler)—a German corporation headquartered in Stuttgart, Germany—based on the California contacts of its subsidiary, Mercedes-Benz USA, LLC (MBUSA). *Daimler,* 134 S. Ct. at 750-51. MBUSA had "multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine." *Id.* at 752. MBUSA was "the largest supplier of luxury vehicles to the California market." *Id.*

The United States Supreme Court held that even if it "were to assume that MBUSA [was] at home in California, and "further to assume MBUSA's contacts [were] imputable to Daimler," these "slim contacts" were insufficient to render Daimler at home within that State. *Id.* at 760.

First, the court rejected the plaintiffs' suggestion that the court should approve the exercise of personal jurisdiction "in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" *Id.* at 761. "That formulation," the court held, "is unacceptably

grasping." *Id.* The "words 'continuous and systematic' were used in *International Shoe*," the *Daimler* court explained, "to describe instances in which the exercise of *specific* jurisdiction would be appropriate." *Id.* (Emphasis in original.) Following *Goodyear*, the proper focus is on whether the defendant's forum contacts are such as would render the defendant "at home" in the forum. *Id.*

Illuminating what it means to be "at home" in a forum, the *Daimler* court explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 762, n. 20. Otherwise, the "at home" standard "would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." *Id.* General jurisdiction may not be predicated on "a particular quantum of local activity," but instead "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide" to determine where the corporation is truly at home. *Id.*

"With respect to a corporation," the *Daimler* court held, "the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction.'" *Id.*, at 760, quoting Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L.Rev. 721, 735 (1988). "Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." *Id.* Although the *Daimler* court did not "foreclose the possibility" that a corporation might be subjected to general jurisdiction in a forum other than its place of incorporation or principal place of business, the court reserved the exercise of general jurisdiction in an alternative forum for "an exceptional

case," such as the unusual circumstances addressed by the court in *Perkins*. *Id.* at 761, n. 19.

Neither Daimler nor MBUSA was incorporated or had its principal place of business in California. *Id.* at 761. To subject Daimler to general jurisdiction in that State would, the court observed, presumably subject Daimler to general jurisdiction "in every other State in which MBUSA's sales are sizable." Finding that "[s]uch exorbitant exercises of all-purpose jurisdiction 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,'" the United States Supreme Court held that Daimler was not subject to suit in California on claims having nothing to do with that forum. *Id.* at 761–62, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

B. Aspen has not established an "exceptional case" warranting the exercise of personal jurisdiction beyond the paradigm forums.

In the wake of both *Goodyear* and *Daimler*, it is now clear that, except in an "exceptional case," a corporation is subject to general jurisdiction only in the State in which it is incorporated or has its principal place of business. Because Interstate is both incorporated and has its principal place of business in Indiana, it could only be subject to general jurisdiction in Illinois if Aspen had achieved the incredibly difficult task of demonstrating that this was an "exceptional case." It did not.

1. The appellate court majority ignored the exceptional case requirement.

The appellate court majority below did not find that the exercise of general jurisdiction over Interstate outside of the State in which it is both incorporated and has its principal place of business was justified because this is somehow an "exceptional case." Indeed, the majority made no mention of the exceptional case requirement at all. Instead, to support its finding of personal jurisdiction, the majority looked to "the reasoning in *Alderson v. Southern Co.*, 321 Ill. App. 3d 832 ([1st Dist.] 2001)." (A19, ¶55).

Decided a decade before *Goodyear* and 13 years before *Daimler*, *Alderson* was decided under the "doing business" test rejected in *Daimler*, including the "continuous and systematic" contacts formulation the *Daimler* court rejected as "unacceptably grasping." *Alderson*, 321 Ill. App. 3d at 849, 857. The appellate court's reliance on *Alderson* reflects a troubling disregard for the unambiguous standards established by the United States Supreme Court in *Daimler.*

2. The facts in this case do not establish an exceptional case.

Not only was the appellate court majority's reliance on *Alderson* incompatible with *Daimler*, the contacts it found sufficient to establish personal jurisdiction under *Alderson* fall far short of what would be required to establish an "exceptional case" for general jurisdiction under *Daimler.* The majority points to: a website and letterhead that reference the IW, Illinois warehouse in Joliet; an employee who serves as a general manager at the Joliet warehouse; and a printout

from the Secretary of State's website suggesting Interstate has been authorized to transact business in Illinois since 1988. (A18, ¶54.) There is nothing "exceptional" about these facts—and certainly nothing about these facts that would suggest that Interstate's home is in Illinois rather than in Indiana, where Interstate is incorporated and has its principal place of business.

The federal courts of appeals have recognized that it is "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business." *Monkton Insurance Services, Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014). "[A]dditional candidates" for the exercise of general jurisdiction "would have to meet the stringent criteria laid out in *Goodyear* and *Daimler*," which "require more than the 'substantial, continuous, and systematic course of business' that was once thought to suffice." *Kipp v. Ski Enterprise Corporation of Wisconsin, Inc.*, 783 F.3d 695, 698 (7th Cir. 2015).

"The only 'exceptional' case the Supreme Court has identified in which a court exercised general personal jurisdiction over a foreign corporation without offending due process is *Perkins*." *Carmouche v. Tamborlee Managemnt, Inc.*, 789 F.3d 1201, 1204 (11th Cir. 2015). See *Daimler,* 134 S.Ct. at 761 n.19. And the facts in *Perkins* were indeed exceptional. At the time of suit, the defendant was unable to operate its business in the Philippines, where it was incorporated, because of the Japanese occupation of that country during World War II. *Daimler*, 134 S.Ct. at 756. The company's president instead directed the

company's limited wartime activities from an office in Ohio, which became the company's "principal, if temporary, place of business." *Id.*

An "exceptional case," then, is one in which the defendant's forum contacts are so substantial that the forum State might be "considered a surrogate for the place of incorporation or head office." *Daimler*, 134 S.Ct. at 756 n.8. The "corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business." *Carmouche*, 789 F.3d at 1205. Or, in the words of the dissenting justice below, an "exceptional case" will exist where a corporate defendant has adopted a "surrogate, *de facto*, or temporary home." (A25, ¶72.) "[M]ere contacts, no matter how 'systematic and continuous,' are extraordinarily unlikely to add up to an 'exceptional case.'" *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 629 (2d Cir. 2016) (plaintiff failed to establish an exceptional case where defendant's in-state contacts fell "far short of establishing a 'surrogate principal place of business'"). Accord *Waldman v. Palestinian Liberation Organization*, 835 F.3d 317, 335 (2d Cir. 2016) ("exceptional case" not established for the exercise of general jurisdiction in the United States where defendants had "not transported their princip[al] 'home' to the United States, even temporarily"); *Otsuka Pharmaceutical Co., Ltd. v. Mylan Inc.*, 106 F.Supp.3d 456, 466 (D. NJ 2015) ("exceptional case" requires that the defendant's forum contacts are "the functional equivalent of incorporation or principal place of business.")

Aspen alleged no facts and produced no evidence that would support a finding that Illinois was Interstate's surrogate, *de facto*, or temporary home. The appellate court majority believed Interstate's Illinois contacts sufficed to justify the exercise of general jurisdiction because (at least in the majority's view) those contacts were "even more substantial than the Illinois ties of the defendant in *Alderson*." But, under *Daimler*, "the general jurisdiction inquiry does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.'" *Daimler*, 134 S.Ct. at 762 n.20. No "'particular quantum of local activity' should give a State authority over a 'far larger quantum of... activity' having no connection to any in-state activity." *Id.* In other words, the proper inquiry is not "How much business does Interstate conduct in Illinois?" but, rather, "What is the significance of Interstate's business activity in Illinois compared with its 'activities in their entirety, nationwide and worldwide?'" *Id.*

Aspen presented no evidence that would suggest that Interstate's activities in Illinois compared to its activities elsewhere were such that Interstate could be considered "at home" in Illinois. For example, Aspen—and the appellate court majority—looked to letterhead that included the Joliet, Illinois warehouse as demonstrating Interstate's jurisdictional contact with this State. But that same letterhead identifies a total of eight warehouses in six different states, with more warehouses in Indiana than in any other state. (A55; SR27.) Nothing in the letterhead (or elsewhere in the record) suggests that Interstate's activity in

connection with the Joliet warehouse was any more significant than its activity anywhere else.

Even more significantly, the same letterhead also specifically identifies the company's head "corporate office" in Fort Wayne, Indiana. (A55; SR27.) Interstate's CFO identified that same Fort Wayne, Indiana address as Interstate's principal place of business. (A61; SR34.) Even the printout Aspen itself provided from the Illinois Secretary of State's website identifies the Fort Wayne, Indiana office as the address for Interstate's president and secretary (A75; SR48). Aspen did not allege or present any evidence that Interstate has any sort of corporate office in Illinois.

Aspen and the appellate court majority additionally relied on Interstate's employment of Ryan Shaffer as a "general manager" at the Joliet warehouse. But Shaffer's affidavit indicates that he oversaw operations only at the Joliet warehouse. (A64; SR37.) Aspen did not allege or offer evidence suggesting that Shaffer somehow oversaw Interstate's nationwide operations from the Joliet warehouse. Nor did Aspen allege or offer evidence that Shaffer's activity as general manager at the Joliet warehouse was any different from the activity of the general managers at any of Interstate's seven other warehouses nationwide. The mere fact that Interstate employer Shaffer to serve as a general manager in Illinois falls far short of rendering Illinois the *de facto* or surrogate home office for Interstate.

Finally, Aspen and the appellate court majority relied on evidence that Interstate is registered to transact business in Illinois. Even apart from the due process standards governed by *Daimler*, however, the Illinois long-arm statute provides that the mere transaction of business is sufficient to support only specific, not general, jurisdiction. 735 ILCS 5/2–209(a). Further, both Aspen and the appellate court majority ignore that Interstate is explicitly registered to transact business *as a foreign corporation*—that is, the registration upon which Aspen and the appellate court majority would rely specifically recognizes that Interstate is "at home" outside of Illinois. (A75; SR48.) See 805 ILCS 5/13.05 (providing procedure for foreign corporations to obtain authority to transact business in this State). Again, Aspen did not allege or offer any evidence suggesting that Interstate's registration to transact business in Illinois was any different from its authorization to conduct business in the five other states in which it operates.

Aspen offered no evidence—and, indeed, *has never argued*—that the Joliet, Illinois warehouse somehow functioned as a surrogate for Interstate's place of incorporation or home office. Nevertheless, the appellate court majority faulted Interstate for "fail[ing] to present any evidence concerning the amount of business it was conducting in Illinois." (A21, ¶ 59.) In the majority's view, such evidence was necessary to overcome Aspen's *prima facie* showing of jurisdiction. (A21, ¶59.) The majority misapprehended or ignored the showing necessary to establish a *prima facie* case of general jurisdiction under *Daimler*.

"[I]n assessing the extent of a corporation's contacts in a state for general jurisdiction purposes" the court "must assess the company's local activity not in isolation, but *in the context of the company's overall activity.*" (Emphasis in original.) *Brown,* 814 F.3d at 629. The corporation's in-state activities must "substantially excee[d] the magnitude of the corporation's activities in other places" before the exercise of general jurisdiction might be appropriate. *Lindora, LLC v. Isagenix Int'l, LLC,* __ F. Supp. 2d __, No. 15-CV-2754-BAS-RBB slip op. at 8, 2016 WL 4077712 at *4 (S.D. Cal. Aug. 1, 2016). In other words, to make a *prima facie* showing of general jurisdiction, Aspen needed to produce evidence establishing that Interstate's business activities in Illinois exceeded the volume and significance of its activities elsewhere to such an extent that Illinois should be considered the company's *de facto* home. Aspen made no attempt at all to do so and, thus, failed to make a *prima facie* showing of general jurisdiction.

III. Aspen bore the burden of producing evidence regarding Interstate's business activities in Illinois and nationwide sufficient to justify jurisdiction.

To the extent the appellate court majority recognized at all the significance of "apprais[ing]... a corporation's activities in their entirety, nationwide and worldwide" (*Daimler*, 134 S.Ct. 762, n. 20), the majority chose to fault Interstate rather than Aspen for the failure to present more detailed evidence regarding Interstate's nationwide activity. (A21, ¶ 59.) That is, once Aspen demonstrated that Interstate engaged in *some* Illinois activity, the appellate court majority

imposed a burden on Interstate to demonstrate that "its contacts were actually 'too slim' to support jurisdiction." (A21, ¶59.)

This Court, however, has made clear that "the plaintiff has the burden to establish a *prima facie* basis to exercise personal jurisdiction over a nonresident defendant." *Russell v. SNFA*, 2013 IL 113909, ¶28. Accord *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 310 (1986) ("The burden of proving a valid basis for the assertion of jurisdiction over a nonresident defendant rests with the party seeking to impose jurisdiction.")

As discussed above, the evidence produced by both parties overwhelmingly demonstrates that Indiana, not Illinois, is Interstate's "home" for jurisdictional purposes. Because Interstate is incorporated in Indiana and maintains its principal place of business in Fort Wayne, Indiana (A61; SR34), Interstate is presumed to be "at home" in Indiana under the paradigm bases for general jurisdiction recognized in *Goodyear* and *Daimler*.

Aspen alleged no facts and produced no evidence of an "exceptional case" to overcome this presumption. To the contrary, the evidence presented confirms that Interstate is "at home," precisely where the paradigm bases presume, in Indiana: Interstate's letterhead and the warehouse contract confirm that its corporate office is located in Fort Wayne, Indiana (A52, A55; SR24, SR27); the "Corporation File Detail Report" Aspen provided from the Illinois Secretary of State's website identifies the addresses of Interstate's President and Secretary at the Fort Wayne, Indiana corporate office (A75; SR48); Interstate's letterhead,

warehouse contract, and website all identify a total of eight warehouses in six states, with more warehouses in Indiana than in any other State (A51, A52, A55; SR23[1], SR24, SR27); the general manager at the Joliet warehouse upon whom process was served forwarded those documents to the corporate office in Indiana for handling (A64; SR38).

To the extent that the trial court had any lingering uncertainty as to how Interstate's Illinois activity compared with Interstate's activity in Indiana and nationwide, that uncertainty compelled a finding that Aspen failed to meet its burden to establish a *prima facie* showing of jurisdiction. Interstate is incorporated and maintains its principal place of business in Indiana, which the Supreme Court has twice recognized are the paradigm forums in which a corporation will be considered at home. *Goodyear*, 564 U.S. at 924; *Daimler*, 134 S.Ct. at 760. Once Interstate demonstrated that the paradigm bases for jurisdiction cannot be established here, Aspen could make a *prima facie* showing only by producing evidence that this is an "exceptional case." *Daimler*, 134 S. Ct. at 761, n. 19. That required Aspen—not Interstate—to produce evidence from which the trial court could appraise Interstate's "activities in their entirety, nationwide and worldwide." *Daimler*, 134 S.Ct. 762, n.20. If the evidence was insufficient to conduct such an appraisal, then Aspen failed to meet its burden.

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[1] The photocopy of the website banner attached to Aspen's complaint is unreadable (A51; SR23); however, Aspen identified the source of the image as: http://www.tippmanngroup.com/interstate-warehousing.

By faulting Interstate for failing to present evidence of its nationwide business activities, the appellate court majority imposed a burden on Interstate to produce evidence necessary to establish Aspen's *prima facie* case. This was error. *Waldman*, 835 F.3d at 334 (district court "erred in placing the burden on the defendants to prove that there exists 'an alternative forum where Plaintiffs' claims could be brought'").

The appellate majority's error in shifting the burden of proof appears to have been influenced by its mistaken belief that Interstate "uniquely has access" to information about things like "the volume of business transacted in Joliet, and the square footage of the Joliet warehouse." (A20, ¶59.) But Supreme Court Rule 201(l), provides for discovery relevant to the jurisdictional inquiry. Ill. S. Ct. R. 201(l). Aspen had the opportunity[2] through the discovery process to seek access to any evidence it believed might exist to demonstrate that Interstate's Illinois activities substantially exceeds its activities elsewhere. Aspen chose not to do so.

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[2] Under Supreme Court Rule 201(l), when a motion contesting personal jurisdiction has been filed, discovery is generally limited to matters relevant to the issue of jurisdiction. Ill. S. Ct. R. 201(l)(1). A trial court, of course, retains discretion under Supreme Court Rule 201(c) to deny or limit jurisdictional discovery where the likely burden or expense of the proposed discovery outweighs the likely benefit. Ill. S. Ct. R. 201(c). Consistent with this discretion, the amici curiae argue that, where a defendant is incorporated and has its principle place of business outside of Illinois, jurisdictional discovery should generally not be permitted unless the plaintiff has alleged sufficient facts to plead a *prima facie* basis for finding an "exceptional case." Because Aspen never pursued any jurisdictional discovery in this case, and Interstate never asked the trial court to limit or deny such discovery, the outcome of the present appeal does not depend on the extent to which jurisdictional discovery could have been limited or denied.

Had Interstate refused to comply with legitimate discovery requests under Rule 201(l), or had Interstate concealed evidence subject to disclosure, the appellate court might have been justified in presuming that the missing evidence would have supported general jurisdiction. *Cf. Insurance Corporation of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 705 (1982) (presumption of jurisdictional facts as sanction for discovery violation did not violate due process). But there is no suggestion of any misconduct here and no basis for penalizing *Interstate* for failing to present the evidence necessary to satisfy *Aspen's* burden.

Plaintiff presented no evidence to suggest—and, indeed, never even argued—that Interstate's activities in Illinois are more substantial, quantitatively or qualitatively, than its activities in Indiana or in any of the other states in which it operates. The appellate majority's holding that Interstate failed to satisfy *its* burden to "prove that its contacts were actually 'too slim' to support jurisdiction" (A21, ¶59) is directly contrary to the burden of proof recognized by this Court (*Russell*, 2013 IL 113909, ¶28). This Court should reverse the trial court and appellate court majority below, reaffirm that the plaintiff bears the burden of establishing a *prima facie* case for general jurisdiction, and hold that Interstate's motion to dismiss for lack of personal jurisdiction should have been granted.

CONCLUSION

For the foregoing reasons defendant-appellant Interstate Warehousing, Inc. respectfully requests that this court find that plaintiff-appellee Aspen

American Insurance Co. failed to show that Interstate is subject to personal jurisdiction in Illinois. Interstate asks this Court to reverse the trial court's order denying Interstate's Motion to Dismiss.

Respectfully submitted,

/s/ Kimberly A. Jansen

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Dated February 1, 2017

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 24 pages.

/s/ Kimberly A. Jansen

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), I, Kimberly A. Jansen, one of the attorneys for Defendant-Appellant Interstate Warehousing, Inc., certify that I: (1) electronically filed the foregoing Appellant's Additional Brief and Attached Appendix with the Clerk of the Illinois Supreme Court on February 1, 2017, by using the Illinois Supreme Court electronic filing service; and (2) have served counsel of record by sending a copy thereof on February 1, 2017, to the email address below:

Timothy S. McGovern
tmcgovern@smbtrials.com

/s/ Kimberly A. Jansen

APPENDIX

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2016 IL App (1st) 151876

No. 1-15-1876

Fifth Division
June 30, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ASPEN AMERICAN INSURANCE COMPANY, as Subrogee of Eastern Fish Company,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 14 L 7376
INTERSTATE WAREHOUSING, INC.,	)	The Honorable John P. Callahan, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court, with opinion.
Presiding Justice Reyes concurred in the judgment and opinion.
Justice Lampkin dissented, with opinion.

OPINION

¶ 1 Plaintiff Aspen American Insurance Company brought this subrogation action against defendant Interstate Warehousing, Inc.,[1] to recover losses sustained by Eastern Fish Company (Eastern), which plaintiff insured. Eastern sustained the losses when the roof of a warehouse owned by defendant collapsed. While the warehouse collapse occurred in Grand Rapids, Michigan, plaintiff brought suit in Cook County, Illinois. Defendant moved to

[1]In this order, we refer to both Interstate Warehousing, Inc., and its subsidiary Interstate Warehousing of Illinois, LLC. We refer to the former as defendant and the latter as IW Illinois.

dismiss the complaint, arguing that Illinois courts lacked personal jurisdiction over it. The trial court denied defendant's motion and defendant now appeals. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 I. The Parties

¶ 4 Plaintiff is the subrogee of Eastern, which sources and imports fish products. It is undisputed on appeal that, on April 23, 2013, Eastern and defendant entered into an agreement for the storage of food products; that, pursuant to this agreement, Eastern delivered food products to defendant's warehouse in Grand Rapids, Michigan; and that part of the warehouse's roof collapsed on March 8, 2014, causing damage to the fish products.

¶ 5 Defendant, which is incorporated and has its principal place of business in the state of Indiana, advertises, on both its website's masthead and its letterhead,[2] the operation of several warehouses including a warehouse in Joliet, Illinois, and the warehouse in Grand Rapids, Michigan, which is the subject of this suit. Defendant's chief financial officer, Jeff Hastings, averred in an affidavit that defendant is "a 75% member of" IW Illinois, and that IW Illinois "operates" the warehouse in Joliet. Hastings also averred that Ryan Shaffer was the general manager of the Joliet warehouse, and that Shaffer was employed by defendant, rather than IW Illinois. In his affidavit, Shaffer averred that he was "responsible for the day-to-day operations at the Joliet warehouse."

¶ 6 II. Complaint

¶ 7 On July 14, 2014, plaintiff filed a complaint in the circuit court of Cook County alleging: (1) breach of contract; (2) negligent bailment; (3) negligence; (4) gross negligence; (5)

[2]Letters displaying defendant's letterhead and a printout of defendant's website masthead were attached as exhibits to plaintiff's complaint.

spoliation of evidence; (6) intentional spoliation of evidence; (7) fraudulent concealment; (8) conversion; (9) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2014)); and (10) bailment in regard to the roof collapse and defendant's subsequent actions.

¶ 8 The complaint alleged that on March 8, 2014, the roof on defendant's warehouse in Grand Rapids, Michigan, collapsed. The collapse ruptured gas lines and caused an ammonia leak within the facility, which made one section of the warehouse dangerous to enter and caused damage to Eastern's fish products.

¶ 9 Attached to the complaint as exhibits was a series of letters between plaintiff and defendant. In these letters, defendant's letterhead advertised that defendant has a warehouse in Joliet. In a letter dated March 9, 2014, and addressed to Eastern, defendant described the accident and stated that Eastern's food products were contaminated or destroyed. In a letter dated March 14, 2014, and addressed to Eastern, defendant stated that the roof collapse was "an act of god," and that defendant was taking no responsibility for Eastern's loss. In a letter dated March 20, 2014, and addressed to defendant, plaintiff stated that it estimated that the value of the products Eastern lost in the collapse was $2.65 million. This letter also stated that defendant had a duty to maintain all evidence regarding the roof collapse and cargo loss and requested that Eastern or its agents be permitted to inspect that evidence.

¶ 10 Also attached to plaintiff's complaint was a copy of the contract that Eastern had entered into with defendant and a printout displaying the masthead from defendant's website, both of which advertise that defendant has a warehouse in Joliet. The complaint also alleged that evidence was destroyed before Eastern was able to have it inspected.

¶ 11 III. Motion to Dismiss

¶ 12 On March 19, 2015, defendant moved to quash service and dismiss plaintiff's complaint for lack of jurisdiction, arguing that the United States Supreme Court's recent decision in *Daimler AG v. Bauman*, 571 U.S. ___, 134 S. Ct. 746 (2014), rejected the traditional "doing business" test that Illinois courts had used for determining general personal jurisdiction. Defendant also claimed that plaintiff failed to properly serve defendant since plaintiff failed to leave a copy with defendant's registered Illinois agent or an officer or agent of defendant.

¶ 13 Attached to the motion to dismiss were affidavits signed by Jeff Hastings, the treasurer and chief financial officer of defendant, and Ryan Shafer, the general manager of defendant's warehouse in Joliet, Illinois. The affidavit of Jeff Hastings averred:

"I, Jeff Hastings, being first duly sworn upon my oath, state as follows:

1. The matters stated in this affidavit are matters within my personal knowledge.

2. I am the treasurer and Chief Financial Officer ('CFO') of [defendant] Interstate Warehousing, Inc.

3. Interstate Warehousing, Inc. is incorporated in Indiana.

4. Interstate Warehousing, Inc.'s principal place of business is located at 9009 Coldwater Rd., Fort Wayne, IN 46825.

5. Interstate Warehousing, Inc. is a 75% member of Interstate Warehousing of Illinois, LLC.

6. Interstate Warehousing of Illinois, LLC, is a limited liability company organized under the laws of Indiana with its principal place of business at 9009 Coldwater Road, Fort Wayne, Indiana 46825.

7. Interstate Warehousing of Illinois, LLC, operates a warehouse facility located at 2500 McDonough Street in Joliet, Illinois.

8. Ryan Shaffer is not the registered agent for, or an officer of, Interstate Warehousing, Inc.

9. Ryan Shaffer is employed by Interstate Warehousing, Inc. as a General Manger at the Joliet, Illinois warehouse.

10. Ryan Shaffer's responsibilities as General Manager do not include accepting or responding to the service of process.

11. Ryan Shaffer has never been provided any training regarding the import of a service of summons or how to handle any summons delivered to him."

¶ 14 The affidavit of Ryan Shaffer averred:

"I, Ryan Shaffer, being first duly sworn upon my oath, state as follows:

1. The matters stated in this affidavit are matters within my personal knowledge.

2. I am employed by [defendant] Interstate Warehousing, Inc. as the General Manger of a warehouse located in Joliet, Illinois.

3. As General Manager, I am responsible for the day-to-day operations at the Joliet warehouse with responsibility for overseeing general operations, including safety, maintenance, and customer service.

4. The managers of each operational division of the Joliet warehouse report to me.

5. I am not an officer of Interstate Warehousing, Inc.

6. I am not the registered agent for Interstate Warehousing, Inc.

7. On November 13, 2014, a gentleman arrived at the Joliet warehouse and indicated that he needed someone to sign for a delivery.

8. As General Manager, I accepted and signed for the delivery, believing it was a delivery directed to the Joliet warehouse.

9. Upon opening the package, I discovered that it contained documents that appeared to be related to a lawsuit against Interstate Warehousing, Inc.

10. My responsibilities as general manager do not include responsibility for responding to or handling legal matters.

11. I have received no training regarding what the significance of a summons and complaint or what to do with such documents.

12. I forwarded the documents to the attention of Jeff Hastings at Interstate Warehousing, Inc.'s corporate office in Indiana."

¶ 15 In its response, plaintiff argued that, because defendant had received authorization to transact business in Illinois from the Illinois Secretary of State pursuant to section 13.10 of the Business Corporation Act of 1983 (805 ILCS 5/13.10 (West 2012)), defendant is considered a resident of Illinois and therefore subject to general jurisdiction.[3] Plaintiff argues that, because defendant was "doing business" in Illinois, defendant "may be sued on causes of action both related and unrelated to its Illinois activities." *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 848-49 (2001).

¶ 16 Plaintiff also argued that its service of general manager Ryan Shaffer was proper, because Shaffer's responsibilities as general manager were so significant that he was imparted with the authority to receive service of process as an "agent" of defendant.

[3]Section 13.10 states that a foreign corporation granted authorization to do business in Illinois "shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character." 805 ILCS 5/13.10 (West 2012).

¶ 17 On June 8, 2015, following argument, the trial court denied defendant's motion without stating its reasons in open court. The written order, dated June 8, 2015, stated only that defendant's motion was denied. Defendant filed a notice of appeal on July 7, 2015, and this appeal follows.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant argues: (1) that the trial court erred in denying its motion to dismiss for lack of general personal jurisdiction and (2) that plaintiff failed to properly serve it with process. For the following reasons, we affirm.

¶ 20 I. Service of Process Was Proper

¶ 21 A. Standard of Review

¶ 22 For service of process on a corporation to be effective when made on an agent of the corporation, the agent must have *actual* authority to accept service on behalf of the corporation. *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 29 (citing *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856, 862 (2010)).

¶ 23 There appears to be some disagreement among Illinois Appellate Courts as to which party has the burden of proof on the presence or absence of the agency relationship. *Dei*, 406 Ill. App. 3d at 863. The majority of courts have held that the burden is on the plaintiff (see *Slates v. International House of Pancakes, Inc.*, 90 Ill. App. 3d 716, 724 (1980); *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235 (1973)), but some courts have held that the defendant has the burden of proving that the person served was not an agent for purposes of accepting service (see *Island Terrace Apartments v. Keystone Service Co.*, 35 Ill. App. 3d 95, 98 (1975); *Millard v. Castle Baking Co.*, 23 Ill. App. 2d 51 (1959)

(abstract of opinion)). *Dei*, 406 Ill. App. 3d at 863. We do not have to resolve this issue because the result would be the same either way in this case.

¶ 24 We review *de novo* whether the trial court obtained personal jurisdiction. *JPMorgan Chase Bank, National Ass'n v. Ivanov*, 2014 IL App (1st) 133553, ¶ 45 (citing *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17). *De novo* consideration means we perform the same analysis that a trial judge would perform. *JPMorgan Chase Bank, National Ass'n v. Ivanov*, 2014 IL App (1st) 133553, ¶ 45 (citing *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011)).

¶ 25 B. Service

¶ 26 On appeal, defendant argues plaintiff failed to properly serve process on defendant. A private corporation may be served by leaving a copy of the process either (1) with its registered agent or (2) any officer or agent of the corporation found anywhere in the state. 735 ILCS 5/2-204(1) (West 2012).[4] Although defendant has a registered agent for service of process,[5] plaintiff did not serve process on that agent. Plaintiff instead served Ryan Shaffer, a general manager employed by defendant at the Joliet warehouse. Shaffer's affidavit avers that he is defendant's employee and that he is "responsible for the day-to-day operations at the Joliet warehouse with responsibility for overseeing general operations, including safety, maintenance, and customer service." The affidavit also avers that Shaffer received no training regarding the significance of a summons or what to do if served with one, but that he did immediately forward the papers to Jeff Hastings, defendant's CFO.

[4]Every domestic and foreign corporation which has "authority to transact business in this State" must "continuously maintain in this State *** [a] registered agent." 805 ILCS 5/5.05(b) (West 2012).

[5]The Illinois Secretary of State maintains a website (https://www.cyberdriveillinois.com) which contains a list of all corporations with authority to transact business in this state and their registered agents. The registered agent listed for defendant is CT Corporation System at 208 South LaSalle Street, suite 814, Chicago, Illinois.

¶ 27 In determining whether an employee of a corporation is an "agent" for the purposes of receiving service of process, courts ask: did the employee understand the import of the documents which he or she received? *Dei*, 406 Ill. App. 3d at 864. Thus, for example, this court has held that service on a secretary or receptionist is sufficient if he or she understands the import of the documents he or she is receiving, but service on a receptionist is insufficient if he or she does not understand the need to immediately deliver the papers to her employer. *Dei*, 406 Ill. App. 3d at 864. However, in a case where an affidavit of an employee averred "that she did not recognize or understand the legal import of service of process" and that "she did not deliver it to any officer of the corporation," this court held that she was not an agent for service of process. *Island Terrace*, 35 Ill. App. 3d at 99.

¶ 28 The facts of *Dei* are instructive to our analysis here. In *Dei v. Tumara Food Mart, Inc.*, a plaintiff served process on a cashier whose first language was Wolof, and who also spoke Arabic and French, and "a little bit" of English. *Dei*, 406 Ill. App. 3d at 860. The employee testified that he could not recall receiving a summons and complaint on June 22, 2007, "but that whenever he received papers while at work, he did not open them but just placed them on the table, without informing anyone." *Dei*, 406 Ill. App. 3d at 860. This court found that the employee was not an "agent" of the defendant corporation because "he did not understand what it meant to be an agent of the corporation for purposes of accepting legal papers." *Dei*, 406 Ill. App. 3d at 863. We further noted that "the fact that upon receipt of the summons and complaint he left it on a table, unopened, as he did with all other papers and documents he received while at work, is further evidence that he did not understand their import." *Dei*, 406 Ill. App. 3d at 863.

¶ 29 Here, unlike the cashier in *Dei*, Shaffer was a general manager and he understood the import of the process he was served with because he immediately sent it to Jeff Hastings, the CFO of defendant. Defendant cites *Dei* for the proposition that Shaffer's lack of training regarding what to do with a summons or complaint means that he cannot be considered an agent. *Dei*, 406 Ill. App. 3d at 863 (finding that an employee was not an agent of the defendant corporation, in part because "no one talked to him about what to do in the event that legal papers were served upon him"). However, the court in *Dei* stressed the employee's lack of understanding concerning what do with the service rather than his lack of formal training. *Dei*, 406 Ill. App. 3d at 865. The cashier in *Dei* left the summons and complaint "on a table, unopened, as he did with all other papers and documents," which the court cited as "evidence that he did not understand their import." *Dei*, 406 Ill. App. 3d at 863. In contrast, Shaffer's affidavit indicates that, despite any lack of training, he knew exactly what to do with them: forward them promptly to defendant's corporate office.

¶ 30 Defendant cites *Jansma Transport, Inc. v. Torino Baking Co.*, 27 Ill. App. 2d 347, 352 (1960), for the proposition that in order for an employee to be considered an agent for the purposes of service of process, his "employment [must be] of such character that he impliedly had authority to receive process." (Internal quotation marks omitted.)

¶ 31 However, the character of the employment in *Jansma Transport* varied markedly from the instant case. In *Jansma Transport*, the plaintiff served process on an 18-year-old Italian immigrant with limited knowledge of English who had been an employee for only six months. *Jansma Transport*, 27 Ill. App. 2d at 351. Her duties were simply to "sort, count and handle returned bread and to wait on any customers who came into the store to buy bread." *Jansma Transport*, 27 Ill. App. 2d at 351. This court held that plaintiff's service of process

was insufficient in light of the employee's age, understanding of the English language, and experience within the corporation as to legal matters. *Jansma Transport*, 27 Ill. App. 2d at 352-53. We noted that, while this statute is relatively vague as to the meaning of "agent," the "word as used in this statute imports something more than an employee." *Jansma Transport*, 27 Ill. App. 2d at 352-53. See also *Cleeland v. Gilbert*, 334 Ill. App. 3d 297, 301 (2002) (holding that service on insurance company's claims analyst is proper service on the company since the analyst was a responsible agent of the corporation).

¶ 32 Here, Shaffer is not simply an employee of defendant. Unlike the employees in both *Jansma Transport* and *Dei*, who were a counter clerk and a cashier respectively, Shaffer is the general manager of a warehouse. His affidavit avers that the managers of each operational division of the warehouse report to him, and that he is responsible for the day-to-day operations of the warehouse. Here, Shaffer is "more than an employee": he is a general manager with supervisory authority. *Jansma Transport*, 27 Ill. App. 2d at 352-53.

¶ 33 Because Shaffer was a general manager and understood the import of the summons that he received, the trial court did not err in determining that Ryan Shaffer was an "agent" who could receive service of process. 735 ILCS 5/2-204(1) (West 2012).

¶ 34 II. Long Arm Jurisdiction

¶ 35 A. Standard of Review

¶ 36 When a trial court decides a jurisdictional question solely on documentary evidence and without an evidentiary hearing, as occurred in this case, our review is *de novo*. *Russell v. SNFA*, 2013 IL 113909, ¶ 28.

¶ 37 When a court considers whether it should exercise personal jurisdiction over a nonresident defendant, it is the plaintiff who bears the initial burden to establish a *prima facie*

case for exercising jurisdiction. *Russell*, 2013 IL 113909, ¶ 28. We resolve any conflicts in the pleadings and affidavits in favor of the plaintiff seeking jurisdiction, "but the defendant may overcome [the] plaintiff's *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction." *Russell*, 2013 IL 113909, ¶ 28. If facts alleged in a defendant's affidavit contesting jurisdiction are not refuted by a counter-affidavit filed by the plaintiff, then those facts are accepted as true. *Kutner v. DeMassa*, 96 Ill. App. 3d 243, 248 (1981).

¶ 38 In reviewing the circuit court's decision on appeal, " 'this court reviews the judgment, not the reasoning, of the trial court, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct.' " *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 18 (quoting *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24).

¶ 39 B. The Illinois Long-Arm Statute

¶ 40 Section 2-209 of the Code of Civil Procedure (Code) (735 ILCS 5/2-209 (West 2012)) is commonly referred to as "the Illinois long-arm statute" and it "governs the exercise of personal jurisdiction by an Illinois court over a nonresident." *Russell*, 2013 IL 113909, ¶ 29. "Historically, [our supreme] court has employed a two-part analysis in deciding a jurisdictional issue under the long-arm statute, first determining whether a specific statutory provision of section 2-209 has been satisfied, and then determining whether the due process requirements of the United States and Illinois Constitutions have been met." *Russell*, 2013 IL 113909, ¶ 29 (citing *Rollins v. Ellwood*, 141 Ill. 2d 244, 275 (1990)).

¶ 41 On appeal, plaintiff argues that defendant's operation of a warehouse in Joliet, Illinois satisfies either subsection (b)(4) or subsection (c) of the Illinois long-arm statute. 735 ILCS

5/2-209 (West 2012). Subsection (b)(4) states that an Illinois court may exercise jurisdiction in any action within or without the state against any person who "[i]s a natural person or corporation doing business within" Illinois. 735 ILCS 5/2-209(b)(4) (West 2012). Section (c) is known as a " 'catch-all provision' " which permits Illinois courts to " 'exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.' " *Commercial Coin Laundry Systems v. Loon Investments, LLC*, 375 Ill. App. 3d 26, 29 (2007) (quoting *Roiser v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 561 (2006), quoting 735 ILCS 5/2-209(c) (West 2004)). Accordingly, " 'if the contacts between a defendant and Illinois are sufficient to satisfy both federal and state due process concerns, the requirements of Illinois' long-arm statute have been met, and no other inquiry is necessary.' " *Solargenix Energy, LLC v. Acciona, S.A.*, 2014 IL App (1st) 123403, ¶ 27 (quoting *Cardenas Marketing Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 29).

¶ 42 III. Illinois Due Process Clause

¶ 43 We consider the due process issue solely under the federal due process clause. The Illinois Supreme Court has declined to consider "the extent, if any, that Illinois due process protections differ from federal due process protections on the issue of personal jurisdiction." *Russell*, 2013 IL 113909, ¶ 33. Our supreme court declined to consider this question because "[d]efendant, as the party challenging personal jurisdiction here, does not argue that it is entitled to greater due process protections under the Illinois due process clause and long-arm statute." *Russell*, 2013 IL 113909, ¶ 33.

¶ 44 Similarly, in defendant's brief to this court, defendant does not argue that the Illinois due process clause provides him with greater protections than the federal due process clause. Thus, we consider only the federal due process clause.

¶ 45 IV. Federal Due Process Clause

¶ 46 In the seminal case of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the United States Supreme Court recognized two different types of personal jurisdiction. The first, specific jurisdiction, occurs when the suit "arise[s] out of or relate[s] to the defendant's contacts with" the forum. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9 (1984).

¶ 47 The second type of personal jurisdiction is general jurisdiction. General personal jurisdiction exists in " 'instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit … *on causes of action arising from dealings entirely distinct from those activities*.' " (Emphasis in original.) *Daimler AG v. Bauman*, 571 U.S. ___, ___, 134 S. Ct. 746, 760 (2014) (quoting *International Shoe*, 326 U.S. at 318). When courts consider whether they may subject a foreign corporation to general personal jurisdiction, the proper inquiry is "whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render [it] essentially at home in the forum State.' " *Daimler AG v. Bauman*, 571 U.S. ___, ___, 134 S. Ct. 746, 761 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The facts of *Goodyear* and *Daimler* illustrate what it means to be "at home" in the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, (2011); *Daimler AG v. Bauman*, 571 U.S. ___, ___, 134 S. Ct. 746, 761 (2014).

¶ 48 In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the United States Supreme Court clarified the limits of general jurisdiction. *Goodyear*, 564 U.S. 915. In *Goodyear*, two United States citizens were killed in a bus accident in France. *Goodyear*, 564 U.S. at 918. The decedents' parents brought suit in North Carolina against The Goodyear Tire and Rubber

Company, and its Turkish, French and Luxembourgian subsidiaries. *Goodyear*, 564 U.S. at 518. Holding that North Carolina courts could not exercise general personal jurisdiction over Goodyear's foreign subsidiaries, the Court explained that, although a small percentage of tires manufactured by the foreign subsidiaries were distributed in North Carolina, the subsidiaries' contacts with North Carolina fell short of " 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." *Goodyear*, 564 U.S. at 929 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

¶ 49 In *Daimler AG v. Bauman*, a group of Argentinian citizens brought suit in California against Daimler, a German corporation, alleging that an Argentinian subsidiary of Daimler had collaborated with state security forces during Argentina's "Dirty War" to kidnap, detain, torture, and kill plaintiffs or plaintiffs' family members between 1976 and 1983. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 751. When Daimler moved to dismiss the suit for lack of general personal jurisdiction, plaintiffs argued that the California contacts of Daimler's United States subsidiary were sufficient to subject Daimler to general personal jurisdiction in California. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 752. The trial court granted Daimler's motion, but the Ninth Circuit Court of Appeals reversed. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 753.

¶ 50 The United States Supreme Court reversed the Ninth Circuit and held that, even if the California contacts of Daimler's United States subsidiary were imputed to Daimler, Daimler's contacts with California were still too "slim" to subject it to general personal jurisdiction in California courts. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760. In order for a court to exercise general personal jurisdiction over a foreign or sister-state corporation, that

"corporation's 'affiliations with the State [must be] so "continuous and systematic" as to render [it] essentially at home in the forum State.' " *Daimler*, 571 U.S. at ___, 134 S. Ct. at 761 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

¶ 51 The Court noted that, with respect to a corporation, "the place of incorporation and principal place of business are 'paradig[m] … bases for general jurisdiction.' " *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760 (quoting Lea Brilmayer, Jennifer Haverkamp & Buck Logan, *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 735 (1988)). The Court acknowledged, however, that "*Goodyear 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; it simply typed those places paradigm all-purpose forums." (Emphasis added and in original.) *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760. Nevertheless, the Court rejected the plaintiffs' calls for the Court to "look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in *every* State in which a corporation 'engages in a substantial, continuous, and systematic course of business.' " (Emphasis added.) *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760-61. The Court labeled this argument as "unacceptably grasping" and found that neither entity was "at home" in California. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 761. Allowing California courts to exercise general personal jurisdiction over Daimler would be "exorbitant" and 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*, 571 U.S. at ___, 134 S. Ct. at 761-62 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

¶ 52 In a footnote, the Court explained that general 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." *Daimler*, 571 U.S. at ___ n.20, 134 S. Ct. at 762 n.20. The Court further noted that "[n]othing in *International Shoe* and its progeny suggests that 'a particular quantum of local activity' should give a State authority over a 'far larger quantum of *** activity' having no connection to any in-state activity." *Daimler*, 571 U.S. at ___ n.20, 134 S. Ct. at 762 n.20 (quoting Meir Feder, *Goodyear, "Home," and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. Rev. 671, 694 (2012)).

¶ 53 As we noted above, when a court considers whether it should exercise personal jurisdiction over a nonresident defendant, it is the plaintiff who bears the initial burden to establish a *prima facie* case for exercising that jurisdiction, and we resolve any conflicts in the pleadings and affidavits in favor of the plaintiff. *Russell*, 2013 IL 113909, ¶ 28. Defendant may then "overcome [the] plaintiff's *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction." *Russell*, 2013 IL 113909, ¶ 28.

¶ 54 Plaintiff has established a *prima facie* case for exercising jurisdiction over defendant. Attached to plaintiff's complaint was a printout that displays the masthead from defendant's website, which advertises that defendant has a warehouse in the Chicago area. Plaintiff also presented a contract and multiple letters from defendant which advertise that defendant has a warehouse in Joliet, Illinois. In its response in opposition to defendant's motion to dismiss, plaintiff attached a printout from the Illinois Secretary of State's website which shows that defendant has been authorized to do business in Illinois since November 15, 1988.[6] See

[6]Defendant's "Corporation File Detail Report," http://www.ilsos.gov/corporatellc (last viewed Apr. 26, 2016) (search for "Interstate Warehousing, Inc." in the "CORP/LLC-CERTIFICATE OF GOOD STANDING" application). "[R]ecords from the Illinois Secretary of State's office *** are public records that this court may take judicial notice of ***." *Maldonado v. Creative Woodworking Concepts, Inc.*, 296 Ill. App. 3d 935, 938 (1998). See also *Garrido v. Arena*, 2013 IL App (1st)

Maldonado v. Creative Woodworking Concepts, Inc., 296 Ill. App. 3d 935, 938 (1998) ("records from the Illinois Secretary of State's office *** are public records that this court may take judicial notice of"). This evidence is sufficient to make a *prima facie* showing that defendant has affiliations with Illinois that are "so continuous and systematic" as to render it essentially "at home" in Illinois.

¶ 55 Our finding is supported by the reasoning in *Alderson v. Southern Co.*, 321 Ill. App. 3d 832 (2001). In *Alderson*, a coal-dust explosion occurred in a power plant located in Indiana. Plaintiffs brought a personal injury suit in Illinois against nine defendant corporations, none of which were incorporated or had their principal place of business in Illinois. *Alderson*, 321 Ill. App. 3d at 835-36. Plaintiffs alleged that they all operated the power plant in Indiana. *Alderson*, 321 Ill. App. 3d at 836. Limited jurisdictional discovery revealed that the defendant corporation which owned the power plant had entered into a series of contracts with a major utility company, pursuant to which the defendant corporation pledged its normal operating capacity of energy to the utility company for 15 years. *Alderson*, 321 Ill. App. 3d at 837. The defendant understood that "most, if not all" of that output would be utilized in Illinois. *Alderson*, 321 Ill. App. 3d at 838. The trial court found that the defendant who contracted with the utility company was subject to general jurisdiction in Illinois courts. *Alderson*, 321 Ill. App. 3d at 844. This court affirmed, holding that, though the defendant did not have offices in Illinois, defendant's contract to supply energy to Illinois for 15 years was continuous and systematic enough to "support the assertion of general jurisdiction over [it]." *Alderson*, 321 Ill. App. 3d at 858.

120466, ¶ 35; *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 11 n.1.

¶ 56 Here, plaintiff made a *prima facie* showing that defendant's ties to Illinois were even more substantial than the Illinois ties of the defendant in *Alderson*. Plaintiff produced evidence showing that defendant advertises the warehouse in Joliet as its own, that defendant's employee is the general manager of the Joliet warehouse, and that defendant has been licensed to transact business in Illinois for 27 years. The burden then switched to defendant to show that its contacts were not sufficiently continuous and systematic enough to "support the assertion of general jurisdiction over [it]." *Alderson*, 321 Ill. App. 3d at 858.

¶ 57 In response, defendant's motion to dismiss claimed that defendant's state of incorporation and its principal place of business were in Indiana. Attached to the motion were affidavits from defendant's CFO and the general manager of the Joliet warehouse averring that the Joliet warehouse was operated by IW Illinois, a limited liability corporation in which defendant has a 75% stake. The affidavits also stated that the general manager of the Joliet warehouse is an employee of defendant, that he is "responsible for the day-to-day operations at the Joliet warehouse," and that managers of each operation division of the Joliet warehouse report to him.

¶ 58 By contrast, in *Daimler*, the defendant presented evidence of the amount of business that it did within the state of California. The Court noted the California sales of Daimler's United States subsidiary accounted for only 2.4% of Daimler's worldwide sales. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 752. Even assuming that Daimler's United States subsidiary was "at home" in California, and that the subsidiary's contacts were imputable to Daimler, the Court found that "Daimler's slim contacts with [California] hardly render it at home there." *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760.

¶ 59 Here, defendant failed to present any evidence concerning the amount of business it was conducting in Illinois. Unlike *Daimler*, the court received no evidence regarding the proportion of defendant's business derived from its contacts with Illinois, as compared to other states or countries. Defendant, which uniquely has access to this sort of information, chose not to provide it with its motion to dismiss. During argument on the motion to dismiss, the trial court asked defense counsel about the volume of business transacted in Joliet, and the square footage of the Joliet warehouse, but counsel was unable to respond to either question. After plaintiff made a *prima facie* showing of jurisdiction, the burden switched to defendant to prove that its contacts were actually "too slim" to support jurisdiction. *Russell*, 2013 IL 113909, ¶ 28. Although this information was uniquely within defendant's control, defendant failed to present it and thus failed to satisfy its burden.

¶ 60 Because defendant failed to overcome plaintiff's *prima facie* showing of jurisdiction, the trial court did not err in denying defendant's motion to dismiss. We have not been asked to consider either venue or *forum non conveniens* and thus offer no comment on those issues.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, we affirm the trial court's decision denying defendant's motion to quash service and dismiss for lack of personal jurisdiction.

¶ 63 Affirmed.

¶ 64 JUSTICE LAMPKIN, dissenting.

¶ 65 I respectfully dissent. Because I would find that defendant Interstate Warehousing, Inc., was not "at home" in Illinois, as required for the exercise of general jurisdiction, I would reverse the trial court's denial of defendant's motion to dismiss the complaint based on lack of personal jurisdiction.

¶ 66 The plaintiff has the burden of establishing personal jurisdiction. *Russell v. SNFA*, 2013 IL 113909, ¶ 27. General, or "all-purpose," jurisdiction exists "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*, 571 U.S. at ___, 134 S. Ct. at 754 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)). The Court explained the nature of the relationship required between a corporation and forum to establish general jurisdiction in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, where it stated: "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the state are so 'continuous and systematic' as to render them essentially at home in the forum State." 564 U.S. ___, ___, 131 S. Ct. 2846, 2851 (2011) (quoting *International Shoe Co.*, 326 U.S. at 317). "*Goodyear* made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760. A corporation's place of incorporation and principal place of business, which define its domicile, are the paradigmatic fora states in which a corporation should be deemed to be "at home." *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at ___, 131 S. Ct. at 2853-54. Although general jurisdiction is not limited to those states, it requires "an equivalent place" (*id*. at ___, 131 S. Ct. at 2853); *i.e.*, it "requires affiliations so continuous and systematic as to render [the foreign corporation] *** comparable to a domestic enterprise in [the forum state]" (internal quotation marks omitted) (*Daimler*, 571 U.S. at ___ n.11, 134 S. Ct. at 758 n.11).

¶ 67 The Supreme Court's recent decision in *Daimler* makes clear the demanding nature of the standard for general personal jurisdiction over a corporation. In *Daimler*, the Court held that

DaimlerChrysler Aktiengesellschaft (Daimler), a German corporation, was not subject to general jurisdiction in California based on the California contacts of its subsidiary, Mercedes–Benz USA (MBUSA). *Daimler*, 571 U.S. at ___, 134 S. Ct. at 750-51. MBUSA, a Delaware corporation, was Daimler's exclusive importer and distributor for the United States. MBUSA's principal place of business was in New Jersey, but it had multiple facilities in California, was the largest supplier of luxury vehicles to the California market, and its California sales accounted for 2.4% of Daimler's worldwide sales. *Id.* at ___, 134 S. Ct. at 752. The Court assumed that MBUSA would be subject to general jurisdiction in California and that MBUSA's California contacts could be imputed to Daimler; nevertheless, the Court still held that Daimler's contacts with California were not "so constant and pervasive as to render [it] essentially at home" in California. (Internal quotation marks omitted.) *Id.* at ___, 134 S. Ct. at 751.

¶ 68 The Court in *Daimler* rejected as "unacceptably grasping" the plaintiffs' argument that general jurisdiction was appropriate whenever a corporation engaged in a substantial, continuous, and systematic course of business in a state. *Id.* at ___, 134 S. Ct. at 761. The Court emphasized that the paradigm fora for general jurisdiction were a corporation's place of incorporation and principal place of business (*id.* at ___, 134 S. Ct. at 760); only in an "exceptional case" would general jurisdiction be available anywhere else (*id.* at ___ n.19, 134 S. Ct. at 761 n.19). *Daimler* discussed an example of an "exceptional case"–*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), where the defendant, a silver and gold mining operation incorporated under the laws of the Philippines, could be sued in Ohio because a world war forced the defendant to temporarily relocate its principal place of business to Ohio due to enemy activity abroad. *Daimler*, 571 U.S. at ___, 134 S. Ct. at 756.

Specifically, the president of the mining company had moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. *Id*. at ___, 134 S. Ct. at 756.

¶ 69 There is no similarly compelling case to be made for exercising general jurisdiction in this case. According to the record, plaintiff's claim arose from events that took place at defendant's Michigan warehouse. Defendant is incorporated in Indiana and its principal place of business is in Indiana. Defendant is a 75% member of a limited liability corporation, IW Illinois, which is organized under Indiana law with its principal place of business also in Indiana. IW Illinois operates a warehouse in Joliet, Illinois, and defendant employs Ryan Shaffer to serve as general manager at that Joliet warehouse. Shaffer is neither an officer of defendant nor its registered agent for service of process in Illinois. He is responsible for overseeing general operations at the Joliet warehouse, including safety, maintenance, and customer service.

¶ 70 The evidence does not show the nature or extent of defendant's activities at the Joliet warehouse, the size of the Joliet warehouse, how many operational divisions exist at the Joliet warehouse, how many employees Shaffer supervises, and the volume of business transacted from the Joliet warehouse. According to defendant's letterhead and website, defendant has–in addition to the Joliet warehouse–warehouses in Ohio, Colorado, Michigan, Tennessee, Indiana, and Virginia. Plaintiff's evidence does not show that the Illinois contacts of either defendant or IW Illinois were significant compared to their contacts in Indiana or any other state. See *Daimler*, 571 U.S. at ___ n.20, 134 S. Ct. at 762 n.20 ("General 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."). The fact that defendant employs a general manager to oversee the operations at the Joliet warehouse is not sufficient to show defendant is comparable to a domestic enterprise based on its own activities and does not suffice to confer general jurisdiction over defendant.

¶ 71 I cannot agree with the majority's conclusion that plaintiff has made a *prima facie* showing sufficient to subject defendant to the general jurisdiction of the Illinois court. The majority's conclusion is based upon defendant's advertising of the Joliet warehouse as its own, defendant's employment of Shaffer, and defendant's filing with the office of the Illinois Secretary of State and designation of a registered agent for service of process in Illinois. The majority places great importance on defendant's filing with the office of the Illinois Secretary of State as a showing that, since 1988, defendant applied for and received authority to transact business in Illinois. See *supra* ¶ 54. The majority, however, misses the point of *Daimler*, where MBUSA was conducting business in California to a much greater extent than defendant's slim business conduct shown here in Illinois, and the Court still characterized that contact with California as "slim." *Daimler*, 571 U.S. at ___, 134 S. Ct. at 760. Being authorized to transact business in Illinois does not distinguish this case from *Daimler*; the relevant question is whether plaintiff has established that defendant should be regarded as comparable to a domestic enterprise. Merely conducting business in Illinois from a home base in Indiana is hardly the sort of unusual fact that would render this an exceptional case amenable to the exercise of general jurisdiction in Illinois.

¶ 72 The facts here do not indicate that defendant has in any way adopted Illinois as a surrogate, *de facto*, or temporary home. There is simply no basis to infer that defendant has in any way sought to make Illinois the base of its business operations. Accordingly, plaintiff

has failed to make even a *prima facie* showing of general jurisdiction, and this court lacks personal jurisdiction over defendant.

Order (Rev. 9/13/04) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Aspen American Insurance Co

v.

Interstate Warehousing

No. 14 L 7376

ORDER

This cause coming before the court for hearing on defendant Interstate Warehousing, Inc.'s Motion to Quash Service and Dismiss for Lack of Jurisdiction, the court being duly advised,

It is hereby ordered:

The motion is denied. Interstate Warehousing, Inc. is granted 30 days, to and including July 8, 2015, to file its motion to dismiss based on forum non conveniens. The matter is continued for status to July 27, 2015 at 10:00 am. in courtroom 2203.

Atty. No.: 40384

Name: Hinshaw & Culbertson / K. Jansen

Atty. for: Interstate Warehousing, Inc.

Address: 222 N. LaSalle St, #300

City/State/Zip: Chicago, IL 60601

Telephone: 312 704 3000

Judge John P. Callahan, Jr.

ENTERED: JUN 08 2015

Circuit Court - 2018

Judge

Judge's No.

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

November 23, 2016

Ms. Kimberly A. Jansen
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601

No. 121281 - Aspen American Insurance Company, etc., appellee, v. Interstate Warehousing, Inc., appellant. Appeal, Appellate Court, First District.

The Supreme Court today ALLOWED the petition for leave to appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company Plaintiff, v. INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP Defendants.	Case No. 14 L 7376

MOTION TO QUASH SERVICE AND DISMISS FOR LACK OF JURISDICTION

Defendant Interstate Warehousing, Inc., incorrectly sued as "Interstate Warehousing, a Tippmann Group Company," by its attorneys Hinshaw & Culbertson LLP moves pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301) to quash service and dismiss this action for lack of personal jurisdiction.

FACTS

The instant action arises from a roof collapse, ruptured gas lines, and an ammonia leak at a warehouse located in Grand Rapids, Michigan. (Complaint, attached as Exhibit A.) According to the complaint, Eastern Fish Company ("Eastern") entered into a contract with defendant Interstate Warehousing, Inc. ("IW, Inc.") for the storage of food products at the Grand Rapids facility. (Exh. A ¶ 5 and Exh. A-B.) Eastern's products were damaged or destroyed as a result of a partial roof collapse. (Exh. A ¶ 7.) Plaintiff, Aspen American Insurance Co., allegedly paid a claim of loss as Eastern's insurer in exchange for subrogation rights. (Exh. A ¶ 3.) Aspen seeks damages from defendant as Eastern's subrogee. (Exh. A at 14.)

IW, Inc. is an Indiana Corporation with its principal place of business in Indiana. (Affidavit of Jeff Hastings, attached as Exhibit B, ¶¶ 3, 4.) IW, Inc. is member of Interstate Warehousing of Illinois, LLC ("IW Illinois"). (Exh. B ¶ 5.) IW Illinois is organized under Indiana law with its principal place of business in Indiana. (Exh. B ¶ 6.) IW Illinois operates a warehouse in Joliet, Illinois. (Exh. B ¶ 7.)

Plaintiff purportedly served process on IW, Inc. by delivering a copy of the summons and complaint to Ryan Shaffer. (Affidavit of Phillip Leyden, attached as Exhibit C.) Mr. Shaffer is employed by IW, Inc. as a General Manager at the Joliet warehouse. (Affidavit of Ryan Shaffer, attached as Exhibit D, ¶ 2.) Mr. Shaffer is not the registered agent or an officer of IW, Inc. (Exh. D ¶¶ 5, 6.) He is responsible for the day-to-day operations at the Joliet warehouse with responsibility for overseeing general operations, including safety, maintenance, and customer service. (Exh. D ¶ 3.) Mr. Shaffer has never received any training or instruction regarding acceptance or handling of service of process. (Exh. D ¶ 11.)

ARGUMENT

I. IW, Inc. is not subject to personal jurisdiction in Illinois

Plaintiff bears the burden of establishing a *prima facie* basis for exercising personal jurisdiction over a defendant. *Russell v. SNFA*, 2013 IL 113909 ¶ 28. The plaintiff's *prima facie* case, however, may be overcome by uncontradicted evidence which defeats jurisdiction. *Id.*

The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts. *Walden v. Fiore*, 571

U.S. __, 134 S. Ct. 1115, 1121 (2014), citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 291 (1980). "[T]he nonresident generally must have 'certain minimum contacts... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.*, quoting *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945). The meaning of the minimum-contacts standard depends upon whether the forum asserts specific jurisdiction or general jurisdiction. *Adams v. Harrah's Maryland Heights Corp.*, 338 Ill. App. 3d 745, 749 (5th Dist. 2003).

A. Specific Jurisdiction

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant "focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Walden*, 571 U.S. at __, 134 S. Ct. at 1121, quoting *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 775 (1984). "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.*

Plaintiff's complaint arises out of a warehouse roof collapse in Grand Rapids, Michigan, and alleges no "suit-related conduct" connected to the state of Illinois. Specific jurisdiction is not at issue here.

B. General Jurisdiction

In *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U. S. __, 131 S. Ct. 2846 (2011), the United States Supreme Court "made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [i.e., general] jurisdiction there." *Daimler AG v. Bauman*, 571 U.S. at __, __, 134 S. Ct. 746, 760 (2014).

Historically, Illinois courts have held that general jurisdiction may be premised upon a finding that a corporation is "doing business" by engaging in "systematic," "continuous and substantial business activity within the forum." *Russell v. SNFA*, 2013 IL 113909 ¶¶ 36, 38; *Falcon v. Faulkner*, 209 Ill. App. 3d 1, 9 (4th Dist. 1991). But the United States Supreme Court has since emphatically rejected this formulation as "unacceptably grasping." *Daimler AG*, 571 U.S. at __, 134 S. Ct. at 761.

"The Supreme Court's recent decision in *Daimler* makes clear the demanding nature of the standard for general personal jurisdiction over a corporation." *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014). To justify general jurisdiction in the wake of *Daimler AG*, a corporation's contacts with a forum must be not only "continuous and systematic," but "so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG*, 571 U.S. at __, 134 S. Ct. at 761, quoting *Goodyear*, 564 U.S. at __ 131 S. Ct. at 2851. "With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m]... bases for general jurisdiction.'" *Id.*, quoting Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 735 (1988).

IW, Inc. is not "at home" in Illinois. IW, Inc.'s formal place of incorporation and principal place of business - the "paradigm... bases for general jurisdiction" - are both in Indiana. Only in "an exceptional case" may a corporation ever be found to be "at home" in a forum "other than its formal place of incorporation or principal place of business." *Id.*, 134 S. Ct. at 761 n.19. No exceptional circumstances exist here. Accordingly, the United

States Supreme Court's holding in *Daimler AG* mandates a finding that IW, Inc. is not amenable to general jurisdiction in Illinois.

Because this Court lacks personal jurisdiction - whether specific or general - over IW, Inc., this Court must dismiss plaintiff's complaint.

II. Plaintiff has not properly served IW, Inc.

Even if IW, Inc. were amenable to personal jurisdiction in Illinois, personal jurisdiction remains lacking because plaintiff has failed to effectively serve IW, Inc. with process in this case. A private corporation may be served by leaving a copy of the process with "its registered agent or any officer or any officer or agent of the corporation found anywhere in the state." 735 ILCS 5/2-204. "For service of process on a corporation to be effectively made upon an agent of defendant, such agent must have actual authority to accept service on behalf of the corporation." *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856, 862 (1st Dist. 2010).

Here, plaintiff has filed the affidavit of Philip J. Leyden averring that he "hand[ed] a copy of the Alias Summons & Complaint to Mr. Ryan Shaffer, identified as General Manager." (Exh. C.) Although Mr. Leyden's affidavit is *prima facie* evidence of service upon Mr. Shaffer, the affidavit is not conclusive as to whether Mr. Shaffer was an agent with actual authority to accept service on behalf of IW, Inc. *Dei*, 406 Ill. App. 3d at 862; *Nibco, Inc. v. Johnson*, 98 Ill. 2d 166, 172 (1983). Where plaintiff purports to have served an agent of the corporation, plaintiff bears the burden of establishing the agency relationship. *Slates v. Int'l House of Pancakes*, 90 Ill. App. 3d 716, 724(4th Dist.1980); *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235, (1st Dist.

1973). But *cf. Island Terrace Apartments v. Keystone Service Co.*, 35 Ill. App. 3d 95, 98 (1st Dist. 1975).

The affidavits of Mr. Shaffer and Mr. Hastings both demonstrate that Mr. Shaffer was neither the registered agent nor an officer of IW, Inc. (Exh. B ¶ 8; Exh. D ¶¶ 5, 6.) Nor was Mr. Shaffer an agent of IW, Inc. with actual authority to accept service of process. It is not enough that Mr. Shaffer is employed by IW, Inc. as "employment and agency generally are not considered identical." *Island Terrance Apartments*, 35 Ill. App. 3d at 98.

For an employee to be considered an agent for purposes of service of process, his "employment [must be] of such character that he impliedly had authority to receive process." *Jansma Transport, Inc. v. Torino Baking Co*, 27 Ill. App 347, at 352 (1st Dist. 1960). Mr. Shaffer's employment was not of such character. He received no instruction or training from IW, Inc. regarding "what to do in the event legal papers were served upon him" (*Dei*, 406 Ill. App. 3d at 863). (Exh. D. ¶ 11.) His normal duties as General Manager for the Joliet warehouse do not include responsibility for responding to or handling legal matters. (Exh. D. ¶ 10.)

Because Mr. Shaffer's employment does not include responsibility for receiving process, he was not an agent of IW, Inc. for purposes of service and the summons should be quashed.

WHEREFORE defendant Interstate Warehousing, Inc., incorrectly sued as "Interstate Warehousing, A Tippmann Group Company" respectfully requests that this Court quash service and dismiss plaintiff's complaint for lack of jurisdiction.

HINSHAW & CULBERTSON LLP
Attorneys for Defendant International Warehousing, Inc., incorrectly sued as "International Warehousing, a Tippmann Group Company"

By: _____
One of Its Attorneys

Kimberly A. Jansen
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Firm No. 90384

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company,	)	
Plaintiff,	)	**Case No.**
v.	)	
INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP,	)	
Defendants.	)	

COMPLAINT

NOW COMES the plaintiff, ASPEN AMERICAN INSURANCE CO. ("Aspen"), as subrogee of Eastern Fish Company ("Eastern") (Aspen and Eastern are from time to time collectively referred to as "plaintiff" for convenience), by its attorneys, SWANSON, MARTIN & BELL, LLP, and complains of defendants, INTERSTATE WAREHOUSING and TIPPMANN GROUP, as follows:

1. This is an action to recover damages resulting from the loss of plaintiff's food products destroyed while stored in defendants' warehouse on or about March 8, 2014. A roof collapse at defendants' facility resulted in ruptured gas lines and an ammonia leak within the facility. The ruptured gas lines and ammonia leak contaminated the food products, rendering them unfit for human consumption. Upon information and belief, the food products were destroyed or otherwise disposed of by defendants.

2. Venue in this Court is appropriate, as defendants maintain a facility in or near Chicago and conduct business within Cook County, Illinois. *See Exhibit A, located at: http://www.tippmanngroup.com/interstate-warehousing/* (last accessed July 11, 2014).

Exhibit A
SR 8

3. Plaintiff, Aspen, is a corporation engaged in the business of providing insurance, and insured the food products. Pursuant to a policy of insurance, Aspen paid a claim for loss of the food products to its insured, Eastern, in return for subrogation rights. Eastern is engaged in the business of sourcing and importing fish products. Eastern owned the food products that are the subject matter of this action.

4. Defendants are warehouseman engaged in the business of providing storage for hire, among other things, within and without the state of Illinois. Defendants stored the food products that are the subject matter of this action in their warehouse.

5. On or about April 23, 2013, Eastern and defendants entered into an agreement for storage of food products. A true and accurate copy of defendants' WAREHOUSE CONTRACT AND RATE QUOTATION is attached hereto as Exhibit B and made a part hereof.

6. Prior to March 8, 2014, Eastern delivered certain food products to the defendants' warehouse for storage. At the time of delivery, said food products were in good order and condition.

7. On or about March 8, 2014, Eastern's food products were damaged and/or destroyed as the result of a partial roof collapse at defendants' warehouse. *See Exhibit C, defendants' letter to plaintiff dated March 9, 2014, which is made a part hereof.*

COUNT I
(Breach of Contract)

8. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 of its complaint as this paragraph 8.

9. By reason of the premises, defendants have breached their agreement with plaintiff in each of the following ways:

(a) Failing to exercise such care with regard to the storage of food products as a reasonably careful warehouseman would under like circumstances;

(b) Failing to take reasonable measures to prevent a roof collapse on the premises;

(c) Failing to take reasonable measures to safeguard the food products while in their care, custody and control; and

(d) Otherwise failed to perform pursuant to the agreement of the parties.

10. Plaintiff brings this action on its own behalf and as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said food products, as the respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

11. Plaintiff has duly performed all duties and obligations on its part to be performed.

12. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT II
(Negligent Bailment - *Res Ipsa Loquitor*)

13. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 of its complaint as this paragraph 13.

14. Pursuant to the agreement of the parties, defendants had a duty to "exercise such care in regard to [the food products] as a reasonably careful man would exercise under like circumstances." *See Exhibit B.*

15. At the time of the roof collapse that is the subject of this action, the defendants' warehouse was under the exclusive management and control of defendants.

16. The roof collapse of March 8, 2014, was not the type of occurrence which ordinarily happens in the absence of negligence.

17. Eastern did not cause or contribute to cause the roof collapse of March 8, 2014.

18. Eastern's food products were destroyed as a result of the roof collapse at defendants' warehouse on March 8, 2014.

19. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT III
(Negligence)

20. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 of its complaint as this paragraph 20.

21. Defendants had a duty to store, care for and protect Eastern's food products in their care, custody and control.

22. Defendants breached their duty by failing to properly store, care for and protect Eastern's food products from damage in the following ways:

(a) Failing to exercise such care with regard to the storage of food products as a reasonably careful warehouseman would under like circumstances;

(b) Failing to take reasonable measures to prevent a roof collapse on the premises;

(c) Failing to take reasonable measures to safeguard the food products while in its care, custody and control; and

(d) Otherwise breached its duties.

23. As the direct and proximate cause of defendants' negligence, Eastern's food products were rendered unfit for human consumption and were otherwise damaged.

24. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT IV
(Gross Negligence)

25. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 of its complaint as this paragraph 25.

26. Defendants had a duty to store and care for Eastern's food products in their care, custody and control.

27. Defendants willfully, wantonly and recklessly breached their duty by failing to properly store, care for and protect Eastern's food products from damage by exhibiting utter indifference to or conscious disregard for the welfare of the Eastern's food products in defendants' care, custody and control.

28. As the direct and proximate cause of defendants' willful, wanton and reckless conduct, Eastern's food products were rendered unfit for human consumption and were otherwise damaged.

29. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT V
(Spoliation of Evidence)

30. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 20 through 29 of its complaint as this paragraph 30.

31. Defendants denied responsibility for the loss of Eastern's food products in a letter dated March 14, 2014, a true and accurate copy of which is submitted herewith as Exhibit D and made a part hereof.

32. As of March 18, 2014, defendants had denied access to the facility or food products to the plaintiff's cargo surveyor and structural engineer.

33. On March 19, 2014, plaintiff's agent was advised that defendants would allow personnel to enter the damaged areas of the warehouse for inspection. Plaintiff's surveyor and structural engineer made an appointment with defendants to meet with warehouse personnel and inspect the site on March 20, 2014. Defendants further advised that nothing would be moved from the warehouse before March 21, 2014.

34. On March 20, 2014, plaintiff (though its attorneys) notified defendants of their obligation to preserve relevant evidence related to the damaged food products and roof collapse at defendants' warehouse. *See Exhibit E.* In relevant part, plaintiff notified defendants as follows:

> Please be advised that you are under a legal duty to maintain, preserve, retain, protect, and not destroy any and all evidence regarding the cargo loss, along with the structural failure. This includes allowing access to the cargo and structure by Eastern or its agents....The failure to preserve and retain the physical evidence and electronic data outlined in this notice may constitute spoliation of evidence which will subject you to legal claims for damages and/or evidentiary and monetary sanctions.

35. In a letter dated April 17, 2014, plaintiff's counsel advised counsel for defendants as follows:

> As you know, we sent a letter dated March 20, 2014, to your client advising of Interstate's obligation to "maintain, preserve, retain, protect, and not destroy any and all evidence regarding the cargo loss, along with the structural failure", including but not limited to providing "access to the cargo and structure by Eastern or its agents."
>
> Eastern's agent, James Goes, P.E. of LWG Consulting, has diligently attempted to examine the structure, in accordance with our letter dated March 20, 2014. However, despite the efforts of Mr. Goes, Interstate and its agents refused to allow necessary access to the structure in order to perform an examination. We understand that the structure has been demolished, at least in part, and expect that much of the evidence has been destroyed. We reserve the right to pursue spoliation of evidence claims against Interstate and its insurers, along with all other rights and remedies available in this matter.

See Exhibit F, submitted herewith and made a part hereof.

36. Plaintiff's agent attempted visits to defendants' warehouse on March 20, March 25, April 7 and April 24, 2014. Defendants advised that access would be provided to plaintiff's agents to investigate the cause and origin of the roof collapse.

37. On April 24, 2014, plaintiff's agent arrived at defendants' warehouse to examine the roof collapse, pursuant to an agreement with Nate Tippmann, a representative of defendants. Upon arrival, plaintiff's agent observed that the relevant and material evidence of the roof collapse had been removed and destroyed. The relevant and material evidence included, but was not limited to approximately forty feet of the middle of the building, columns, joist girders, joists, roof deck, roofing material, mechanical systems and materials formerly on the roof of the structure. Access was never provided to plaintiff's agent before the structure was removed.

38. Defendants claimed that the roof collapse was caused by an "Act of God". *See Exhibit D.*

39. Defendants knew that the structure of their warehouse, including, but not limited to columns, joist girders, joists, roof deck, roofing material, mechanical systems and materials formerly on the roof of the structure, constituted evidence that would be relevant in future litigation, as indicated in Exhibits E and F hereto.

40. Defendants breached their obligation to preserve relevant and material evidence by destroying or otherwise disposing of the structure of their warehouse, including, but not limited to columns, joist girders, joists, roof deck, roofing material, mechanical systems and materials formerly on the roof of the structure.

41. As a direct and proximate result of said destruction and disposal of the structure of defendants' warehouse, plaintiff has been prejudiced and impaired in proving claims against the defendants.

42. As a result of destruction and disposal of the structure of defendants' warehouse, plaintiff has been deprived of relevant and material evidence to refute defendants' claim that the roof collapse was caused by an Act of God. As a result, no expert will be able to make a determination and testify without doubt regarding the cause and origin of the roof collapse. Further, plaintiff has been caused to suffer damages in the form of impaired ability to recover against defendants and/or lost or reduced compensation from defendants for the loss of food products.

43. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT VI
(Intentional Spoliation of Evidence)

44. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 30 through 43 of its complaint as this paragraph 44.

45. By destroying or otherwise disposing of the structure of their warehouse, including, but not limited to columns, joist girders, joists, roof deck, roofing material,

mechanical systems and materials formerly on the roof of the structure, defendants acted intentionally and in reckless disregard of their duty to preserve such evidence.

46. As a direct and proximate result of said destruction and disposal of the structure of defendants' warehouse, plaintiff has been prejudiced and impaired in its ability to prove claims against the defendants.

47. As a result of destruction and disposal of the structure of defendants' warehouse, plaintiff has been deprived of relevant and material evidence to refute defendants' claim that the roof collapse was caused by an Act of God. As a result, no expert will be able to make a determination and testify without doubt regarding the cause and origin of the roof collapse. Further, plaintiff has been caused to suffer damages in the form of impaired ability to recover against defendants and/or lost or reduced compensation from defendants for the loss of food products.

48. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT VII
(Fraudulent Concealment)

49. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 30 through 43 of its complaint as this paragraph 49.

50. Defendants presented their warehouse as reasonably and adequately fit for the intended storage of food products.

51. Defendants had a duty to notify Eastern of any structural inadequacies or deficiencies that could cause damage to Eastern's food products. Defendants further had a duty to move Eastern's food products to one of their warehouses that was reasonably and adequately maintained to safeguard Eastern's food products.

52. Defendants knew or should have known that their warehouse was structurally inadequate or deficient.

53. Defendants fraudulently concealed the state of disrepair of their warehouse in which Eastern's food products were stored.

54. As a result of defendants' fraudulent concealment of the condition of its warehouse, Eastern stored its food products at defendants' warehouse.

55. As a direct and proximate result of the destruction and disposal of the structure of defendants' warehouse, Eastern has been prejudiced and impaired in discovering the cause and origin of the roof collapse at defendants' warehouse.

56. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT VIII
(Conversion)

57. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 30 through 43 of its complaint as this paragraph 57.

58. Eastern was the owner of the food products that are the subject matter of this action and at all material times hereunder had an absolute and unconditional right to take possession of said food products.

59. Eastern demanded access to its food products to determine the cause and extent of the loss.

60. Defendants assumed control, dominion or ownership of the food products and wrongfully and without authorization, had the food products removed from the warehouse and destroyed.

61. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT IX
(Illinois Consumer Fraud and Deceptive Business Practices Act)

62. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 30 through 43 of its complaint as this paragraph 62.

63. Defendants presented their warehouse as reasonably and adequately fit for the intended storage of food products.

64. Defendants knew or should have known of the state of disrepair of its warehouse where Eastern's food products were stored.

65. The deception occurred in the course of conduct involving commerce, as the food products were to be distributed and/or sold to third parties throughout the United States.

66. As a result of defendants' concealment of the condition of its warehouse, Eastern stored its food products at defendants' warehouse.

67. As a direct and proximate result of the destruction and disposal of the structure of defendants' warehouse following the roof collapse, plaintiff has been prejudiced and impaired in discovering the cause and origin of the roof collapse at defendants' warehouse.

68. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

COUNT X
(Bailment)

69. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 and 30 through 43 of its complaint as this paragraph 69.

70. By reason of the premises, defendants breached their respective duties and obligations under the agreement of the parties, and breached their respective obligations as bailee of the food products, in one or more of the following ways:

(a) Failing to deliver the food products to Eastern in good order and condition;

(b) Failing to take reasonable measures to prevent a roof collapse on the premises;

(c) Failing to take reasonable measures to safeguard the food products while in their care, custody and control; and

(d) Otherwise failed to perform pursuant to the agreement of the parties.

71. Plaintiff brings this action on its own behalf and as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said food products, as the respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

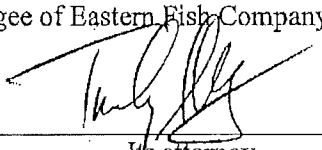
72. Plaintiff has duly performed all duties and obligations on its part to be performed.

73. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid by defendants, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses.

WHEREFORE, plaintiff, ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, prays that judgment be entered in its favor and against defendants, jointly and severally, in the estimated amount of $2,650,000.00, plus interest, costs, attorney fees and expenses, and for such other relief as this Court deems just.

Respectfully submitted,

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company, plaintiff,



It's attorney

Timothy S. McGovern
Daniel G. Wills
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EXHIBIT
A

SR 23

interstate warehousing
a Tippmann Group Company

315 Corporate Office
9009 Coldwater Road
Fort Wayne, IN 46825
(260) 490-3000
(260) 490-1362 / fax

QUOTE # 13-0040

WAREHOUSE CONTRACT AND RATE QUOTATION

For the Account of: # 7666

Eastern Fish Company
300 Frank W. Burr Blvd.
Teaneck, NJ 07666
Attn: Patrick Kearns
Ph: 201-801-0800 Fax: 201-801-0802

Date: April 23, 2013

☐ Cincinnati, Ohio
10 Distribution Drive
Hamilton, OH 45014
(513) 874-6500
(513) 874-6775 / fax

☐ Denver, Colorado
10251 East 51st Avenue
Denver, CO 80239
(303) 375-1000
(303) 375-9331 / fax

☐ Franklin, Indiana
700 Bertram Parkway
Franklin, IN 46131
(317) 738-5100
(317) 738-5107 / fax

☒ Grand Rapids, Michigan
2966 Highland Drive
Hudsonville, MI 49426
(616) 669-3600
(616) 669-3603 / fax

☐ Indianapolis, Indiana
301 S. Keystone Avenue
Indianapolis, IN 46203
(317) 781-4285
(317) 781-4292 / fax

☐ Joliet, Illinois
2500 McDonough Street
Joliet, IL 60436
(815) 744-5222
(815) 744-5551 / fax

☐ Nashville, Tennessee
2125 Joe B. Jackson Pkwy
Murfreesboro, TN 37127
(615) 904-3000
(615) 904-3001 / fax

☐ Newport News, Virginia
21 Harwood Drive
Newport News, VA 23603
(757) 887-8100
(757) 887-1400 / fax

ITEM/DESCRIPTION	PRICING UNIT	HANDLING-IN/OUT	STORAGE PER MO.
Frozen Seafood Product	Pallet	$10.85	$12.85
Case Pick Fee	Case	$0.18	
Lumper Breakdown on Inbound	Case	$0.16	
Pallet Inverting	Pallet	$5.00	
New Grade A Wood	Pallet	$6.50	
Stretch Wrap	Pallet	$2.50	
OT Work	Hour	$32.50	
Work In Load/Fee	Load	$82.40	
Print/Affix Meijer required label to each outbound pallet	Pallet	$2.00	

ASSUMPTIONS:
1. Pallet height, including wood, not to exceed 72" tall.
2. All inbound product will arrive containerized and must be broken down per Meijer's ti/hi requirement.
3. Full pallet in/out storage and distribution.
4. Frozen product received above 10 degrees (F) subject to freezing charge.
5. Grade A white wood or CHEP wood required within warehouse. If non-compliant, pallet and pallet transfer cost may apply.
6. Any additional services not specifically noted on contract to be billed pursuant to current IWI Hudsonville, MI Standard Tariff/Charge Sheet.
7. Net 10 days

ALL RATES BASED ON GROSS WEIGHT, UNLESS OTHERWISE STATED*
This Rate Quotation is Valid One Hundred Eighty (180) Days from Date. ACCEPTED QUOTATIONS SUBJECT TO REVIEW;
SEE SECTION 5 - "CONTRACT TERMS AND CONDITIONS" ON REVERSE SIDE FOR ADDITIONAL DETAILS.

COMPANY AND STORER AGREE THAT THE TERMS AND CONDITIONS FOR STORAGE CONTAINED ON THIS RATE QUOTATION ARE AGREED TO WITHOUT EXCEPTION. THIS CONTRACT MAY NOT BE MODIFIED OR AMENDED EXCEPT IN WRITING. THE ACT OF SHIPPING GOODS TO COMPANY OR TENDERING GOODS FOR STORAGE WITHIN ONE HUNDRED EIGHTY (180) DAYS FROM DATE OF THIS CONTRACT OR PERMITTING GOODS TO REMAIN IN STORAGE AFTER YOUR RECEIPT OF THIS CONTRACT SHALL CONSTITUTE AN ACCEPTANCE WITHOUT EXCEPTION OF THE TERMS AND CONDITIONS HEREOF. THIS WAREHOUSE CONTRACT AND RATE QUOTATION IS ALSO APPLICABLE TO ALL GOODS PRESENTLY IN STORAGE.

EXHIBIT
sticker B

Brad Hastings
FOR INTERSTATE WAREHOUSING

**For Special Tariff Provisions, Other/Special Charges and General Information, Contact the Warehouse Directly.*

CONTRACT TERMS AND CONDITIONS

PROPERTY WILL BE ACCEPTED BY THIS COMPANY FOR STORAGE ONLY UNDER THE FOLLOWING TERMS AND CONDITIONS, AS PROMULGATED BY THE INTERNATIONAL ASSOCIATION OF REFRIGERATED WAREHOUSES

SECTION 1 - DEFINITIONS

As used in this Contract Receipt or Contract the following terms have the following meanings:

(a) STORER. The person, firm, corporation or other entity for which the goods described herein are stored and which is a party hereto.

(b) COMPANY. Interstate Warehousing of Colorado, L.L.C.; Interstate Warehousing of Illinois, L.L.C.; Interstate Warehousing of Indiana, L.L.C.; Interstate Warehousing of Michigan, L.L.C.; Interstate Warehousing of Ohio I, L.L.C.; Interstate Warehousing of Tennessee, L.L.C.; Interstate Warehousing of Virginia, L.L.C., and its officers, directors, agents, and employees of the COMPANY while acting within the scope and course of their employment.

(c) LOT. Unit or units of goods for which a separate account is kept by COMPANY.

(d) ADVANCE. All sums due or claimed to be due to COMPANY from STORER or others relating to the goods stored hereunder regardless of the source, whether liquidated or not, including, but not limited to loans, disbursements, expenses, charges made for or on account of STORER or goods necessary for preservation of goods or reasonably incurred in their sale pursuant to law.

SECTION 2 - TENDER FOR STORAGE

(a) All goods for storage shall be delivered at the warehouse properly marked and packed for handling.

(b) STORER shall furnish at or prior to such delivery, a manifest showing marks, brands or other to be kept and accounted for separately and the class of storage desired. Otherwise the goods may be stored in bulk or assorted LOTS in freezer, cooler or general storage at the discretion of the COMPANY and charges for such storage will be made at the applicable storage rate.

(c) Receipt and delivery of all or any units of a LOT shall be made without subsequent sorting except by special arrangement and subject to a charge.

(d) COMPANY shall store and deliver goods only in the packages in which they are originally received.

(e) Unless STORER shall have given, at or prior to delivery of the goods, written instructions to the contrary, COMPANY, in its discretion, may commingle and store in bulk different LOTS of fungible goods, whether or not owned by the same STORER.

(f) COMPANY shall not be responsible for segregating goods by production code date unless specifically agreed to in writing.

SECTION 3 - TERMINATION OF STORAGE

(a) COMPANY may, upon written notice, as required by law, require the removal of the goods, or any portion thereof, from the warehouse upon the payment of all charges attributable to said goods within a stated period, not less than 30 days after such notification. If said goods are not so removed, COMPANY may sell them as provided by law and shall be entitled to exercise any other rights it has under the law with respect to said goods.

(b) If, in the opinion of COMPANY, goods may be about to deteriorate or decline in value to less than the amount of COMPANY'S lien thereon, or may constitute a hazard to other property or to the warehouse or persons, said goods may be removed or disposed of by COMPANY as permitted by law. All charges related to said removal shall be paid by STORER.

SECTION 4 - STORAGE LOCATION

(a) The goods stored pursuant to this Contract shall be stored at COMPANY'S discretion at any one or more buildings at COMPANY'S warehouse complex identified on the front side of the Contract. The identification of any specific location within the COMPANY'S warehouse complex does not guarantee that the goods shall be stored therein.

(b) Subject to any contrary written instructions given by STORER, COMPANY may, at any time, at its expense, and without notice to STORER, remove any goods from any building, room of area of the warehouse complex to any other building, room or area thereof.

(c) Upon ten (10) days' written notice to the STORER, COMPANY may, at its expense, remove the goods to any other warehouse complex operated by COMPANY.

SECTION 5 - STORAGE CHARGES

(a) Storage charges commence upon the date that COMPANY accepts care, custody and control of the goods, regardless of unloading date or date contract is issued. Charges shall be made on the basis of the maximum number of units in the LOT(S) in storage at any time during the calendar month.

(b) A full month's storage charge will be applied to all goods when received. Monthly storage charges will accrue upon the monthly anniversary of the date identified in Item 5(a). (b) If storage rates are quoted on a "CALENDAR MONTH BASIS" the storage month shall be a calendar month. A full month's storage charge will apply to all GOODS received between the 1st and 15th, inclusive, of a calendar month. One half month's storage charge will apply on all GOODS received between the 16th and last day, inclusive, of a calendar month. A full month's storage charge shall apply on the 1st day of the next calendar month and each month thereafter on all GOODS then remaining in storage.

(c) If storage rates are quoted on an "ANNIVERSARY BASIS" the storage month shall extend from date of receipt in one calendar month to, but not including, the same date of the next month. If there is no corresponding date in the next month, the storage month shall extend to, and include, the last day of said month. A full month's storage charge shall apply on receipt of goods and additional monthly storage charge shall apply for each successive storage month on all goods then remaining in storage.

(d) Charges shall be applicable as set forth on the rate quotation issued by the COMPANY to the STORER.

(e) Unless COMPANY specifies otherwise all storage charges are due and payable on the 1st day of storage for the initial storage month and thereafter on the monthly anniversary date.

(f) Rates quoted by weight will, unless otherwise specified, be computed on gross weight and 2,000 pounds shall constitute a

SECTION 6 - HANDLING CHARGES

(a) Unless otherwise specified or elected by COMPANY, handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized goods on pallets at the warehouse dock during normal warehouse hours but do not include loading and unloading.

(b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for any work performed by COMPANY other than specified in Section 6(a) at rates which are in effect from time to time, a copy of which rates are available upon request.

(c) When goods are ordered out in quantities less than in which received, the COMPANY may make an additional charge for each order or each item of an order.

(d) Delivery by the COMPANY of less than all units of any LOT or of less than all the fungible goods owned by STORER shall be made without subsequent sorting except by special arrangement and subject to an additional charge.

(e) COMPANY may assess an additional charge when goods, designated for freezer storage, are received at temperatures above 10° Fahrenheit.

SECTION 7 - TRANSFER OF TITLE; DELIVERY

(a) Instructions by STORER to transfer goods to the account of another person are not effective until delivered to and accepted by COMPANY. Charges will be made for each such transfer and for any rehandling of goods deemed by COMPANY to be required thereby. COMPANY reserves the right not to deliver or transfer goods to or for the account of any person except upon receipt of written instructions properly signed by STORER.

(b) STORER may furnish written instructions authorizing COMPANY to accept telephone orders for delivery, in such case, (1) COMPANY may require that each telephone order be confirmed by STORER in writing within 24 hours, and (2) acceptance by COMPANY of any telephone order shall be at the risk of STORER. COMPANY will not be liable for any loss resulting from delivery made pursuant to telephone order, whether or not so authorized, unless COMPANY failed to exercise reasonable care with respect thereto.

(c) COMPANY shall have a reasonable time to make delivery after goods are ordered out and shall have a minimum of 10 business days after receipt of a delivery order in which to locate any misplaced goods.

(d) If COMPANY has exercised reasonable care and is unable, due to causes beyond its control, to effect delivery before expiration of the current storage period, the goods will be subject to storage charges for each succeeding storage period.

(e) All instructions and requests for delivery of goods or transfer of title are received subject to satisfaction of all charges, liens and security interests of COMPANY with respect to the goods whether for accrued charges or ADVANCES or otherwise.

(f) COMPANY may require, as a condition precedent to delivery, a statement from STORER holding COMPANY harmless from claims of others asserting a superior right to STORER to possession of the goods. Nothing herein shall preclude COMPANY from exercising any other remedy available to it under the law. All costs, including attorneys' fees, incurred by COMPANY relating in any way to the above shall be charged to STORER and shall attach as a lien on STORER'S goods.

SECTION 8 - OTHER SERVICES AND CHARGES

(a) Other services rendered in the interest of STORER or the goods are chargeable to STORER. Such services may include the following: furnishing of special warehouse space or material, repairing, recoopling, sampling, weighing, tagging, inspecting, compiling stock statements, mailing collections, furnishing insurance surveys, reporting or recording marked weights or numbers, handling railroad expense bills, and handling shipments.

(b) All ADVANCES are due and payable immediately. All charges are due and payable upon the date of invoice; All charges and ADVANCES not paid within 10 days from the due date are subject to an interest charge from the date said charge or ADVANCE became due until paid at the rate of 1½ percent per month or the maximum rate permitted by law.

(c) STORER may, subject to insurance regulations and reasonable facilities, inspect the goods stored pursuant to this CONTRACT when accompanied by an employee of COMPANY whose time is chargeable to STORER.

(d) In the event of damage or threatened damage to stored goods, STORER shall pay all reasonable and necessary costs of protecting and preserving the goods. When the costs of protecting and preserving stored goods are attributable to more than one STORER, said costs shall be apportioned among all STORERS on a pro rata basis to be determined by the COMPANY.

(e) COMPANY shall supply dunnage bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to STORER.

(f) Any additional costs incurred by COMPANY in unloading rail containing damaged goods are chargeable to STORER.

(g) COMPANY shall not be responsible for demurrage or delays in loading or unloading cars or delays in obtaining cars for outbound shipment unless such demurrage or delay was caused solely by COMPANY'S negligence.

(h) A charge in addition to regular storage and handling rates will be made for bonded storage.

(i) COMPANY may assess an additional charge when GOODS, designated for freezer storage, are received at temperatures above 5° Fahrenheit; however COMPANY shall not be responsible for blast freezing GOODS unless STORER specifically requests such services in writing.

(j) All storage, handling and other services may be subject to minimum charges.

(k) STORER agrees to pay COMPANY all costs and ADVANCES including reasonable attorney's' fees incurred by COMPANY in connection with the storage, handling or disposition of the goods hereunder, including lawsuits to which COMPANY has been made a party relating in any way to its performance under this agreement.

SECTION 9 - LIABILITY AND LIMITATION OF DAMAGES

(a) COMPANY shall not be liable for any loss, damage or destruction to goods however caused unless such loss, damage or destruction resulted from COMPANY'S failure to exercise such care in regard to the goods as a reasonably careful man would exercise under like circumstances. COMPANY is not liable for damages which could not have been avoided by the exercise of such care.

(b) COMPANY and STORER agree that COMPANY'S duty of care referred to in Section 9 (a) above does not extend to providing and/or maintaining a sprinkler system or warehouse complex or any portion thereof.

(c) Unless specifically agreed to in writing, COMPANY shall not be required to store goods in humidity controlled environment or be responsible for dampening goods.

(d) **IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO STORED GOODS FOR WHICH COMPANY IS LEGALLY LIABLE, STORER DECLARES THAT COMPANY'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (1) THE ACTUAL COST TO STORER OF REPLACING OR REPRODUCING THE LOST, DAMAGED AND/OR DESTROYED GOODS TOGETHER WITH TRANSPORTATION COSTS TO WAREHOUSE, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED AND/OR DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF LOSS, DAMAGE OR DESTRUCTION, (3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO THE LOST, DAMAGED AND/OR DESTROYED GOODS, (4) $0.50 PER POUND FOR THE LOST, DAMAGED AND/OR DESTROYED GOODS; PROVIDED, HOWEVER, THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS CONTRACT, STORER MAY, UPON WRITTEN REQUEST INCREASE COMPANY'S LIABILITY ON PART OR ALL OF THE GOODS STORED UNDER THIS CONTRACT, IN WHICH CASE AN INCREASED CHARGE WILL BE MADE UPON SUCH INCREASED VALUATION; FURTHER PROVIDED THAT NO SUCH REQUEST SHALL BE VALID UNLESS MADE BEFORE LOSS, DAMAGE OR DESTRUCTION TO ANY PORTION OF THE GOODS HAS OCCURRED.**

(e) The COMPANY'S liability referred to in Section 9(d) shall be STORER'S exclusive remedy against COMPANY for any claim or cause of action whatsoever relating to loss, damage and/or destruction of goods and shall apply to all claims including inventory shortage and mysterious disappearance claims unless STORER proves by affirmative evidence that COMPANY converted the goods to its own use. STORER waives any rights to rely upon any presumption of conversion imposed by law. In no event shall STORER be entitled to incidental, special, punitive or consequential damages.

SECTION 10 - NOTICE OF CLAIM AND FILING OF SUIT

(a) COMPANY shall, in no event, be liable for any claim of any type whatsoever with respect to stored goods unless such claim is presented, in writing, within a reasonable time, not exceeding 60 days, after STORER learns of, in the exercise of reasonable care, should have learned of the loss, damage or destruction.

(b) As a condition to making any claim and as a condition precedent to filing any suit, STORER shall provide COMPANY with a reasonable opportunity to inspect the goods which are the basis of STORER'S claim.

(c) NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY STORER OR OTHERS AGAINST COMPANY WITH RESPECT TO GOODS STORED UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN PARAGRAPH (a) OF THIS SECTION AND UNLESS STORER HAS PROVIDED WAREHOUSEMAN WITH A REASONABLE OPPORTUNITY TO INSPECT GOODS AS PROVIDED IN PARAGRAPH (b) OF THIS SECTION AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN 9 MONTHS AFTER STORER LEARNS OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS AND/OR DESTRUCTION OF AND/OR DAMAGE TO THE GOODS.

SECTION 11 - INSURANCE

Goods are not insured and the storage rates do not include insurance unless the COMPANY has agreed, in writing, to obtain such insurance for the benefit of STORER.

SECTION 12 - LIEN

COMPANY shall have a lien against the goods and on the proceeds thereof for all charges for storage, handling, transportation (including demurrage and terminal charges), insurance, labor charges present and future with respect to such goods, ADVANCES or loans by COMPANY in relation to the goods and for expenses necessary for the preservation of such goods or reasonably incurred on their sale pursuant to law. COMPANY further claims a lien on the goods for all such charges, ADVANCES and expenses in respect to any other property stored by STORER in any warehouse owned or operated by COMPANY or its subsidiaries wherever located and whenever deposited and without regard to whether or not said other property is still in storage.

SECTION 13 - WAIVER-SEVERABILITY

(a) COMPANY'S failure to insist on strict compliance with any provision of this Contract shall not constitute a waiver or estoppel to later demand strict compliance thereof and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of this Contract.

(b) In the event any section of this Contract or part thereof shall be declared invalid, illegal and/or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

SECTION 14 - AUTHORITY

STORER represents and warrants that it either (i) is the lawful owner of the goods which are not subject to any lien or security interest of others; or (ii) is the authorized agent of the lawful owner and/or any holders of a lien or security interest and has full power and authority to enter into the agreement incorporated into this CONTRACT. STORER agrees to notify all parties acquiring any interest in the goods of the terms and conditions of this Contract and to obtain, as a condition precedent to effecting such an interest, agreement of such parties to be bound by the terms and conditions of this Contract.

SECTION 15 - NOTICES

All written notices provided herein may be transmitted by any commercially reasonable means of communication and directed to COMPANY at the address on front side hereof and to STORER at its last known address. STORER is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section within five days of transmittal.

SECTION 16 - ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between COMPANY and STORER relative to the goods and supersedes all existing agreements between them whether written or oral and shall not be changed, amended or modified except by written agreement signed by representatives of COMPANY and STORER.

IWI - Grand Rapids
CUSTOMER CHARGE SHEET
IWI STANDARD RATES

Description	Tariff#	Bill By	Rate	Status
Blast Freezing			N/A	
Case Picking	300	case	$0.10	ACTIVE
Case Stamping	305	case	$0.10	ACTIVE
Catchweight Charges	200	case	$0.10	ACTIVE
Clerical Charges	250	hour	$32.00	INACTIVE
Container Cone Date	317	each	$5.00	ACTIVE
Cooling Charge	400	cwt	$0.40	ACTIVE
Cone Boarding	321	each	$5.00	ACTIVE
Deep Chill Rate	323	cwt	$0.60	ACTIVE
Dump Truck	320	each	$150.00	ACTIVE
Equipment Rental	403	unit	pass thru	INACTIVE
Export Documentation	410	each	$50.00	ACTIVE
Extra Labor	408	hour	$32.00	ACTIVE
Extra Labor w/ equipment	409	hour	$40.00	ACTIVE
Freezing Charges	399	cwt	$0.50	ACTIVE
Inserting Spacers	301	case	$0.08	ACTIVE
Labeling	310	hour	$33.00	ACTIVE
Load Rearranging	401	each	$50.00	ACTIVE
Lumping	401	case	$0.10	ACTIVE
Overtime Labor	401	hour	$48.00	ACTIVE
Pallet Inverting	302	plt	$5.00	ACTIVE
Pallet Transfer	325	each	$50.00	ACTIVE
Pallets	27	plt	$6.50	ACTIVE
Placarding	318	each	$50.00	INACTIVE
Removing Spacers	303	case	$0.08	ACTIVE
Slipsheet Charge (material)	315	each	$5.00	ACTIVE
Slipsheet Handling	316	plt	$2.50	ACTIVE
Sorting Charge	307	pass	$0.10	ACTIVE
Stretch Wrap	304	plt	$3.50	ACTIVE
Trailer Moves	405	trailer	$50.00	ACTIVE
Unloading Container	407	case	$0.10	ACTIVE
Work in Fees	406	hour	$32.00	ACTIVE

Corporate Office

9009 Coldwater Road
Fort Wayne, IN 46825
(260) 490-3000 Phone
(260) 490-1362 Fax

Warehouse Locations

Chicago, Illinois
2500 McDonough Street
Joliet, IL 60436
(815) 744-5222 Phone
(815) 744-5551 Fax

Cincinnati, Ohio
110 Distribution Drive
Hamilton, OH 45014
(513) 874-6500 Phone
(513) 874-6775 Fax

Denver, Colorado
10251 E. 51st Avenue
Denver, CO 80239
(303) 375-1000 Phone
(303) 375-9331 Fax

Grand Rapids, Michigan
2966 Highland Drive
Hudsonville, MI 49426
(616) 669-3600 Phone
(616) 669-3603 Fax

Indianapolis, Indiana
700 Bartram Parkway
Franklin, IN 46131
(317) 738-5100 Phone
(317) 738-5107 Fax

Indianapolis, Indiana
1401 S. Keystone Avenue
Indianapolis, IN 46203
(317) 781-4285 Phone
(317) 781-4292 Fax

Nashville, Tennessee
2125 Joe B. Jackson Parkway
Murfreesboro, TN 37127
(615) 904-3000 Phone
(615) 904-3001 Fax

Newport News, Virginia
121 Harwood Drive
Newport News, VA 23603
(757) 887-8100 Phone
(757) 887-1400 Fax

March 9, 2014

Patrick Kearns
Eastern Fish Company
Phone: 1-800-526-9066
Fax: 201-801-0802

Dear Patrick:

As has been communicated previously, on Saturday, March 8, 2014, IWI Hudsonville experienced a roof collapse. This facility was constructed in two phases (1 and 2). The Phase 1 portion of this building is where the roof collapse occurred. Although additional investigation is required, preliminary (and unofficial) observations suggest it resulted from significant ice and snow accumulation on the roof.

The roof collapse caused a breach to the roof top piping which houses ammonia and supports the refrigeration systems of the facility. As a result, the refrigeration systems are inoperable at this time for the entire building.

The Phase 2 portion of the building did not experience ammonia contamination, and as a result, our focus has been on removing the inventory from this area as quickly, safely and efficiently as possible. In coordination with these customers, we have worked tirelessly to deplete the inventory in Phase 2 and empty this room. Our goal is to complete this by 6 a.m. on Monday, March 10, 2014.

With respect to Phase 1, our records indicate that your inventory was in this affected area. This space has been inspected by a structural engineer and determined to be compromised. As a result, we have been counseled not to enter this area until all reasonable measures to ensure safety have been addressed. This fact, coupled with the ammonia contamination and non-functioning refrigeration system has compromised the product in this area. There are no specific timeline or guidance we can offer at this time as to when we can safely access this space or when refrigeration systems will be restored to the building. When additional details are available, we will advise you so that inspection and disposition of your product by representatives of your company or insurer can be coordinated.

We recognize this to be a trying and difficult time for all parties involved. We are committed to keeping lines of communication open and doing everything we reasonably can to ensure the safety and security of everyone associated with this effort.

As more information becomes available, we will provide updated communication.

Regards,

Brad Hastings
Senior Vice President
Tippmann Group/Interstate Warehousing

EXHIBIT
C

interstate warehousing
a Tippmann Group Company

Corporate Office

)009 Coldwater Road
Fort Wayne, IN 46825
260) 490-3000 Phone
260) 490-1362 Fax

Warehouse Locations

Chicago, Illinois
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815) 744-5551 Fax

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513) 874-6500 Phone
513) 874-6775 Fax

Denver, Colorado
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Denver, CO 80239
303) 375-1000 Phone
303) 375-9331 Fax

Grand Rapids, Michigan
2966 Highland Drive
Hudsonville, MI 49426
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616) 669-3603 Fax

Indianapolis, Indiana
700 Bartram Parkway
Franklin, IN 46131
317) 738-5100 Phone
317) 738-5107 Fax

Indianapolis, Indiana
1401 S. Keystone Avenue
Indianapolis, IN 46203
317) 781-4285 Phone
317) 781-4292 Fax

Nashville, Tennessee
2125 Joe B. Jackson Parkway
Murfreesboro, TN 37127
615) 904-3000 Phone
615) 904-3001 Fax

Newport News, Virginia
121 Harwood Drive
Newport News, VA 23603
757) 887-8100 Phone
757) 887-1400 Fax

March 14, 2014

Alex Tejada
Eastern Fish Company
Glenpointe Center East
300 Frank W. Burr Blvd.
Teaneck, NJ 07666

Re: *Damage to goods in storage at Interstate Warehousing facility In Hudsonville, Michigan from roof collapse*

Dear Alex:

This letter is in response to your letter dated March 13, 2014 directed to Brad Hastings with our company.

We thank you for your business. We are sorry that you had a loss that was occasioned by the roof collapse at our warehouse in Hudsonville.

As this was an Act of God, we have no responsibility for your loss.

Although we feel that this is not a covered claim, our insurance claims adjuster for this matter is Stephen Bryan at Travelers Insurance Company, his contact information is (610) 775-4237 (SBRYAN@travelers.com).

Yours very truly,

Jeff Hastings, Treasurer
Interstate Warehousing, Inc.

EXHIBIT D

SWANSON, MARTIN & BELL, LLP

ATTORNEYS AT LAW
330 NORTH WABASH, SUITE 3300, CHICAGO, ILLINOIS 60611
(312) 321-9100 • FAX (312) 321-0990

Writer's Direct Dial Number
(312)222-8549
e-mail address: tmcgovern@smbtrials.com

March 20, 2014

VIA OVERNIGHT MAIL

Mr. Brad Hastings
Senior Vice President
Tippmann Group / Interstate Warehousing
9009 Coldwater Road
Fort Wayne, Indiana 46825

Re: Eastern Fish Company / Interstate Warehousing
Cargo loss following roof collapse in Grand Rapids, Michigan
Date of loss: March 8, 2014

Dear Mr. Hastings:

We represent the interests of Eastern Fish Company and their insurers, Aspen American Insurance (hereinafter "Eastern"), in connection with the loss of cargo stored at your facility in Grand Rapids, Michigan, in the estimated amount of $2.65 million.

Please be advised that you are under a legal duty to maintain, preserve, retain, protect, and not destroy any and all evidence regarding the cargo loss, along with the structural failure. This includes allowing access to the cargo and structure by Eastern or its agents. Further, you are under a legal duty to maintain, preserve, retain, protect, and not destroy any and all documents and data, both electronic and hard copy, that may be relevant to Eastern's claims. The failure to preserve and retain the physical evidence and electronic data outlined in this notice may constitute spoliation of evidence which will subject you to legal claims for damages and/or evidentiary and monetary sanctions.

For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, all text files (including word processing documents), presentation files (such as PowerPoint), financial data, spread sheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), Internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications,

EXHIBIT 3

telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence. Specifically, you are instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to the Eastern's claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence.

We trust you will provide appropriate access to the cargo and the facility to Eastern's agents so we may conduct an investigation of the loss. If you have any questions or desire to discuss this matter, please feel free to contact me. Thank you.

Very truly yours,

SWANSON, MARTIN & BELL, LLP

Timothy S. McGovern

SWANSON, MARTIN & BELL, LLP

ATTORNEYS AT LAW
330 NORTH WABASH, SUITE 3300, CHICAGO, ILLINOIS 60611
(312) 321-9100 • FAX (312) 321-0990

Writer's Direct Dial Number
(312)222-8549
e-mail address: tmcgovern@smbtrials.com

April 17, 2014

VIA ELECTRONIC MAIL

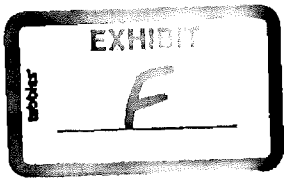
Mr. William D. Swift
Barrett & McNagny LLP
215 East Berry St.
Fort Wayne, Indiana 46802
wds@barrettlaw.com

Re: Eastern Fish Company / Interstate Warehousing
Cargo loss following roof collapse in Grand Rapids, Michigan
Date of loss: March 8, 2014

Dear Mr. Swift:

We represent the interests of Eastern Fish Company and their insurers, Aspen American Insurance (hereinafter "Eastern"), in connection with the loss of cargo stored at the Interstate Warehousing/Tippmann Group ("Interstate") facility in Grand Rapids, Michigan, in the estimated amount of $2.65 million. As you know, we sent a letter dated March 20, 2014, to your client advising of Interstate's obligation to "maintain, preserve, retain, protect, and not destroy any and all evidence regarding the cargo loss, along with the structural failure", including but not limited to providing "access to the cargo and structure by Eastern or its agents."

Eastern's agent, James Goes, P.E. of LWG Consulting, has diligently attempted to examine the structure, in accordance with our letter dated March 20, 2014. However, despite the efforts of Mr. Goes, Interstate and its agents refused to allow necessary access to the structure in order to perform an examination. We understand that the structure has been demolished, at least in part, and expect that much of the evidence has been destroyed. We reserve the right to pursue spoliation of evidence claims against Interstate and its insurers, along with all other rights and remedies available in this matter.



SWANSON, MARTIN & BELL, LLP

Very truly yours,

SWANSON, MARTIN & BELL, LLP

Timothy S. McGovern

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company	)	
Plaintiff,	)	Case No. 14 L 7376
v.	)	
INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP	)	
Defendants.	)	

AFFIDAVIT OF JEFF HASTINGS

I, Jeff Hastings, being first duly sworn upon my oath, state as follows:

1. The matters stated in this affidavit are matters within my personal knowledge.

2. I am the Treasurer and Chief Financial Officer ("CFO") of Interstate Warehousing, Inc.

3. Interstate Warehousing, Inc. is incorporated in Indiana.

4. Interstate Warehousing, Inc.'s principal place of business is located at 9009 Coldwater Rd., Fort Wayne, IN 46825.

5. Interstate Warehousing, Inc. is a 75% member of Interstate Warehousing of Illinois, LLC.

6. Interstate Warehousing of Illinois, LLC, is a limited liability company organized under the laws of Indiana with its principal place of business at 9009 Coldwater Road, Fort Wayne, Indiana 46825.

7. Interstate Warehousing of Illinois, LLC operates a warehouse facility located at 2500 McDonough Street in Joliet, Illinois.

8. Ryan Schaffer is not the registered agent for, or an officer of, Interstate Warehousing, Inc.

9. Ryan Shaffer is employed by Interstate Warehousing, Inc. as a General Manager at the Joliet, Illinois warehouse.

10. Ryan Shaffer's responsibilities as General Manager do not include accepting or responding to the service of process.

11. Ryan Shaffer has never been provided any training regarding the import of a service of summons or how to handle any summons delivered to him.

Further affiant sayeth not.

Jeff Hastings

SUBSCRIBED and SWORN to
before me this 12th day of March, 2015

Notary Public

MARINA R. GARCIA
NOTARY PUBLIC • OFFICIAL SEAL
State of Indiana, Allen County
My Commission Expires Sep. 9, 2021

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

2014 NOV 14 PM 2:20

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ASPEN AMERICAN INS. CO.,
a/s/o Eastern Fish Company

Plaintiff,

14 L 7376

INTERSTATE WAREHOUSING a
Tippmann Group Company and
Tippmann Group,

Defendants,

AFFIDAVIT

My name is Philip J Leyden. I have met the requirements for licensing under the Private Detective, Private Alarm, Private Security and Locksmith Act of 2004. My registration number is 0129-003890 and expires May 31, 2015.

I Philip J. Leyden being first duly sworn on oath depose and say he served an Alias Summons & Complaint on Interstate Warehousing by handing a copy of the Alias Summons & Complaint to Mr. Ryan Shaffer, identified as General Manager. This service was accomplished at 2500 McDonough St. Joliet, IL on November 13, 2014 at 9:42 A.M. 2121

Philip J. Leyden

Signed and sworn before me Nov. 13 ,2014

NOTARY PUBLIC

Linda L. Quinn

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
LINDA L QUINN
MY COMMISSION EXPIRES
JANUARY 24, 2015

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company	)	
Plaintiff,	)	Case No. 14 L 7376
v.	)	
INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP	)	
Defendants.	)	

AFFIDAVIT OF RYAN SHAFFER

I, Ryan Shaffer, being first duly sworn upon my oath, state as follows:

1. The matters stated in this affidavit are matters within my personal knowledge.

2. I am employed by Interstate Warehousing, Inc. as the General Manager of a warehouse located in Joliet, Illinois.

3. As General Manager, I am responsible for the day-to-day operations at the Joliet warehouse with responsibility for overseeing general operations, including safety, maintenance, and customer service.

4. The managers of each operational division of the Joliet warehouse report to me.

5. I am not an officer of Interstate Warehousing, Inc.

6. I am not the registered agent for Interstate Warehousing, Inc.

7. On November 13, 2014, a gentleman arrived at the Joliet warehouse and indicated that he needed someone to sign for a delivery.

8. As General Manager, I accepted and signed for the delivery, believing it was a delivery directed to the Joliet warehouse.

9. Upon opening the package, I discovered that it contained documents that appeared to be related to a lawsuit against Interstate Warehousing, Inc.

10. My responsibilities as General Manager do not include responsibility for responding to or handling legal matters.

11. I have received no training regarding the significance of a summons and complaint or what to do with such documents.

12. I forwarded the documents to the attention of Jeff Hastings at Interstate Warehousing, Inc.'s corporate office in Indiana.

Further affiant sayeth not.

Ryan Shaffer

SUBSCRIBED and SWORN to
before me this 12th day of March, 2015

Notary Public

OFFICIAL SEAL
KELLY A DUVALL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES JAN 06, 2016

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company,	)	
Plaintiff,	)	**Case No. 14 L 7376**
v.	)	
INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP,	)	
Defendants.	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH SERVICE AND DISMISS FOR LACK OF JURISDICTION

NOW COMES the plaintiff, ASPEN AMERICAN INSURANCE CO. ("Aspen"), as subrogee of Eastern Fish Company, and responds in opposition to defendants' motion to quash service and dismiss for lack of jurisdiction.

I. Introduction.

This is an action to recover damages resulting from the loss of plaintiff's food products destroyed while stored in defendants' warehouse on or about March 8, 2014. A roof collapse at defendants' facility resulted in ruptured gas lines and an ammonia leak within the facility. The ruptured gas lines and ammonia leak contaminated the food products, rendering them unfit for human consumption. Upon information and belief, defendants destroyed the contaminated food products. Also, defendants destroyed the warehouse, along with all evidence related to the loss.

Defendants continue to operate a warehouse in Illinois. Plaintiff's initiated the instant action and properly served defendants' with process. Though defendants' challenge this court's jurisdiction, the challenge is improper. Plaintiff recognizes that there could be a choice of law

question going forward in this matter. However, there is no question that defendants' are subject to this court's jurisdiction.

II. Statement of facts.

On or about April 23, 2013, Eastern and defendants entered into an agreement for storage of food products ("Warehouse Contract"). A true and accurate copy of the Warehouse Contract was submitted as Exhibit B to plaintiff's complaint. On defendants' website (see Exhibit A to plaintiff's complaint) and the Warehouse Contract, defendants identify the operating organization as "Interstate Warehousing, a Tippmann Group Company". The Warehouse Contract is signed by Brad Hastings, defendants' agent, "FOR INTERSTATE WAREHOUSING". Plaintiff's insured delivered food products to defendants for storage in a warehouse. The food products were destroyed while stored in defendants' warehouse on or about March 8, 2014.

Following the subject loss, defendants sent correspondence dated March 9, 2014, to plaintiff's insured advising of the loss. The letter is signed by Brad Hastings, on behalf of "Tippmann Group/Interstate Warehousing". *See Exhibit C to plaintiff's complaint.* The March 9, 2014 letter notes various warehouse locations, including "Chicago, Illinois". *Exhibit C to plaintiff's complaint.* On March 14, 2014, defendants sent additional correspondence to plaintiff's insured. *See Exhibit D to plaintiff's complaint.* The March 14, 2014 correspondence is sent from "Interstate Warehousing a Tippmann Group Company" and is signed by:

Jeff Hastings, Treasurer
Interstate Warehousing, Inc.

The March 14, 2014 correspondence further identifies the "Chicago, Illinois" location.

In accordance with the contract prepared by defendants, plaintiff sued "INTERSTATE WAREHOUSING, a Tippmann Group Company, and TIPPMANN GROUP." On November 13,

2014, plaintiff served defendants via Ryan Schaffer, General Manager of Interstate Warehousing, Inc. at its facility located in Illinois.

As indicated, defendants have an employee in Illinois at their facility in Illinois. *See Affidavit of Ryan Schaffer, Exhibit D to defendants' motion.* Further, Interstate Warehousing, Inc., who responded to inquiries related to the loss (Exhibit D to plaintiff's complaint), and applied for and received authorization to transact business in the state of Illinois from the Illinois Secretary of State. *See Exhibit 1 hereto.* Interstate Warehousing has employees in Illinois, operates a facility in Illinois and is authorized to transact business in the state of Illinois.

III. Defendants are subject to jurisdiction in Illinois.

Defendants have agreed to be subject to Illinois law without question and are subject to suit within Illinois. In order for the court to have personal jurisdiction, the defendant must have minimum contacts with the forum state.

> The minimum contacts required for personal jurisdiction must be based on some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

(internal citations omitted) *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006 at ¶ 14, 379 Ill.Dec. 174, 6 N.E.3d 251 (2014). If a court has general jurisdiction over a defendant, the defendant may only be sued where the defendant has continuous and systematic general business contacts with the forum state. *Id.* at ¶ 15.

> General jurisdiction occurs when the events that are the basis of the lawsuit do not arise out of and are not related to any activities within the forum state, but the minimum contacts requirement has been satisfied by the defendant's "continuous and systematic" contacts with the forum state. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, — U.S. ——, ——, 131 S.Ct. 2846, 2851, 180 L.Ed.2d 796 (2011); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

Chraca v. U.S. Battery Mfg. Co., 2014 Ill App (1st) 132325 at ¶ 28, 388 Ill.Dec. 275, 285, 24 N.E.3d 183, 193 (1st Dist. 2014).

> The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum. The defendant must transact business in Illinois" 'not occasionally or casually, but with a fair measure of permanence and continuity.' Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. **Once the doing business standard is satisfied, the defendant is deemed a resident of Illinois and may be sued on causes of action both related and unrelated to its Illinois activities.**

(internal citations omitted) (emphasis supplied). *Alderson v. Southern Co.*, 321 Ill.App.3d 832, 848-849, 254 Ill.Dec. 514, 529, 747 N.E.2d 926, 940 (1st Dist. 2001).

In addition to maintaining a warehouse and employing people within the state of Illinois, Interstate Warehousing, Inc. applied for and received authorization to transact business in Illinois from the Illinois Secretary of State. *See Exhibit 1*. Pursuant to Illinois law:

> Sec. 13.10. Powers of foreign corporation. No foreign corporation shall transact in this State any business which a corporation organized under the laws of this State is not permitted to transact. A foreign corporation which shall have received authority to transact business under this Act shall, until a certificate of revocation has been issued or an application for withdrawal shall have been filed as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such authority is granted; and, except as in Section 13.05 otherwise provided with respect to the organization and internal affairs of a foreign corporation and except as elsewhere in this Act otherwise provided, **shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.**

805 ILCS 5/13.10. Therefore, under Illinois law, Interstate is a resident of Illinois and is subject to general jurisdiction of this court.

IV. The U.S. Supreme Court's decision in *Daimler AG v. Bauman* is distinguishable on its face.

Pursuant to *Daimler*, a U.S. court cannot exercise general personal jurisdiction over a foreign corporation solely because of the imputed agency of the foreign corporation's subsidiary. The court held that can exist if a corporation's "affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State." 134 S.Ct. 746, 187 L.Ed. 624 (2014). In the instant case, defendants' affiliations with Illinois render defendants at home in Illinois. Interstate Warehousing Inc. asked the state of Illinois for permission to conduct its business in Illinois and received authority from the Illinois Secretary of State. Interstate Warehousing Inc. maintains a warehouse and employees in the state of Illinois.

Interpreting *Daimler*, courts have recognized that that a corporation could be "at home" in a place where it operates business continuously and substantially. For example, in *Barriere v. Juluca*, 2014 WL 652831 (S.D.Fla. 2014), the United States District Court for the Southern District of Florida interpreted "at home" as follows:

> What is clear from Daimler is that, for a court to exercise general jurisdiction over a foreign corporation, that corporation must be "at home" in the forum. *See id.* "At home" can be read to mean "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit...on causes of action arising from dealings entirely distinct from those activities." *Id.* at 761 (quoting *Int'l Shoe Co. v. Washington*, 325 U.S. at 318). While the Court did not expand on the specifics, it noted that it would be possible for a corporation to be "at home" in places outside of its place of incorporation or principal place of business. *See Id.* at 761 n. 19.

Id. at p. 7. The district court denied defendant's motion to dismiss based on lack of personal jurisdiction. In the instant case, defendants are "at home" in Illinois.

V. Defendants have been properly served in this matter.

Plaintiff's served Ryan Schaffer, the General Manager of Interstate Warehousing, Inc. Joliet, Illinois warehouse. Def. Mtn. Exhibit B, ¶ 9. Mr. Schaffer oversees all the managers of each operational division. Def. Mtn. Exhibit D, ¶ 4. He is responsible for the operations of the Joliet warehouse. *Id.* at ¶¶ 3 & 4. Mr. Schaffer is not a cashier or 18 year old immigrant employee as was the situation in the cases the defendants cite in support of their motion. Mr. Schafer's role within Interstate Warehousing, Inc. is such that he had the authority to receive service as an agent of the defendants.

Mr. Schaffer's role as the general manager is sufficient for service to be proper as exemplified in *Gray v. Kroger Grocery*, 294 Ill. App. 151, 13 N.E. 672 (4th Dist. 1938). In *Gray*, plaintiff served the manager of Kroger Grocery with the summons and complaint. In an effort to vacate a default judgment, defendant challenged the sufficiency of service. The court, however, found the service to be proper.

> The language of the statute is plain; it may be served by leaving a copy thereof with any officer or agent of said company found in the county. The return recites that it was served on Frank Ragsdale, manager and agent of the Kroger Grocery & Baking Company, a corporation, personally.
>
> * * *
>
> We are of the opinion that the summons in this case, served as the return shows that it was served, clothed the trial court with jurisdiction of the person of appellant; that the court, therefore, had jurisdiction to act, on failure of defendant to plead.

Id. at 156.

Service of a manager was also set forth to be proper by the Illinois First District Appellate Court in *Pergl v. U.S. Axle Co.*, 320 Ill. App. 115, 50 N.E. 115 (1st Dis. 1943), where plaintiff's served the manager of a warehouse that stored defendant's axle products as the agent of the defendant. Defendant challenged the sufficiency of the process, but the court held that the service

was sufficient. The court held that "...the company was here, subject to process of Illinois courts, and that Johnson was its agent upon whom service could be had under our practice." *Id.* at 120.

In the present case, Mr. Schaffer testifies via his affidavit that he is employed by defendants as the General Manager of the Joliet, Illinois warehouse. He is "responsible for all the day-to-day operations at the Joliet warehouse with responsibility for overseeing general operations, including safety, maintenance, and customer service." Def. Mtn. Exhibit D, ¶ 3. Mr. Schaffer is in charge of the entire warehouse, as "[t]he managers of each operational division of the Joliet warehouse report to" him. Mr. Schaffer's role and responsibility within Interstate Warehousing, Inc. renders him as an agent with the authority to receive service of process.

Defendants cite to *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856 (1st Dist. 2010). In this case, defendant Tumara Food Mar, Inc. objected to service upon its employee, a cashier served by the sheriff. The trial court found that service was not proper and the First District Appellate court upheld this ruling.

Defendants also cite to *Jansma Transport, Inc. v. Torino Baking Co.*, 27 Ill. App. 2d 347, (1st Dist. 1960). In *Jansma*, defendants objected to service by the deputy bailiff on an employee who was an 18 year old immigrant that spoke little English and only duties were to wait on customers who came into the store to buy bread. Service was also found to be improper in this case.

The facts are significantly different in the present case. Mr. Schaffer is a General Manager of Interstate Warehousing, Inc.'s Joliet warehouse, tasked with running the warehouse and managing the facility. Mr. Schaffer is not a cashier or immigrant store clerk. Mr. Schaffer's role within Interstate Warehousing, Inc. instills him with authority to receive service as an agent of the defendants.

As discussed in *Jansma*, [t]he character of agency for service of process has not been precisely defined. *Id.* at 352. The court in *Jansma* referenced 1 Nichols, Illinois Civil Practice, ch. 24, sec. 597, which states:

> It would seem that if an agent is served, he must be one whose connection with the company is such, or whose employment is of such character that he impliedly had authority to receive process, and would be likely to inform the corporation of service of summons. While the wording of the statute is broad enough to include service on any agent, and the word 'agent' may well be considered the same as 'employee,' it is doubtful whether service upon a day laborer would be sufficient.

Here, Mr. Schaffer is not a day laborer, but a General Manager of the defendants' facility. As discussed in Nichols above, Mr. Schaffer's connection with Interstate Warehousing, Inc. is such that he had authority to receive service as an agent. Furthermore, Mr. Schaffer's responsibility was such that he forwarded the summons and complaint to the Chief Financial Officer, Jeff Hastings and informed the corporation of this lawsuit. Def. Mtn. Exhibit D, ¶¶ 9 7 & 12.

Mr. Schaffer's roles and responsibilities, as an employee of the defendants, is so significant that he is imparted with the authority to receive service of process as an agent of the defendants. Accordingly, defendants' motion to quash service should be denied and service found to be proper.

VI. Conclusion.

Plaintiff has properly served defendants. Defendants are authorized to transact business in Illinois, operate a facility in Illinois and have employees in Illinois. Defendants are subject to the general jurisdiction of this court. Therefore, defendants' motion must be denied.

Respectfully submitted,

ASPEN AMERICAN INSURANCE CO.,
plaintiff,

One of its attorneys

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CERTIFICATE OF SERVICE

I, Timothy S. McGovern, attorney, certify that the foregoing response to defendant's motion was served upon all counsel of record via U.S. Mail on this 24th day of April, 2015.

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JESSE WHITE
SECRETARY OF STATE

CORPORATION FILE DETAIL REPORT

Entity Name	INTERSTATE WAREHOUSING, INC.	**File Number**	55290067
Status	ACTIVE		
Entity Type	CORPORATION	**Type of Corp**	FOREIGN BCA
Qualification Date (Foreign)	11/15/1988	**State**	INDIANA
Agent Name	C T CORPORATION SYSTEM	**Agent Change Date**	08/07/2006
Agent Street Address	208 SO LASALLE ST, SUITE 814	**President Name & Address**	JOHN V TIPPMANN, JR 9009 COLDWATER RD FORT WAYNE IN 46825
Agent City	CHICAGO	**Secretary Name & Address**	PATRICK TIPPMANN, 9009 COLDWATER RD, FORT WAYNE, IN 46825
Agent Zip	60604	**Duration Date**	PERPETUAL
Annual Report Filing Date	10/31/2014	**For Year**	2014

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