New York County Clerk's Index Nos. 650435/2011 and 650678/2011

New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

Index No. 650435/2011

VIKING GLOBAL EQUITIES, LP, VIKING GLOBAL EQUITIES II LP AND VGE III PORTFOLIO LTD.,

Plaintiffs-Respondents,

—against—

PORSCHE AUTOMOBIL HOLDING SE, f/k/a DR. ING. H.C. F. PORSCHE AG,

Defendant-Appellant.

(caption continued on inside cover)

BRIEF *AMICI CURIAE* OF GERMAN AND AMERICAN LAW PROFESSORS IN SUPPORT OF DEFENDANT-APPELLANT PORSCHE

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Index No. 650678/2011

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Plaintiffs-Respondents,

—against—

PORSCHE AUTOMOBIL HOLDING SE, f/k/a DR. ING. H.C. F. PORSCHE AG,

Defendant-Appellant.

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INTEREST OF *AMICI CURIAE*

Amici are professors of American and German law whose writing and teaching focus on corporations and securities regulation. A complete list of individual *amici* and, for identifying purposes only, their respective academic institutions, is set forth in Appendix A.

American *Amici* are professors who specialize in securities litigation and enforcement, securities regulation and/or corporate governance. Some of the *amici* are admitted to practice law in New York and have particular expertise in New York law governing securities fraud and investor protection. Some of the *amici* also have expertise on the relationship of state law to federal law more generally. German *Amici* are professors who have studied and specialize in securities litigation, enforcement and regulation, as well as corporate governance under German law and the law of the European Union.

Amici are of the view that issuers of and investors in securities and securities-based agreements require clear guidance as to when federal and state laws in the United States apply to their transactions and when they do not. *Amici* are particularly concerned about the potential for plaintiffs to arbitrage around the law of other countries by bringing state common law fraud claims, when those under federal securities law fail. If the reach of United States securities laws and

claims is too far-ranging – and particularly if state law is allowed to have an extraterritorial range that exceeds that of federal law – the potential for an adverse impact on foreign relations and the global economy will be substantial.

SUMMARY OF ARGUMENT

The decision of the trial court in this case to retain jurisdiction over state common law claims arising from allegedly fraudulent conduct and stock market manipulation concerning a German company, relating to transactions that took place in Germany or elsewhere abroad, stands in stark contrast to the Southern District of New York's earlier determination in a related federal lawsuit to dismiss both federal securities and state common law fraud claims brought by many of the same plaintiffs against Porsche based on the same underlying conduct. *See Elliott Associates v. Porsche Automobil Holding SE*, 759 F.Supp.2d 469 (S.D.N.Y. 2010).

In *Elliott*, the district court concluded that to allow plaintiffs' claims under Section 10(b) of the Securities Exchange Act of 1934 would result in the impermissible extraterritorial application of United States law.[1] *Id.* at 474-77. *See also Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010) (holding that Section 10(b) of the Exchange Act applies only to securities transactions that

[1] Several of the *amici* on this brief have also submitted a brief in the related Second Circuit case, *Viking Global Equities v. Porsche Automobil Holding SE*, Case No. 11-0397-CV(L), in which the appellate court is reviewing the district court's decision that the federal securities laws could not reach plaintiff's foreign swap transactions.

occur inside the United States). But the district court also concluded that (1) "to determine the merits of Plaintiffs' common law fraud claims would require the Court to analyze German law governing securities fraud"; (2) Germany "provides for exclusive jurisdiction of securities fraud cases in its own courts, making any judgment from [a U.S.] court unenforceable in Germany"; and (3) these factors, combined with the German "consul's letter" advising of parallel ongoing investigations by German securities regulators, and "the strong connection of all aspects of this action to Germany provide[d] additional support for [the district court's] decision to decline to exercise supplemental jurisdiction over the[se] state law claims." *Elliott Associates*, 759 F.Supp.2d at 477.

Amici can see no reason the State of New York should exercise jurisdiction over, or assert a more significant interest in, state common law claims founded on the same conduct.

In its opening and reply briefs, Porsche explained why forum non conveniens principles similarly favor New York state courts dismissing in favor of allowing these claims to be pursued in Germany, alongside other securities actions arising out of the same alleged stock scheme. We do not repeat those arguments. Rather, we emphasize and expand upon three elements central to the forum non conveniens analysis which further support dismissal here: (1) the location of the

conduct giving rise to this action (Germany); (2) the adequacy of Germany as an alternative forum; and (3) Germany's strong interest in applying its own laws to claims against domestic companies accused of wrongdoing that occurred within Germany and is subject to Germany's securities regulations.

The forum non conveniens doctrine is a vital tool for policing litigation in state courts that could undermine the balance established by Congress and the federal courts on the sensitive issue of when United States securities laws apply to non-U.S. based transactions. This case in particular involves issues of national importance because of the potential diplomatic and other consequence of interference with Germany's sovereign authority to regulate securities transactions taking place within its borders. *Amici* urge this Court to apply the doctrine of forum non conveniens in this case and dismiss plaintiffs' claims in favor of their pursuing their claims in Germany.

ARGUMENT

I. THE PRESUMPTION AGAINST THE EXTRATERRITORIAL APPLICATION OF U.S. OR NEW YORK LAW AND CONSIDERATIONS OF INTERNATIONAL COMITY WEIGH STRONGLY IN FAVOR OF DISMISSAL BASED ON FORUM NON CONVENIENS.

"It is a 'longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial

jurisdiction of the United States.'" *Morrison*, 130 S. Ct. at 2877 (quotations and citations omitted); *see also*, *Microsoft Corp. v. AT & T Corp*., 550 U.S. 437, 454 (2007) (noting the presumption "that United States law governs domestically but does not rule the world"); *The Apollon*, 22 U.S. (9 Wheat.) 362, 370 (1824); *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 630-31 (1818). Thus, the presumption against extraterritoriality dictates that "[w]hen a [federal] statute gives no clear indication of an extraterritorial application, it has none." *Morrison*, 130 S. Ct. 2869, 2878 (2010).

The presumption is based on the realization that application of U.S. law to conduct on foreign soil "creates a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs." *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 165 (2004). Consequently, courts have recognized that only Congress, not the courts, should address any extraterritorial application of U.S. law in the first instance because Congress "alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain." *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147 (1951); *see also McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 22 (1963) (same).

A similar presumption against extraterritoriality applies to New York statutes. *See, e.g., Padula v. Lilarn Props. Corp.*, 84 N.Y.2d 519, 523 (1994) (Titone, J., concurring) (applying the New York law of statutory interpretation that courts may not infer an extraterritorial effect to a New York law in the face of legislative silence); *Goshen v. Mut. Life Ins. Co. of New York*, 286 A.D.2d 229, 230, 730 N.Y.S.2d 46 (1st Dep't 2001)("[W]e recognize the settled rule of statutory interpretation, that unless expressly stated otherwise, "no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state . . . enacting it." (quotations and citations omitted)).

Here, as the federal district court held, the plaintiffs' transactions were not domestic and therefore did not give rise to a cause of action under the federal securities laws. See ante, pp. 2-3. Other post-*Morrison* decisions in the Southern District of New York have similarly rejected securities claims under federal law where a plaintiff located inside the United States sues over a transaction outside the United States. *See, e.g., Plumbers' Union Local No. 12 Pension Fund v. Swiss Reinsurance Co.*, 753 F. Supp. 2d 166, 172, 179 (S.D.N.Y. 2010) (dismissing plaintiff's Section 10(b) claims, even though plaintiff "decided to purchase" and "electronically routed" orders "placed" from Chicago for stock in defendant corporation, because "[defendant] is a Swiss corporation; the stock at issue in this

case was listed on the SWX Swiss Exchange, and stock market transactions in [defendant's] common stock were executed, cleared, and settled on [a foreign exchange]"). The result in these cases is driven by the threat that lawsuits in the U.S. based on foreign transactions will impinge on the sovereignty of other nations. *Id.* at 178 ("As the Supreme Court emphasized in *Morrison*, where a security is traded only on a foreign exchange, 'the adoption of a clear test that will avoid' 'interference with foreign securities regulation' is of paramount concern.")

There is no reason why New York courts should come to a contrary conclusion when considering common law fraud claims under a forum non conveniens analysis, especially where, as here, the alternative forum's interest in the underlying conduct and claims is strong. *See World Point Trading PTE, Ltd. v. Credito Italiano*, 225 A.D.2d 153, 649 N.Y.S.2d 689 (1st Dep't 1996)(forum non conveniens invoked where case involved a complex international business transaction involving nonresidents and cause of action with primarily foreign locus). Indeed, the doctrine of forum non conveniens is founded on the principle that a court should stay or dismiss an action when, "although it may have jurisdiction over a claim, the court determines that in the interest of substantial justice the action should be heard in another forum." *Koskar v. Ford Motor Co.*, 84 A.D.3d 1317, 1317-18, 923 N.Y.S.2d 901 (2d Dep't 2011) (quoting CPLR 327(a))

(internal quotation marks omitted); *see also Shin-Etsu Chem. Co., Ltd. v. ICICI Bank Ltd.*, 9 A.D.3d 171, 178, 777 N.Y.S.2d 69 (1st Dep't 2004) (court must also consider the interests of each forum in litigating the controversy and the need to apply foreign law); *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 479, 478 N.Y.S.2d 597, 600 (1984) ("[t]he rule rests upon justice, fairness and convenience"). In the present case, plaintiffs' transactions occurred abroad, and Porsche's alleged scheme to manipulate the price of VW stock took place in Germany and involved German companies. Germany's interest in regulating the conduct at issue here is apparent, and this Court should not interfere with it.

In many contexts the rationale for applying the doctrine of forum non conveniens remains robust, even though plaintiffs may allege that they have New York offices and/or principal places of business in New York. The mere presence of a plaintiff in New York should not create a right to litigate over every transaction under New York law in New York courts, even where just about every other aspect of the transaction took place abroad.

"Economic globalization has increased the number of claims filed in U.S. courts by plaintiffs seeking relief for injuries suffered abroad, and the doctrine of forum non conveniens . . . is an increasingly prominent tool for judicial management of these cases." *Cross-Jurisdictional Forum Non Conveniens*

Preclusion, 121 Harv. L.Rev. 2178 (2008). Although globalization makes it possible for most plaintiffs to allege at least some connection to the United States, and to New York in particular, it is not in the interest of the United States or New York to adjudicate all disputes involving such plaintiffs. Where "a plaintiff voluntarily reaches out" to place bets on transactions on a foreign exchange, "it is reasonable to expect that a dispute resulting from the transaction will be adjudicated in the forum in which the adversary resides." *Strategic Value Master Fund, Ltd. v. Cargill Fin. Servs. Corp.*, 421 F.Supp.2d 741, 773 (S.D.N.Y. 2006). This is particularly so where, as here, the adversary is not plaintiffs' contractual counterparty, but simply a participant in the foreign market where plaintiffs speculated.

Because the international comity concerns underlying the presumption against extraterritoriality—namely, unwarranted interference "with a foreign nation's ability independently to regulate its own affairs" (*F. Hoffman –La Roche Ltd.*, 542 U.S. at 165)—apply with equal force to common law fraud claims, this Court should dismiss plaintiffs' complaints under the doctrine of forum non conveniens.

II. GERMANY PROVIDES AN ADEQUATE ALTERNATIVE FORUM FOR CLAIMS BASED ON MARKET MANIPULATION AND OTHER MISCONDUCT INVOLVING SHORT SALES OF GERMAN SECURITIES OR SWAP AGREEMENTS THAT REFERENCE GERMAN SECURITIES.

"The availability of an adequate alternate forum does not depend on the existence of an identical cause of action in the other forum." *Capital Currency Exch. v. National Westminster Bank*, 155 F.3d 603, 610 (2d Cir. 1998) (citing *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 74 (2d Cir. 1998) (holding a fraud claim to be an adequate substitute for plaintiffs' RICO claims).[2] A forum is likewise adequate even if the "law applicable in the alternative forum may be less favorable to the plaintiff's chance of recovery." *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448, 453 (2d. Cir. 1975) (citing *Canada Malting Co. v. Paterson Steamships*, 285 U.S. 413, 418-20 (1932)). In *Capital Currency Exchange*, for example, plaintiffs argued that England was not an adequate alternative forum because it was unclear whether an English court would award damages for antitrust claims, and English law might not recognize some of plaintiff's common law

[2] Because the New York forum non conveniens doctrine is, in large part, similar to the federal doctrine (see Mark D. Greenberg, *The Appropriate Source of Law For Forum Non Conveniens Decisions in International Cases: A Proposal for the Development of Federal Common Law*, 4 Int'l Tax & Bus. Law. 155, 164 (1986)), federal decisions are relevant to the analysis under state law. New York does differ from federal law in one relevant respect: New York does not *require* proof of an available alternative forum in order to dismiss a case on forum non conveniens grounds. *See Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d. 474 at, 481, 478 N.Y.S.2d. at 601.

claims. 155 F.3d at 609. The court held that although "plaintiffs might not be able to recover in England on some of their common law claims, the essential subject matter of the dispute can be adequately addressed by an English court." *Id.*at 611.

Thus, an alternative forum is generally deemed adequate if the defendants "are amenable to service of process there, and if [the forum] permits litigation of the subject matter of [the] dispute." *Norex Petroleum Ltd. v. Access Indus., Inc*., 416 F.3d 146, 157 (2d Cir. 2005) (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 75 (2d Cir. 2003)). Prior decisions in which a court found a particular forum adequate give rise to a strong presumption in favor of forum availability. *See In re Ford Motor Co.,* 591 F.3d 406, 413 (5th Cir. 2009) ("District courts do not have to start from scratch each time they consider a forum's availability; if we have found a forum to be available in earlier cases, district courts can rely on our precedent in similar cases to hold that it is still available."). Germany has frequently been deemed an adequate alternative forum. *See, e.g*., *Wyser-Pratte Management Co. v. Babock Borsig AG*, No. 603364/02, 2004 N.Y. Misc. LEXIS 3064, at *16 (N.Y. Sup. Ct. July 8, 2004) ("In conducting a forum non conveniens analysis, courts in New York and elsewhere have routinely dismissed cases on the grounds that Germany was an adequate and more appropriate forum."); *In re European Aeronautic Defence & Space Co. Securities*

Litigation, 703 F.Supp.2d 348, 361 & n.5 (S.D.N.Y. 2010) (determining that Germany was an adequate alternative forum for a securities fraud case); *Gita Sports Ltd. v. SG Sensortechnik*, 560 F.Supp.2d 432, 438-39 (W.D.N.C. 2008) (internal quotation marks omitted); *Graf von Spee v. Graf von Spee*, 514 F.Supp.2d 302, 314 & n.27 (D. Conn. 2007) (determining that "Germany is an available and adequate alternative forum, in that defendants clearly are subject to service of process in Germany and Germany permits litigation of the subject matter of the dispute" and observing that multiple Second Circuit decisions had reached the same conclusion).

Germany provides an adequate alternative forum in this case too. Indeed, the statements and transactions by Porsche that are at issue in this case are already being investigated by German authorities. The public prosecutor's office in Stuttgart announced on February 22, 2011 that its investigation of two former board members of Porsche for manipulating VW shares was ongoing. The allegations concern public statements made by Porsche representatives and their alleged failure to make certain required statements concerning acquisition of shares in VW. *See* Porsche Automobil Holding SE, Interim Report for the Period 1, January 2011 to 29 April, 2011 at 6-7, 25 (available at http://www.porsche-

se.com/pho/en/investorrelations/mandatorypublications/interimreport (last visited October 18, 2012).)

Institutional investors in Germany also have initiated proceedings against Porsche claiming damages from alleged breaches of German law in connection with Porsche's acquisition of shares in VW. Some of the plaintiffs that had initially filed suit in the Southern District of New York and are appealing its decision to the Second Circuit are among those who have filed actions in Germany.

Private lawsuits in Germany are proceeding without delay. In April 2011, other investors initiated proceedings against Porsche based on similar claims. *Id.* at 7. The claims allege lost profits estimated to total approximately 2.98 billion euros. *Id.* On September 19, 2012, the Braunschweig Regional Court dismissed two of the eight investor suits filed in Germany. Karin Matussek, *Porsche Wins Dismissal of Two German VW – Options Lawsuits*, Bloomberg, Sept. 19, 2012. The court found, among other things, that Porsche's actions during the relevant 2008 time period did not constitute "vicious behavior," and, therefore, that Porsche was not liable to the plaintiff investors. *Id.* The German court also dismissed these two cases in part because "'[t]here was no evidence ... [of a] direct link between the damage alleged by the applicant and any profits made by Porsche Automobil Holding SE in the trading of options on VW shares.'" Natalie Rodriguez, *German Court Nixes 2*

Investor Suits Over Porsche's VW Deal, Law360 (Sept. 19, 2012) (available at http://www/law360.com/articles/379585). In one of the cases, the German court further concluded that statements in Porsche's March 2008 press releases were "not wrong, let alone 'grossly incorrect,'" and therefore could not give rise to a claim against Porsche for violation of public policy under Section 826 of the German Civil Code either. *Cukierman v. Porsche Automobil Holding SE, et al*., Braunschweig Regional Court No. 50 1110/11*075*, at 21-22 (9/19/12). Section 826 remains a potentially viable claim for stock market manipulation, however, where both a violation of public policy and causation can be established.[3]

[3] Section 826 of the German Civil Code, which provides a remedy under tort law for injuries caused by an "intentional and immoral tort," plays an important role in investor protection. Section 826 applies in cases where market participants intentionally manipulated capital markets. Both the Regional Court of Braunschweig in *Cukierman* and the Regional Court of Berlin (as of May 20, 2008, docket number 514 AR 1/07, published in WM 2008, p. 1470, noted *Mock* in EWiR § 826 BGB 8/08, p. 617 et seq.), have held that Section 826 provides a private right of action. Section 823 subs. 2 German Civil Code also provides a private cause of action under German law in cases of market manipulation. Section 823 subs. 2 of the German Civil Code may ultimately also provide an additional private right of action in conjunction with Section 20a of the German Stock Trading Act (WpHG). The highest German court in civil matters (BGH) has held that the German legislature did not intend to establish a private cause of action by enacting Section 20a WpHG, and that Section 20a WpHG protects investors and other capital market participants as a group but not as individuals. However, the significant media attention of the Porsche case in Germany may lead other courts to request a ruling from the European Court of Justice under Art. 267 of the Treaty on the Functioning of the European Union to determine whether Section 20A WpHG (implemented in compliance with Article 14 of the Directive 2003/6/EC) should provide a private cause of action.

The fact that other investors have commenced similar actions in Germany leaves no question that Porsche is amenable to service of process in Germany and that German law permits litigation of securities fraud cases. The dismissal of some of these actions does not render the forum unavailable. There is no requirement that an alternative forum guarantee recovery. That German law may be "less favorable to the plaintiff's chance of recovery . . . does not make [the alternative forum] so clearly inadequate or unsatisfactory that it is no remedy at all." *In re European Aeronautic Defence & Space Co. Securities Litigation*, 703 F.Supp.2d at 360 (quoting *Piper Aircraft v. Reyno*, 454 U.S. 235, 250 (1981)) (internal quotation marks omitted).

Moreover, these parallel proceedings in Germany also present the risk of inconsistent results if this litigation proceeds in New York, which is yet another factor favoring dismissal of this suit on forum non conveniens grounds. (*See* Porsche reply brief at 17-19.)

So long as Germany offers some remedy for claims that fall within the subject matter of the suit, which it does, Germany provides an adequate alternative forum.

III. ADDITIONAL PUBLIC POLICY CONCERNS WEIGH AGAINST ALLOWING CLAIMS ARISING FROM SHORT SALES AND SECURITY-BASED SWAPS THAT REFERENCE FOREIGN-TRADED SECURITIES.

A. Making issuers and traders in reference securities liable to the parties to security-based-swap agreements enormously increases the scope of potential liability and the settlement value of strike suits.

Those who enter into security-based swap agreements do not buy or sell the securities referenced in those agreements; they only make bets for or against them. Here, for example, the plaintiffs were using security-based swap agreements to bet that the VW stock price would go down. They now seek to sue Porsche for its actions in the primary market that allegedly made the stock price go up instead. It is difficult to comprehend the link between a common law fraud claim grounded in such bets against a foreign stock through security-based swaps and the objective of protecting investors in securities markets.

There would be a great potential cost to such a private right of action. Security-based swap agreements of enormous magnitude can be entered into referencing the stock of a relatively small company. Swap traders theoretically could enter into billions of dollars of swaps referencing the value of stock in a corporation owning a single coffee shop off Wall Street. More realistically, they could do likewise for the stock of a relatively small company that just made an

offering of a few million dollars of stock on the NASDAQ. When the security-based swap traders lose money, permitting them an implied private right of action would allow them to sue the issuer of the reference security or the persons who buy and sell that security. Because outstanding swap agreements sometimes exceed the capitalization of operating companies by several times, the potential liability of companies and their shareholders to hedge funds and other speculators in swaps could bankrupt many companies and investors.

According to the Bank for International Settlements, the total outstanding notional amount outstanding of equity-linked derivatives (the category of over-the-counter derivatives that includes security-based swaps) grew by more than six times from $1.645 *trillion* in June 2000 to $10.177 *trillion* in June 2008. During this same period, according to the World Federation of Exchanges, the total global market capitalization grew from just over *$30 trillion* in 2000 to a height of over *$60 trillion* in 2007, before falling back below $35 trillion in 2008. *See* World Federation of Exchanges, Market Capitalization (available at http://www.world-exchanges.org/files/statistics/excel/TS2%20Market%20cap.XLS (last visited October 21, 2012).) These statistics show a clear disconnect between the growth in equity-linked derivatives and the size of global capital markets, which further emphasizes the vast liability that could be imposed on issuers and third parties such

as Porsche if parties to security-based swap agreements are allowed to sue them under New York law or federal law.

We submit that courts should not impose such a result in a common law fraud case brought by swap participants against third parties absent an express act of the New York Legislature creating such a cause of action, particularly where, as here, such a liability regime would be imposed by the law of a state in the United States on securities markets outside the United States.

B. Making issuers and traders in securities liable to short sellers involves difficult policy issues that are best resolved in the forum where the short sales were entered into.

The plaintiffs in this case sold VW stock short outside the United States, once again betting that the stock would go down.

New York courts should be reticent to allow a common law fraud action on behalf of short sellers who bet against a company's stock and then claim that they were not told good news that instead made the stock go up. In some cases, the short sellers may be permitted to claim that they, like ordinary sellers, were defrauded; in other cases, such claims should fail for any one of a number of reasons including lack of reasonable reliance by the short sellers on the alleged misrepresentation, lack of proximate loss causation, or wrongful conduct by the short sellers themselves. When short sales are entered into in New York with

respect to securities traded in New York, these are issues that New York courts can appropriately decide.

The short sale positions in this case, however, were made on foreign exchanges, and the swaps in turn referenced those same foreign-traded securities. The hedge fund plaintiffs can claim only their own presence – not the presence of the short sale itself – inside the United States. These plaintiffs now claim that New York law, not the law of the jurisdiction where these short sales took place, should govern their transactions. *Amici* respectfully disagree.

Each jurisdiction has the right to determine how to regulate short sales within its borders and how much legal protection to extend to persons who enter into short sales within that jurisdiction. Some countries, including Germany, have serious concerns about short selling and other speculative positions against stocks traded on their exchanges. Other countries are more tolerant of short selling and similar speculative positions that profit when underlying securities decline in value. Short sellers should know the laws of the jurisdictions where short sales are executed and should not be allowed to avoid those laws by fleeing to another forum such as New York, which lacks any material connection to the transactions. Persons who take short positions somewhere else should expect to be bound by the laws where those short positions were created.

CONCLUSION

For the foregoing reasons, as well as those set forth in the briefs submitted by Porsche, the trial court's order refusing to dismiss or stay these claims on grounds of forum non conveniens should be reversed.

Dated: October 23, 2012

Respectfully submitted,

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Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of the case caption and pages containing the table of contents, table of citations, and this Statement, is 4,459.

Dated: October 23, 2012

Respectfully submitted,

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