THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Appellate Case No. _____

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are the..... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

In this products liability action, Respondent Dwayne Thompson seeks recovery for injuries allegedly sustained when a 18650 lithium ion battery allegedly exploded in his pocket. Respondent alleges that he purchased the battery from Defendant Rolling Fog Vapor Company, LLC ("Rolling Fog"), as a standalone power source for his e-cigarette device, and that Petitioners LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") designed, manufactured, supplied, sold, imported, and distributed the subject battery.

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia. LGCAI is a wholly owned subsidiary of LG Chem, and is a separate and independent corporate entity. Neither is "at home" in South Carolina.

Petitioners never designed, manufactured, distributed, advertised, or sold LG 18650 lithium ion cells for use by consumers as standalone, replaceable batteries and never authorized anyone else to do so either. Instead, it appears that third parties have acquired lithium ion cells manufactured by LG Chem (and other manufacturers) and diverted those cells from their intended chain of distribution (to be incorporated into battery packs with protective circuitry) into an unauthorized and unintended consumer marketplace for standalone, replaceable batteries used to power e-cigarette and vaping devices.

Notwithstanding these facts, Respondent successfully argued to the circuit court that Petitioners are subject to specific personal jurisdiction in South Carolina under a "stream of commerce" theory. In making this argument, Respondent relied almost entirely on this Court's opinion in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008). Respondent successfully argued to the circuit court that he could satisfy his burden of proving that

due process was satisfied simply by alleging in his complaint that Petitioners placed a product into the stream of commerce and expected that it would make its way to South Carolina.

Since this Court's 2008 decision in *Sumatra* (which involved a taxation matter, not a products liability suit), the United States Supreme Court has addressed the question of specific jurisdiction over a non-resident product manufacturer in *J. McIntyre*, *Bristol-Myers*, and *Ford*. In those decisions, the U.S. Supreme Court emphasized that, for specific jurisdiction, due process can only be satisfied if the suit is connected to the forum by the actions of the defendant, not by the actions of third parties. Here, the circuit court found that due process was satisfied despite the lack of allegations or evidence that could meet this standard.

Due process is a constitutional limit on the power of a court to compel a non-resident to appear before it. Here, two circuit court judges reached contrary conclusions regarding whether the suit could go forward – both based on the exact same record. The first circuit court judge found there was insufficient information to determine that jurisdiction could be properly exercised. The second circuit court judge held that Respondent's burden was met based on the exact same facts. Petitioners are entitled to appellate review of this decision that impacts a "substantial right."

Without an immediate appellate remedy, Petitioners would be subject to the burdens of this litigation despite the absence of constitutionally sufficient minimum contacts. As the Court of Appeals recognized in *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), and consistent with the rationale of North Carolina's appealability statute, this interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction should be allowed because the sufficiency of constitutional minimum contacts is at issue.

CERTIFICATION OF COUNSEL

Pursuant to Appellate Rule 242(d), counsel certifies that a petition for rehearing was made and finally ruled upon by the Court of Appeals by order dated May 19, 2022.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in finding that the underlying orders denying Petitioners' motions for lack of personal jurisdiction based on an absence of constitutional minimum contacts were not immediately appealable?

II. In dismissing the appeal, did the Court of Appeals err by failing to reverse the trial court's failure to dismiss the case for lack of personal jurisdiction against both Petitioners in violation of constitutional due process?

STATEMENT OF THE CASE

In this products liability case, Respondent Dwayne Thompson alleges he was injured on July 27, 2018, when a battery he describes as an "LG Brown Hg2 INR 18650 3000mAh" exploded in his pocket. (R. 38, 39.) Respondent alleges that he purchased the battery from Rolling Fog, a retail vape store with its principal place of business in Spartanburg, South Carolina for use with his e-cigarette device (R. 38, 39) and that LG Chem and LGCAI designed, manufactured, supplied, sold, imported, and distributed the subject battery (R. 39.)

A. Appellant LG Chem

In the circuit court, LG Chem filed a motion to dismiss for lack of personal jurisdiction, supported by a sworn affidavit setting forth the facts to establish that it was not properly served, that it is not "at home" in South Carolina, and that it did not form any suit-related contacts with South Carolina. (R. 104-113)

LG Chem is a Korean company headquartered in Seoul, South Korea (R. 110), which Respondent acknowledges. (R. 38.) Respondent attempted to serve LG Chem with the Summons

and Complaint by certified mail to the South Carolina Secretary of State, in contravention of the Hague Service Convention. (R. 45.)

Specifically, the affidavit of Sung Han Ryu showed that (1) LG Chem never designed, manufactured, distributed, advertised, or sold 18650 lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices, (R. 111); (2) LG Chem never conducted any business with the alleged retail vape store and did not direct or control its actions, *(id.);* and (3) LG Chem never authorized anyone to advertise, distribute, or sell 18650 lithium ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id*.)

B. Appellant LGCAI

In the circuit court, LGCAI filed a motion to dismiss for lack of personal jurisdiction, supported by a sworn affidavit setting forth the facts to establish that it is not "at home" in South Carolina and that it did not form any suit-related contacts with South Carolina. (R. 286-292.) Specifically, the affidavit of HyunSoo Kim showed that (1) LGCAI could not have manufactured the subject battery because it does not manufacture any products (R. 291); (2) LGCAI never designed, manufactured, distributed, advertised, or sold 18650 lithium-ion battery cells for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices, (*id*.); (3) LGCAI never conducted any business with the alleged retail vape store (Rolling Fog) and did not direct or control its actions, (*id*.); and (4) LGCAI never authorized Rolling Fog or any distributor, wholesaler, retailer, or re-seller to advertise, distribute or sell 18650 lithium-ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id*.)

ARGUMENT

I. The Court of Appeals erred in finding that the underlying orders denying Petitioners' motions for lack of personal jurisdiction based on an absence of constitutional minimum contacts were not immediately appealable.

A. The Court of Appeals erred in failing to find that the case was immediately appealable when the denial of the defendant's substantial constitutional right to due process based on the sufficiency of minimum contacts was at issue.

"An order affecting a substantial right" is immediately appealable if it "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." S.C. Code Ann. § 14-3-330(2). This Court has recognized that "by its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis." *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). Here, the constitutional guarantee of due process is implicated when a court finds there are sufficient minimum contacts and denies a motion to dismiss for lack of personal jurisdiction on that basis.

Although the Court previously held in *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993) that "the denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable," Petitioners raised several arguments to the lower court that were not before the *Mid-State* court. Importantly, in *Mid-State*, the Court's opinion focused solely on the whether the subject order was sufficiently final such that it "involved the merits." *See id.* at 336–37, 426 S.E.2d at 780–81. The court ***did not*** expressly address whether a ruling that the defendant had sufficient minimum contacts to satisfy constitutional due process affects a substantial right. In addition, *Mid-State* expressly overruled two prior cases to the extent they conflicted with the current definition of "involving the merits," but ***did not*** expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which permitted an interlocutory appeal from an order denying a motion to dismiss for lack of

personal jurisdiction where the sufficiency of minimum contacts was at issue. Further, *Mid-State* came to the Court under an entirely different procedural posture from the present case.

Furthermore, South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable.[1] North Carolina's appealability statute is similar to South Carolina's and likewise permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although North Carolina's appealability statute is different in that it expressly permits "immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C. Gen. Stat. § 1-277(b), this right is ***limited*** to the appeals that raise questions concerning due process and minimum contacts, because those are the questions ***affecting a substantial right***. This is because a substantial right exists when the interlocutory order denying a motion to dismiss for lack of personal jurisdiction "raises questions concerning due process and minimum contacts." *Hardee ex rel. White v. Lowe's Cos., Inc.*, 640 S.E.2d 445 (N.C. Ct. App. 2007) (table), at *1. South Carolina should follow the same rule.

B. <u>The lack of available appellate remedies has led to a dearth of precedent to guide the lower courts.</u>

Without immediate appealability, a litigant seeking appellate review of a denial of a motion to dismiss for lack of personal jurisdiction—particularly one based on lack of minimum contacts—cannot appeal until after final judgment and, only then, if the litigant loses on one or more issues. Without immediate appealability, Appellants would be forced through the entirety of long and expensive litigation despite the absence of minimum contacts supporting personal jurisdiction.

[1] *See, e.g.*, *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions).

Further, even if a litigant raises a jurisdictional issue on appeal, the appellate court may not reach the issue. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 428 S.C. 638, 643 n.1, 837 S.E.2d 485, 488 n.1 (2020).

The lack of appellate review of orders finding sufficient minimum contacts creates, in turn, a lack of precedent addressing what is constitutionally sufficient, leaving trial judges and counsel to apply outdated principles with little guidance and resulting in contrary opinions in the trial courts – as aptly demonstrated in this case where two different circuit court judges reached opposite conclusions in this case despite the exact same facts. In addition, other circuit court judges in this state have reached opposite conclusions on the same constitutional issue in other cases involving the same Petitioners (including a circuit court that granted a similar motion filed by Petitioner LG Chem, Ltd. which is currently on appeal in *Reid Fleming v. LG Chem, Ltd*., Appellate Case No. 2022-000346), further illustrating the lack of precedential guidance. This situation is contrary to the principles of stare decisis, which calls for a "series of decisions" to follow, as opposed to a sole "exemplar" such as *Mid-State*. *See McLeod v. Starnes*, 396 S.C. 647, 654, 723 S.E.2d 198, 203 (2012) ("[S]tare decisis is far more a respect for a body of decisions as opposed to a single case standing alone.").

For all of these reasons, the Court should hold that the Court of Appeals erred in dismissing the case for lack of immediate appealability.

II. In dismissing the appeal, the Court of Appeals erred by failing to reverse the trial court's failure to dismiss the case for lack of personal jurisdiction.

Personal jurisdiction is exercised as "general jurisdiction" or "specific jurisdiction." *Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Here, only specific jurisdiction is at issue because, as the circuit court observed, "Plaintiff did not dispute [LG Chem's and LGCAI's] argument as to general jurisdiction." (R. 14; R. 22.)

A. The circuit court erred in failing to address that no specific jurisdiction can exist in this case because South Carolina's long-arm statute was not satisfied.

Specific jurisdiction allows the court to exercise personal jurisdiction over causes of action that relate specifically to a defendant's contacts with the forum. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. (citation omitted). At the pretrial stage, the plaintiff has the burden of proving personal jurisdiction over a nonresident by a prima facie showing of jurisdiction. *Id.*

To meet his burden, Respondent must establish both that the long-arm statute is satisfied and that constitutional due process is satisfied. South Carolina's long-arm statute requires a finding that the plaintiff's claims arise from the defendant's activities. *See* S.C. Code Ann. § 36-2-803(A)(4); *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, the uncontroverted evidence showed no connection between Respondent's claim and any alleged activity Petitioners took in this state, and Respondent did not, and cannot, establish that his claim arose from an enumerated act (by either Petitioner) in the long-arm statute.[2]

B. The circuit court erred in finding that Respondent had established a prima facie showing of specific jurisdiction over LG Chem and LGCAI.

Under South Carolina law, "[t]he determination of whether the requirements of due process are satisfied involves a two-prong analysis: (1) the 'power' prong, in which minimum contacts provide courts the 'power' to adjudicate the action; and (2) the 'fairness' prong, which requires the exercise of jurisdiction to be 'reasonable' or 'fair.' " *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

[2] The two cases that the circuit court cited in its March 19, 2021 Orders to support its finding are inapplicable: the 37-year-old *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984), interpreting the Maryland long-arm statute, does not apply here, and *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 335, 594 S.E.2d 878, 886—in which the defendant admitted that it sold 25 copies of the book at issue in South Carolina and its employees distributed its books widely in this state—is materially distinguishable.

To meet the power prong, the suit must arise out of or relate to the defendant's contacts with the forum. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–94, 611 S.E.2d 505, 509–10 (2005); *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1025 (2021); *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011). Specifically, the court must "find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131; *see also Ford*, 141 S. Ct. at 1025. Specific personal jurisdiction cannot exist if the cause of action is unrelated to the defendant's contacts with the forum. *Id.*

The circuit court concluded that Respondent satisfied his burden of establishing jurisdiction based on the sole conclusory allegation in his complaint that Petitioners had "continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state." (R. 15-16; R. 23-24.) Alternatively, the circuit court concluded that entries on an unauthenticated and inadmissible spreadsheet showed that LG Chem and LGCAI shipped other products into South Carolina ports and that this was sufficient to support Respondent's burden. (R. 17; R. 25.)

These conclusions are directly at odds with controlling U.S. Supreme Court authorities and, if the extent the circuit court correctly concluded that *Sumatra* supported this result, then *Sumatra* is inconsistent with controlling U.S. Supreme Court precedent and should be overruled.

1. Petitioners' Motions to Dismiss should have been granted because Respondent's claims do not "arise out of or relate to" any conduct Petitioners directed to South Carolina.

Petitioners submitted admissible evidence to show that neither had any suit-related contacts with South Carolina. Specifically, neither entity designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for use by individual consumers as standalone, replaceable batteries in electronic cigarette devices. (R. 111; R. 291).) Neither entity ever conducted any business with Rolling Fog (the retailer where Respondent alleges he purchased the subject battery at issue in this case) and did not direct or control its actions. (*Id*.) Neither entity ever authorized Rolling Fog, or anyone else, to advertise, distribute, or sell LG 18650 lithium ion cells for use by individual consumers as standalone, replaceable batteries in e-cigarette devices or for any other purpose. (*Id*.)

Even taken as true, the allegations of Respondent's complaint, and the additional, inadmissible facts set forth in Respondent's unauthenticated spreadsheet, at best showed that Petitioners engaged in unrelated business activities in South Carolina. In *Bristol-Myers*, the U.S. Supreme Court expressly held that specific jurisdiction could not be based on the defendant's unrelated business activities in the state, no matter how extensive.[3] In so doing, the Supreme Court expressly rejected the California Supreme Court's "sliding scale" approach to specific jurisdiction. *Bristol-Myers*, 137 S. Ct. at 1778. Under that approach, California had allowed a weaker connection between the defendant's activities and the claims at issue when the defendant had other, unrelated contacts with the forum. Rejecting this approach, the U.S. Supreme Court emphasized the importance of the connection between the defendant's in-state activities and the claims at

[3] In *Bristol-Myers*, the plaintiffs alleged that they were injured by a pharmaceutical product, Plavix. Bristol-Myers had sold almost 187 million Plavix pills in the state, through an in-state distributor, and took in more than $900 million from those sales between 2006 and 2012. 137 S. Ct. at 1778. Additionally, in California the company owned five research and laboratory facilities, employing a total of approximately 160 employees; employed about 250 sales representatives; and maintained a state-government advocacy office—all involving the very same product at issue—the drug Plavix. *Id.* Despite all these contacts with the state, including the defendant's sale to others of the same product at issue, the Court found that the plaintiffs' claims against the company were not connected to those contacts.

issue—regardless of any in-state activities unrelated to those claims, no matter how extensive. *Id*. at 1781.

Additionally, in its most recent pronouncement on specific jurisdiction, the U.S. Supreme Court again reiterated in *Ford*, that specific jurisdiction must be determined based on the contacts the defendant itself formed with the forum state—not contacts formed by others, as is the case here.[4] Although the Supreme Court rejected Ford's argument that a strict causal link was required to satisfy the relatedness element of the specific jurisdiction test, the Court nevertheless reiterated that its decision should not be interpreted to mean that "anything goes when it comes to the relatedness standard." Instead, the relatedness element "incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Id*. at 1026.

In *Ford*, although Ford did not bring the specific vehicles to the forum states, Ford itself engaged in extensive and wide-ranging activities in the forum state in furtherance of its undisputed intention to serve a consumer market for the very same type of vehicles at issue. It was Ford, not unauthorized third parties, that supplied consumers in Minnesota and Montana with Ford vehicles; it was Ford that advertised those vehicles to in-state consumers on TV and billboards and by "every means imaginable"; and it was Ford that licensed dealers to sell, maintain, and repair Ford cars in Minnesota and Montana. *Ford*, 141 S. Ct. at 1028. In fact, the Court found that Ford had "a veritable truckload" of relevant, suit-related contacts with the forum States. *Id.* at 1031.

[4] In *Ford*, which consolidated two cases that originated in Montana and Minnesota state courts, the Supreme Court found that those two states had properly exercised personal jurisdiction over Ford in cases in which a consumer plaintiff asserted product liability claims against the company based on use of a Ford vehicle that had arrived in the forum state (where the accident occurred) as the result of consumer relocations and resales, and was not designed, manufactured, or sold in the forum by Ford.

By contrast, here, neither LG Chem nor LGCAI had a single suit-related contact with the forum state. Both introduced admissible evidence—that Plaintiff did not rebut—showing that neither supplied 18650 lithium ion cells to a consumer market in South Carolina (or anywhere in the U.S.) for standalone, replaceable 18650 lithium ion batteries. Here, it was unauthorized third parties—not LG Chem or LGCAI—that supplied consumers in South Carolina with 18650 lithium ion cells sold as standalone batteries through retail stores that had no connection to either LG Chem or LGCAI. No retailers or dealers supplying LG 18650 lithium ion cells to consumers as standalone batteries were authorized by LG Chem or LGCAI to do so. LG Chem or LGCAI did not "urge" consumers—on TV or billboards or other advertisements—to purchase 18650 lithium ion cells as standalone batteries for any purpose. Any connections that exist between South Carolina and this lawsuit were formed entirely by Respondent and other third parties, none by LG Chem or LGCAI. *See Wallace v. Yamaha Motors Corp, U.S.A*., No. 19-2459, 2022 WL 61430, at *1 (4th Cir. Jan. 6, 2022); *Santiago v. Venezio*, No. 9:21-CV-158-MBS, 2021 WL 1791500, at *5 (D.S.C. May 5, 2021) (quoting *Ford* for the principle that the contacts necessary for a finding of specific jurisdiction "must be the defendant's own choice" and the claims at issue must "arise out of or relate to the defendant's contacts" with the forum."*)* (citations omitted).

Here, there was nothing in the record to support a finding that Respondent had met his burden of showing Petitioners had sufficient suit-related minimum contacts with South Carolina to satisfy due process, and the motions to dismiss should have been granted.

2. The circuit court erred by applying a 2008 decision in a way that conflicts with more recent cases reaffirming the necessity of showing that the defendant itself formed a suit-related connection with the forum state.

This Court addressed the "stream of commerce" theory of jurisdiction most recently in *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), nearly fourteen

years ago. There, the Court held that a foreign tobacco manufacturer was subject to personal jurisdiction in South Carolina based on its analysis that the foreign defendant purposefully availed itself of the privilege of doing business in each of the fifty U.S. States, including South Carolina.

Since *Sumatra* was decided in 2008—in addition to *J. McIntyre*, *Bristol-Myers*, and *Ford*—the United States Supreme Court has spoken several times on issues of personal jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Taken together, these cases reinforce the two principles that should have guided the circuit court's decision: (1) a non-resident defendant cannot be subject to personal jurisdiction in a state based on the unilateral actions of third parties, and (2) the exercise of specific jurisdiction requires a plaintiff to establish that his claims are sufficiently related to minimum contacts formed by the defendant with the forum state to satisfy due process.

Further, the U.S. Supreme Court rejected "nationwide" stream of commerce jurisdiction in *J. McIntyre*, decided three years after *Sumatra*. Indeed, the argument advanced by Respondent—that, irrespective of how a product arrived in the state, specific jurisdiction exists in every state when a manufacturer allegedly targets the United States as a whole—is precisely the argument that the New Jersey Supreme Court accepted in *Nicastro v. McIntyre Machinery America, Ltd.*, 987 A.2d 575, 592 (N.J. 2010), which the U.S. Supreme Court later reversed. Notably, in reaching its conclusion, the New Jersey Supreme had cited to this Court's opinion in *Sumatra* in support. 987 A.2d at 588, n.1.

This Court's decision in *Sumatra* has not been reviewed since the United States Supreme Court's clarifying pronouncements in *J. McIntyre* (in 2011), *Bristol-Myers* (in 2017), and *Ford*

(2021).[5] Here, the circuit court interpreted *Sumatra* to allow the exercise of personal jurisdiction based on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina. If that is the meaning of *Sumatra*, it is inconsistent with the United States Supreme Court's decisions.

Moreover, the circuit court's reliance on *Sumatra* failed to account for the factual dissimilarities between that decision and this case, and the circuit court erred in finding that *Sumatra* required him to deny Petitioners' motions. (R. 18; R. 26.) In *Sumatra*, this Court recognized that "[t]he question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." 379 S.C. at 88.

Sumatra is distinguishable because in this case, it is uncontroverted that the subject product arrived in South Carolina through the unilateral actions of third parties, not as the result of or related to any action of LG Chem or LGCAI directed to South Carolina. The "stream of commerce" metaphor, even if applied broadly, is not a substitute for establishing the constitutionally required connection among the non-resident defendant, the forum, and the plaintiff's claims. In *Sumatra*, unlike here, the Court found that the defendant admitted to taking actions to purposefully avail itself of a consumer market for its cigarettes in all 50 U.S. states. 379 S.C. at 223. No such facts exist here.

Here, by contrast, the facts are more similar to *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005). *Cockrell* held that our state courts lacked specific personal jurisdiction over a Massachusetts baseball center and its director, which had certified aluminum baseball bats that

[5] *Ford* was issued on March 25, 2021, and LG Chem and LGCAI included a discussion of the case in their Motions to Reconsider, filed March 29, 2021. (R.1101, 1109-1111; R. 1124, 1125, 1132, 1133.) The circuit court's Form 4 Order was filed on April 21, 2021 and did not address any arguments in the motions to reconsider and, instead, stated only that the motions were denied "for the reasons stated by the Court in its prior orders." (R.29-31.)

caused injury in South Carolina. The bats did not arrive in South Carolina through the non-resident defendants' efforts, but instead through the unilateral efforts of third parties. *Id.* at 492, 611 S.E.2d at 508–09; *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). Similar to *Cockrell*, the 18650 battery arrived in South Carolina as the result of the unilateral actions of third parties and not as the result of or related to any conduct by LG Chem or LGCAI directed to South Carolina.

Numerous other state and federal appellate courts have concluded that due process is not satisfied by allegations that LG Chem placed its product into the stream of commerce with the "expectation" or "awareness" that it might be sold or used in the forum state.[6] This is because, as this Court recognized in *Sumatra*, personal jurisdiction cannot be based on a defendant's knowledge or expectations; rather, the exercise of personal jurisdiction depends on the defendant's own actions. "[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Helicopteros,* 466 U.S. at 417. The "defendant's conduct [ ] must form the necessary connection with the forum State that is the

[6] *Miller v. LG Chem, Ltd*., 2022-NCCOA-55, 868 S.E.2d 896 (N.C. Ct. App. Feb. 1, 2022), *petition for review filed*; *Kadow v. LG Chem, Ltd*., No. B309854, 2021 WL 5935657, at *7–8 (Cal. Ct. App. Dec. 16, 2021), *review denied* (Mar. 30, 2022); *LG Chem, Ltd. v. Turner*, No. 14-19-00326-CV, 2021 WL 2154075, at *5 (Tex. App. May 27, 2021); *LG Chem, Ltd. v. Granger*, No. 14-19-00814-CV, 2021 WL 2153761, at *5 (Tex. App. May 27, 2021); *State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020) (en banc); *Walsh v. LG Chem, Ltd*., 834 Fed. App'x 310 (9th Cir. Nov. 2, 2020); *Eriksen v. ECX, LLC*, 15 Wash. App. 2d 1001, 2020 WL 6395534 (Ct. App. Wash. Nov. 2, 2020); *Schexnider v. E-Cig Central, LLC*, No. 06-20-00003, 2020 WL 6929872 (Tex. Ct. App. Nov. 25, 2020), *reh'g denied* (Dec. 15, 2020); *see also*, *Davis v. LG Chem, Ltd. and Fullerton v. LG Chem, Ltd.*, Case Nos. 20-13837 and 20-13838 (consolidated), 2020 WL 981418 (11th Cir. March 16, 2021) (affirming orders dismissing LG Chem for lack of personal jurisdiction from similar suit in Georgia based on failure to satisfy Georgia long-arm statute); *Durham v. LG Chem, Ltd*., No. 21-11814, 2022 WL 274498, at *1 (11th Cir. Jan. 31, 2022) (same); *Cf. LG Chem America, Inc. v. Morgan*, No. 01-19-00665-CV, 2020 WL 7349483 (Tex.App.-Hous. (1 Dist.), Dec. 15, 2020) *petition for review filed* (Feb 11, 2022) (affirming order denying LG Chem's and LGCAI's special appearances).

basis for its jurisdiction over him." *Walden v. Fiore*, 571 U.S. 277, 285 (2014); *see also Cockrell*, 363 S.C. at 491–92, 611 S.E.2d at 508 ("[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents' efforts."); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 334, 594 S.E.2d 878, 885 (Ct. App. 2004) ("The fruits of [defendant's] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.").

3. The circuit court erred in finding that Respondent met his burden simply by making conclusory allegations that Petitioners placed "products" into the stream of commerce and expected those products to arrive in South Carolina.

The circuit court found that the following conclusory allegations in the complaint—completely devoid of supporting facts—were sufficient to meet Respondent's burden:

> [LG Chem and LGCAI have] continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(R. 15-16; R. 23-24.) In so ruling, the circuit court contradicted settled precedent that requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008). In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Paragraph 7 of Respondent's complaint:

> [E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

Id. at 148, 723 S.E.2d at 835.

The South Carolina Court of Appeals held that, even with a liberal construction of the statute and the complaint, the plaintiff had "failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina." *Id.* at 151, 723 S.E.2d at 839 (emphasis added). Here, as in *Sullivan*, merely alleging general legal conclusions, without alleging a single fact to support the conclusions, requires the circuit court to grant a Rule 12(b)(2) motion. *Id.*

Further, the complaint does not allege any connection between Respondent's claims and any action allegedly directed by LG Chem or LGCAI to South Carolina specifically, as required by constitutional due process. Therefore, the complaint itself is insufficient to meet Respondent's prima facie burden.

4. The circuit court erred in finding that Respondent met his burden based on his inadmissible and irrelevant exhibit of dissimilar imports.

Outside of his insufficiently pleaded complaint, Respondent submitted an unauthenticated chart, of unknown origin, which was attached as an exhibit to his opposition to Petitioners' motions to dismiss. The chart purported to show that LG Chem imported automobile batteries to car manufacturers in South Carolina and purported to show that LGCAI imported petrochemicals through South Carolina ports. In addition to being inadmissible under Rules 801(c) and 901 of the South Carolina Rules of Evidence, the chart did not support a finding that either of the Petitioners engaged in any suit-related activities in South Carolina. Instead, even if it were accurate and admissible, at most, the chart suggested that Petitioner LG Chem had shipped a different product (automotive batteries) to a car manufacturer in Charleston and that Petitioner LGCAI had imported

raw petrochemicals through Charleston. These activities have nothing to do with Plaintiff's claims for alleged injury from use of a 18650 lithium-ion cell as a standalone battery.[7]

Regardless of whether raw chemicals, automotive batteries, or even LG 18650 lithium ion cells were shipped to South Carolina (which were not on Respondent's chart and were not alleged in the complaint to have been shipped by either Respondent to South Carolina specifically), Respondent still failed to make any connection between those alleged shipments and his claims against LG Chem and LGCAI. Therefore, the circuit court judge erred by finding this chart supported the exercise of specific jurisdiction.

D. The circuit court erred in finding that the fairness prong was satisfied.

The circuit court's conclusion that the fairness prong was satisfied was erroneous for two reasons. First, the circuit court should not have addressed the fairness prong because Respondent did not meet his burden of proof for either general or specific jurisdiction:

> [E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Bristol-Myers, 137 S. Ct. at 1780–81 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 276, 294 (1980)). Further, due process "protects the defendant against the burdens of litigating in a distant or inconvenient forum." *World–Wide Volkswagen*, 444 U.S. at 291–92.

In addition, the circuit court's decision on the fairness prong addressed only one of the factors required under *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423

[7] First, Respondent presented the chart to the first circuit court judge, who concluded the information was insufficient to determine the issue of jurisdiction. (R. 164; R. 321; R. 1; R. 5; R. 9.) Then, Respondent presented the same chart to the second circuit court judge, who concluded Plaintiff had made his prima facie case. (R. 463; R. 805; R. 17; R. 25.)

S.E.2d 128 (1992),[8] and the decision was based on evidence that is irrelevant to the fairness factors, such as Petitioners' having defended other cases involving similar claims and three other courts in this state having found personal jurisdiction over this defendant (and ignoring the prior circuit court's order in this case and the numerous cases in which courts across the country have recognized that LG Chem and LGCAI are not subject to specific jurisdiction in other forums based on similar claims and allegations).

E. The circuit court erred by impermissibly overruling a prior circuit court's decision regarding a prima facie showing of jurisdiction over LG Chem and LGCAI.

"There is a long-standing rule in this State that one judge of the same court cannot overrule another." *See Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995); *Tisdale v. Am. Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949); *see also Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003); *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324, 329 (1880) (stating the principles underlying this rule).

Here, the circuit court incorrectly stated that the order of the Honorable J. Cordell Maddox, Jr. "declin[ed] to decide" the issue of personal jurisdiction. (R. 18; R. 26.) However, Judge Maddox's order made an affirmative decision that Respondent had not submitted enough information for the court to base a decision on personal jurisdiction. ("This lack of information still remains an issue that prevents a decision on personal jurisdiction." (R. 9.)) Judge Maddox had provided Respondent with the opportunity to conduct jurisdictional discovery in order to obtain

[8] Specifically, the fairness factors "the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies." *S. Plastics*, 310 S.C. at 263, 423 S.E.2d at 132 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

that information. Because Respondent bears the burden of proof regarding personal jurisdiction, the determination of insufficiency of information by Judge Maddox necessarily meant that if Respondent failed to obtain any additional information, he would fail in his burden of proving personal jurisdiction. Specifically, Judge Maddox's Order stated as follows:

> As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information remains an issue that prevents a decision on personal jurisdiction.

(Order dated 7/20/2020 (emphasis added) (R. 9)). By way of clarification, Judge Maddox expressly agreed with LG Chem and LGCAI that he had found Respondent's allegations and the facts presented to him insufficient on the issue of personal jurisdiction, and that his Order was only to allow Respondent the opportunity to conduct jurisdictional discovery instead of outright dismissal.

The matter came on for hearing before a second circuit court judge on February 1, 2021, at which time Respondent stated that he had no further facts to submit, that he waived jurisdictional discovery, and that he wanted the Court to render its decision based only on the same record that had been presented to Judge Maddox. Based on that record, Judge McKinnon should have granted the motions to dismiss because Judge Maddox already concluded (correctly so) that Respondent had not supported his burden of proof on jurisdiction. The second circuit court judge's determination that Respondent had met his burden of proof—based on the exact same facts (including the same allegations and the same inadmissible import data chart) that had been presented to Judge Maddox—is a direct reversal of a previous court's decision. This was error, and the circuit court was not empowered to reverse Judge Maddox.

F. The circuit court erred in finding that service of process was valid for failure to serve LG Chem through the Hague Convention.

The circuit court incorrectly found that service on LG Chem was valid through service on the South Carolina Secretary of State under South Carolina Code § 15-9-245.[9] (R. 1); *see also* R. 45.) However, because LG Chem is a foreign company, Respondent was required to serve it through the Hague Service Convention. His failure to do so renders service invalid as a matter of law. This Court recently amended Rule 4 of the South Carolina Rules of Civil Procedure and added a new Rule 4.1, titled "Service of Process in Foreign Countries," which "is intended to provide guidance as to **the proper methods of service and proof of service in foreign countries**." Rule 4.1(d) & Reporter's Note (emphasis added). Rule 4.1 states, in pertinent part, that a foreign corporation may be served in any manner prescribed in Rule 4.1(a) for serving a foreign individual:

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, *such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents*; . . .
> (3) by other means *not prohibited by international agreement*, *as the court orders*.

Rule 4.1(a), (d), SCRCP (emphasis added).

"The Hague Service Convention is an international treaty that **pre-empts inconsistent methods of service prescribed by state law in all cases** where service abroad is required." *Bakala v. Bakala*, 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988) (emphasis added). Both South Korea and the United States are signatories to the Hague Convention. *See* https://www.hcch.net/en/states/hcch-members/details1/?sid=48; *see also Boone-Coleman v. SCA, Inc.*, No. 3:18-CV-776-ECM, 2019 WL 5295567, at *3 (M.D. Ala. Oct. 18, 2019).

[9] Section 15-9-245 itself states that this code section does not prescribe the "necessarily required means" of serving a foreign business not authorized to do business in this State. S.C. Code Ann. § 15-9-245(f).

By virtue of the Supremacy Clause, the Hague Convention applies "**in all cases,** in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." 20 U.S.T. 361, art. 1 (emphasis added); *accord Bakala v. Bakala,* 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) ("The Hague Service Convention is an international treaty that pre-empts inconsistent methods of service prescribed by state law in all cases where service abroad is required."). Here, even if § 15-9-245 were otherwise allowed, the statute itself requires the Secretary of State to transmit the pleadings to LG Chem in Korea, thus triggering compliance with the Hague Convention.[10]

The Hague Convention requires that each country establish a central authority to receive requests for service from other countries, serve the documents, and provide certificates of service. *See id.* at Arts. 2–6. A country may consent to foreign methods of service other than a request to its central authority, if it affirmatively chooses not to object to article 10. *Id.* at Art. 10(a); *accord Bakala*, 352 S.C. at 626, 576 S.E.2d at 163. Accordingly, service abroad by mail is only permissible if the receiving country has not lodged an objection to Article 10. *Id.*, 352 S.C. at 626.

South Korea objected to article 10 of the Hague Service Convention and does not permit the sending of judicial documents by postal channels directly to persons abroad. *See Boone-Coleman*, 2019 WL 5295567, at *3 ("South Korea's express opposition to Article 10(a) makes the Respondent's attempt to serve Defendant Kim by mail insufficient."); *Monagas v. Samsung Elecs. Am., Inc.*, No. 3:13CV927 MPS, 2013 WL 5970977, at *2 (D. Conn. Nov. 8, 2013) (granting

[10] "Service of the process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. **The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order**." S.C. Code Ann. § 15-9-245 (emphasis added)

motion to dismiss attempted mail service on South Korean company because it violated the Hague Service Convention). Accordingly, South Korean residents, including LG Chem, may only be serviced through South Korea's designated Central Authority. Respondent's failure to comply with the requirements of the Hague Convention rendered Respondent's attempted service invalid, and Respondent never corrected his failure to effect service through the Hague Convention.

Because Respondent's attempted service on LG Chem was invalid as a matter of law, the court never acquired personal jurisdiction of this defendant, even if constitutional due process was satisfied (and it was not). Accordingly, the court should have quashed Respondent's attempted service of process on LG Chem and dismissed it from this action.

CONCLUSION

This Court should grant the Petition for Writ of Certiorari to review the Court of Appeals' orders dismissing LG Chem's and LGCAI's appeal based on lack of immediate appealability and its failure to review and reverse the lower court orders.

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