

RECEIVED *VSC*  
SUPREME COURT  
STATE OF WASHINGTON  
Mar 19, 2014, 11:07 am  
BY RONALD R. CARPENTER  
CLERK

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

*E* *CRF*  
RECEIVED BY E-MAIL

Supreme Court No. 89303-9

(Court of Appeals No. 68130-3-1)

FUTURESELECT PORTFOLIO MANAGEMENT, INC.,  
FUTURESELECT PRIME ADVISOR II LLC, THE MERRIWELL  
FUND, L.P., and TELESIS IIW, LLC

*Plaintiffs/Respondents,*

v.

TREMONT GROUP HOLDING, INC., TREMONT PARTNERS, INC.,  
OPPENHEIMER ACQUISITION CORPORATION,  
MASSACHUSETTS MUTUAL LIFE INSURANCE CO., and ERNST &  
YOUNG LLP

*Defendants/Petitioners.*

---

**RESPONDENTS' STATEMENT OF ADDITIONAL AUTHORITY**

---

**GORDON TILDEN THOMAS &  
CORDELL LLP**  
Jeffrey M. Thomas, WSBA #21175  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
ATTORNEYS FOR Respondents

**PACIFICA LAW GROUP LLP**  
Paul J. Lawrence, WSBA #13557  
1191 Second Avenue, Suite 2100  
Seattle, WA 98101  
ATTORNEYS FOR Respondents

**THOMAS, ALEXANDER &  
FORRESTER LLP**  
Steven W. Thomas  
14 - 27th Avenue  
Venice, CA 90291  
ATTORNEYS FOR Respondents

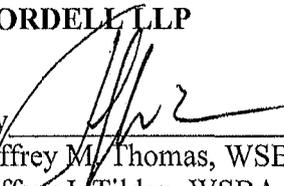
The Plaintiffs/Respondents (collectively, "FutureSelect") pursuant to RAP 10.8, submit the following additional authority (attached as Exhibit A):

*NTCH-WA, Inc. v. ZTE Corp.*, 2014 WL 814644 (E.D. Wash. Feb. 27, 2014) (stating that under *Daimler AG v. Bauman*, 571 U.S. \_\_\_, 134 S. Ct. 746, \_\_\_ L. Ed. 2d \_\_\_ (Feb. 25, 2014) agency principles remain relevant in the context of specific jurisdiction and "a corporation can purposely avail itself of a forum by directing its agents or distributors to take action there") (quoting *Daimler AG v. Bauman*, 134 S. Ct. at 759 n.13).

Dated: March 19, 2014

Respectfully submitted,

**GORDON TILDEN THOMAS &  
CORDELL LLP**

By 

Jeffrey M. Thomas, WSBA #21175

Jeffrey I. Tilden, WSBA #12219

1001 Fourth Avenue, Suite 4000

Seattle, Washington 98154

Tel. (206) 467-6477

Fax (206) 467-6292

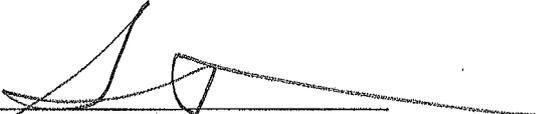
Email: [jthomas@gordontilden.com](mailto:jthomas@gordontilden.com)

Email: [jtilden@gordontilden.com](mailto:jtilden@gordontilden.com)

**PACIFICA LAW GROUP LLP**

By Paul Lawrence (m)  
Paul J. Lawrence, WSBA #13557  
1191 Second Avenue, Suite 2100  
Seattle, Washington 98101  
Tel. (206) 245-1708  
Fax (206) 245-1756  
Email: [Paul.Lawrence@pacificallawgroup.com](mailto:Paul.Lawrence@pacificallawgroup.com)

**THOMAS, ALEXANDER & FORRESTER  
LLP**

By   
Steven W. Thomas, *admitted pro hac vice*  
14 27th Avenue  
Venice, California 90291  
Tel. (310) 961-2536  
Fax (310) 526-6852  
Email: [steventhomas@tafattorneys.com](mailto:steventhomas@tafattorneys.com)

Attorneys for FutureSelect Portfolio  
Management, Inc., FutureSelect Prime Advisor  
II LLC, The Merriwell Fund, L.P. and Telesis  
IIW, LLC

## DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on March 19, 2014, I caused a true and correct copy of the foregoing Respondents' Statement of Additional Authority to be delivered via U.S. first class mail, with a courtesy copy via email, to:

Chris Howard  
Averil Budge Rothrock  
Claire L. Been  
Schwabe Williamson & Wyatt  
1420 Fifth Avenue, Suite 3400  
Seattle, WA 98101  
[choward@schwabe.com](mailto:choward@schwabe.com)  
[arothrock@schwabe.com](mailto:arothrock@schwabe.com)  
[cbeen@schwabe.com](mailto:cbeen@schwabe.com)  
*Attorneys for Petitioner Mass.  
Mutual Life Ins. Co.*

Stephen M. Rummage  
Roger A. Leishman  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101  
[steverummage@dwt.com](mailto:steverummage@dwt.com)  
[rogerleishman@dwt.com](mailto:rogerleishman@dwt.com)  
*Attorneys for Petitioner Ernst &  
Young LLP*

David A. Kotler  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036  
[david.kotler@dechert.com](mailto:david.kotler@dechert.com)  
*Attorneys for Petitioner  
Oppenheimer Acquisition Corp.*

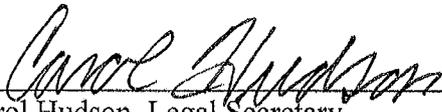
Tim J. Filer  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
[filet@foster.com](mailto:filet@foster.com)  
*Attorneys for Petitioners Tremont  
Group Holdings, Inc. and Tremont  
Partners, Inc.*

Robert B. Hubbell  
Morrison & Foerster LLP  
707 Wilshire Blvd., Suite 6000  
Los Angeles, CA 90017-3543  
[rhubbell@mfo.com](mailto:rhubbell@mfo.com)  
*Attorneys for Petitioner Ernst &  
Young LLP*

David F. Taylor  
Cori G. Moore  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101  
[dftaylor@perkinscoie.com](mailto:dftaylor@perkinscoie.com)  
[cgmoore@perkinscoie.com](mailto:cgmoore@perkinscoie.com)  
*Attorneys for Petitioner  
Oppenheimer Acquisition Corp.*

Seth M. Schwartz  
Jason C. Vigna  
Skadden, Arps, Slate, Meagher &  
Flom LLP  
Four Times Square  
New York, NY 10036-6522  
[seth.schwartz@skadden.com](mailto:seth.schwartz@skadden.com)  
[jason.vigna@skadden.com](mailto:jason.vigna@skadden.com)  
*Attorneys for Petitioners Tremont  
Group Holdings, Inc. and Tremont  
Partners, Inc.*

DATED this 19th day of March, 2014, at Seattle, Washington.

  
\_\_\_\_\_  
Carol Hudson, Legal Secretary  
Gordon Tilden Thomas & Cordell LLP

# **EXHIBIT A**

Slip Copy, 2014 WL 814644 (E.D.Wash.)  
 (Cite as: 2014 WL 814644 (E.D.Wash.))

**H**

Only the Westlaw citation is currently available.

United States District Court,  
 E.D. Washington,  
 NTCH-WA, INC., Plaintiff,  
 v.  
 ZTE CORP., Defendant.

No. 12-CV-3110-TOR.  
 Signed Feb. 27, 2014.

Lisa J. Dickinson, Dickinson Law Firm PLLC, Spokane, WA, Lisa Marie Sofio Hollyer Brady LLP New York, NY, Melissa J. Anderson, Orrick Herrington & Sutcliffe LLP, Seattle, WA, Shannon Gallagher, Gallagher & Moore, Irvine, CA, for Plaintiff.

Laura Eve Besvinick, Hogan Lovells US LLP, Miami, FL, Michael John Kapaun, Thomas Dean Cochran, Witherspoon Kelley Davenport & Toole, Spokane, WA, for Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR  
 RECONSIDERATION

THOMAS O. RICE, District Judge.

\*1 BEFORE THE COURT is Defendant's Motion for Reconsideration (ECF No. 113). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

DISCUSSION

Motions to reconsider may be reviewed under either Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.1993). "Reconsideration is appropriate if the district court (1) is presented with

newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Id.* at 1263; *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir.2009). A motion to reconsider is properly denied when a litigant "present[s] no arguments in his motion for [reconsideration] that had not already been raised" in the underlying motion. *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir.1989).

Defendant asks the Court to reconsider its prior ruling that Plaintiff effectuated proper service of process in light of the Supreme Court's recent decision in *Daimler AG v. Bauman*, — U.S. —, 134 S.Ct. 746, —L.Ed.2d — (2014). The Court has reviewed the *Bauman* decision and finds its holding inapposite to the issue of whether service of process was properly completed. *Bauman* is a personal jurisdiction case which addresses the limits of a court's exercise of general jurisdiction over a foreign (*i.e.*, out-of-country) corporate defendant. As relevant to the instant motion, the case holds that general jurisdiction may not be predicated solely on the defendant's contacts with the forum state through a subsidiary acting as the defendant's "agent" in the forum. 134 S.Ct. at 758–60. General jurisdiction based solely on agency principles, *Bauman* explains, would "subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outco jurisdiction" "that the Supreme Court rejected in prior cases. *Id.* at 760 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, —U.S. —, —, 131 S.Ct. 2846, 2856, 180 L.Ed.2d 796 (2011)).

Although *Bauman* rejects an agency analysis in the general jurisdiction context, it strongly suggests that agency principles remain relevant in the context of *specific* jurisdiction. Indeed, the case specifically notes that "a corporation can purposefully avail itself

Slip Copy, 2014 WL 814644 (E.D.Wash.)  
(Cite as: 2014 WL 814644 (E.D.Wash.))

of a forum by *directing its agents or distributors to take action there.*" *Id.* at 759 n. 13 (emphasis added) (citing *Asahi Metals Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 112, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987), *Int'l Shoe Co. v. & R Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945), and *Goodyear*, 131 S.Ct. at 2855)). If specific jurisdiction can be established over a foreign corporation on an agency theory, it necessarily follows that service of process which is a prerequisite to establishing personal jurisdiction can be accomplished by serving a foreign defendant's subsidiary acting as its agent in the forum state. That is precisely what Plaintiff did here. Accordingly, the motion for reconsideration of the Court's Order at ECF No. 55 is denied.

**\*2 IT IS HEREBY ORDERED:**

Defendant's Motion for Reconsideration (ECF No. 113) is **DENIED**. The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

E.D.Wash., 2014.  
NTCH-WA, Inc. v. ZTE Corp.  
Slip Copy, 2014 WL 814644 (E.D.Wash.)

END OF DOCUMENT

## OFFICE RECEPTIONIST, CLERK

---

**From:** Carol Hudson <chudson@gordontilden.com>  
**Sent:** Wednesday, March 19, 2014 11:05 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** choward@schwabe.com; arothrock@schwabe.com; steverummage@dwt.com; rogerleishman@dwt.com; david.kotler@dechert.com; filet@foster.com; rhubbell@mof.com; dftaylor@perkinscoie.com; cgmoore@perkinscoie.com; Jeff Thomas; paul.lawrence@pacificallawgroup.com; steventhomas@tafatorneys.com; emilyalexander@tafatorneys.com; Melissa Lawton (MelissaLawton@tafatorneys.com); 'cbeen@schwabe.com'; 'seth.schwartz@skadden.com'; 'jason.vigna@skadden.com'  
**Subject:** No. 89303-9, FutureSelect v. Tremont  
**Attachments:** Respondents' Stmt of Add'l Authority.pdf

Re: FutureSelect Portfolio Management, Inc., et al. v. Tremont Group Holding, Inc., et al.  
Supreme Court No. 89303-9

Dear Clerk:

Attached for filing is Respondents' Statement of Additional Authority.

Thank you.

Sent on behalf of:  
Jeffrey M. Thomas, WSBA #21175  
[jthomas@gordontilden.com](mailto:jthomas@gordontilden.com)  
206-467-6477

**Carol Hudson**

Legal Secretary to  
Charles C. Gordon  
Jeffrey M. Thomas  
Michael Rosenberger  
Jonathan Toren  
Gordon Tilden Thomas & Cordell LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
T 206.467.6477 | F 206.467.6292  
[www.gordontilden.com](http://www.gordontilden.com)

**GORDON TILDEN  
THOMAS & CORDELL LLP**

**A TRIAL PRACTICE FIRM**