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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2022-000853

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

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

FINAL BRIEF OF PETITIONERS LG CHEM, LTD. AND LG CHEM AMERICA, INC.

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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 writ proceeding, Petitioners LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") seek review of the circuit court's orders denying their motions to dismiss.

On March 4, 2019, Respondent Dwayne Thompson filed a complaint against LG Chem, LGCAI, and Defendant Rolling Fog Vapor Company ("Rolling Fog"). (Appx. 00036-44.) Respondent alleged that he was injured when a 18650 lithium-ion battery he allegedly purchased from Rolling Fog as a standalone power source for his e-cigarette device allegedly exploded in his pocket. (Appx. 00045.)

On April 11, 2019, Respondent filed a Certificate of Service, asserting that service of the Summons and Complaint was effected on LG Chem through the South Carolina Secretary of State's Office on March 22, 2019, by certified mail. (Appx. 00045.)

On April 24, 2019, Petitioners LG Chem and LGCAI both filed motions to dismiss, supported by the Affidavits of Sung Han Ryu (LG Chem) and HyunSoo Kim (LGCAI). (Appx. 00104-00114, 00286-00292.) By its motion, LG Chem sought dismissal based upon both lack of personal jurisdiction and insufficient service of process. By its motion, LGCAI sought dismissal based upon lack of personal jurisdiction. LG Chem and LGCAI each filed memoranda in support of their motions to dismiss on September 18, 2019. (Appx. 00114-00127, 00298-00301.)

On September 20, 2019, Plaintiff filed an opposition brief with exhibits in response to both motions. (Appx. 00138-00295, 00310-00377.) The circuit court (the Honorable J. Cordell Maddox, Jr.) conducted a hearing on both motions on September 23, 2019. (Appx. 00046-00058.) Judge Maddox ruled from the bench, stating in his oral ruling that "I think factually, there's not enough information to grant or deny at this point." (Appx. 00057.)

Following the September 23, 2019 hearing, Respondent submitted proposed written orders (Appx. 000394-000395), which Judge Maddox signed and entered on December 6, 2019 (LG Chem) and December 23, 2019 (LGCAI), denying both motions to dismiss. (Appx. 00001-00004, 0005-0006.) Respondent and Petitioners disagreed as to the meaning of the orders regarding whether the case should proceed with discovery on the merits, and Petitioners jointly filed a Motion for Clarification or, Alternatively, for Reconsideration on December 16, 2019. (Appx. 00390-00393.) On May 4, 2020, Respondent filed a memorandum in opposition. (Appx. 00384-00389.) Judge Maddox entered his Order granting the Motion for Clarification and denying the Motion for Reconsideration on July 20, 2020. (Appx. 00007-00010.) The July 20, 2020 Order stated that discovery was for 90 days and limited to the issues of "whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem's and LGCAI's jurisdictional contacts with South Carolina. (*Id.* at Appx. 00010.)

Respondent served discovery on LG Chem. LG Chem answered in part, objected in part, and filed a motion for protective order on its objections. Respondent did not serve discovery on LGCAI. After the 90 days elapsed, LG Chem and LGCAI filed renewed motions to dismiss for lack of personal jurisdiction with memoranda and exhibits in support. (Appx. 00436, 00787.)

On January 28, 2021, Respondent filed its memorandum and exhibits in opposition to LG Chem's renewed motion to dismiss. (Appx. 000442.) On February 1, 2021, LG Chem filed its reply

memorandum and exhibits in further support of its renewed motion to dismiss. (Appx. 00529.) Respondent did not file an opposition to LG Chem's motion for protective order.

On January 29, 2021, Respondent filed its memorandum and exhibits in opposition to LGCAI's renewed motion to dismiss. (Appx. 00792.) On February 2, 2021, LGCAI filed its reply memorandum and exhibits. (Appx. 00879.)

The renewed motions to dismiss and LG Chem's motion for protective order came on for hearing before the Honorable William A. McKinnon on February 1, 2021. (Appx. 00059.) During the hearing, Respondent stated he was not seeking more time for jurisdictional discovery. (Appx. 00094.) Based on that representation, Judge McKinnon concluded that LG Chem's motion for protective order on the scope of jurisdictional discovery was moot. (*Id*.) After oral argument, Judge McKinnon directed Respondent's counsel to prepare proposed orders denying LG Chem's and LGCAI's renewed motions to dismiss, which they did. (Appx 01036, 00626-690, 00951-01025.)

On March 2, 2021, LG Chem and LGCAI each filed Objections to Respondent's Proposed Orders. (Appx. 00691-00786, 01026-01059.)

On March 19, 2021, Judge McKinnon entered his Orders denying LG Chem's and LGCAI's renewed motions to dismiss. (Appx. 00012, 00020.) On March 25, 2021, the U.S. Supreme Court issued its decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1025 (2021). On March 29, 2021, LG Chem and LGCAI each filed Motions to Reconsider (March 19, 2021) Orders denying their renewed motions to dismiss. (Appx. 01100, 01123.) On April 21, 2021, Judge McKinnon denied the Motions to Reconsider in a Form 4 Order. (Appx. 00029.)

On May 19, 2021, LG Chem and LGCAI filed a Notice of Appeal. (Appx. 01237-01241.) On July 9, 2021, the Court of Appeals issued a letter requesting a memorandum addressing

appealability. (Appx. 01262.) On July 19, 2021, LG Chem and LGCAI filed their Memorandum in Support of Immediate Appealability. (Appx. 01145.)

On March 10, 2022, the Court of Appeals dismissed LG Chem's and LGCAI's appeal. (Appx. 00032.) On March 25, 2022, LG Chem and LGCAI filed a Petition for Rehearing. (Appx. 01265.) The Court of Appeals denied the petition on May 19, 2022. (Appx. 00034.)

On June 20, 2022, LG Chem and LGCAI filed their Petition for Writ of Certiorari. Respondent filed a Return to Petition for Writ of Certiorari on July 29, 2022. LG Chem and LGCAI filed a Reply in further support of their Petition on August 8, 2022.

On March 7, 2023, this Court granted LG Chem and LGCAI's Petition for Writ of Certiorari.

STATEMENT OF FACTS

A. Respondent's claims.

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. (Appx. 00038-00039.) 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 (*Id.*) and that LG Chem and LGCAI designed, manufactured, supplied, sold, imported, and distributed the subject battery (*Id.*)

B. LG Chem's motion to dismiss.

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. Respondent acknowledged this fact and conceded that general jurisdiction was not at issue. (Appx. 000014, 00038.) Respondent attempted service of the Summons and Complaint on LG Chem by certified mail through the South Carolina Secretary of State. (Appx. 00045.)

LG Chem's motion to dismiss was supported by admissible evidence, through the Affidavit of Sung Han Ryu, showing that LG Chem was not served through the Hague Convention and that LG Chem did not serve a consumer market in South Carolina (or anywhere else) for standalone, replaceable 18650 batteries. (Appx. 00109-00113.) LG Chem did not design, manufacture, distribute, advertise, or sell 18650 lithium-ion battery cells for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices. (*Id*., at 00011.) LG Chem did not conduct business with the retail vape store that allegedly sold the subject battery cell to a South Carolina consumer as a standalone battery, did not direct or control its actions, and never authorized the vape store, or anyone else, to advertise, distribute, or sell 18650 lithium-ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id*.)

In opposition to LG Chem's renewed motion to dismiss, Respondent filed the same unauthenticated import chart he had previously submitted in opposition to LG Chem's original motion to dismiss to show that LG Chem had transacted business in South Carolina by using the Port of Charleston to ship products into the state. The import charts did not contain entries reflecting shipment by LG Chem of the same type of product (18650 lithium-ion battery cells) to vape stores or consumers in South Carolina.

C. LGCAI's motion to dismiss

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.

LGCAI's motion to dismiss was supported by admissible evidence, through the Affidavit of HyunSoo Kim, showing that LGCAI is incorporated in Delaware and has its principal place of business in Georgia, that LGCAI could not have manufactured the battery because LGCAI does not manufacture any products, and that LGCAI did not serve a consumer market in South Carolina

(or anywhere else) for standalone, replaceable 18650 batteries. (Appx, 000290-00292.) LGCAI dd not conduct any business with the retail vape store that allegedly sold the subject battery cell to a South Carolina consumer as a standalone battery, did not direct or control its actions, and never authorized the vape store, or anyone else, to advertise, distribute, or sell 18650 lithium-ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id.* at 000291.)

In opposition to LGCAI's renewed motion to dismiss, Respondent filed the same unauthenticated import chart he had previously submitted in opposition to LGCAI's original motion to dismiss to show that LGCAI had transacted business in South Carolina by using the Port of Charleston to ship products into the state. Respondent also submitted a copy of LGCAI's registration to do business. The import charts did not contain entries reflecting shipment by LGCAI of the same type of product (18650 lithium-ion battery cells) to vape stores or consumers in South Carolina.

Standard of Review

Appealability under S.C. Code Ann. § 14-3-330(2) is a question of law which the Court decides *de novo*. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (de novo standard applies to questions of law); *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011) (questions of statutory interpretation are questions of law).

"The question of personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law. *Id.*; *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016). Errors of law are reviewed *de novo*.

ARGUMENT

In this products liability action, Respondent Dwayne Thompson seeks recovery for injuries allegedly sustained when a 18650 lithium-ion battery he allegedly purchased from Rolling Fog Vapor as a standalone power source for his e-cigarette device allegedly exploded in his pocket.

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.

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. 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 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).

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.

An immediate appellate remedy is necessary to safeguard the important constitutional rights at issue. Reversal on appeal after requiring Petitioners to go through a trial is not an adequate

remedy for deprivation of the substantial right to constitutional due process, particularly when the circuit court's decision was not supported by admissible evidence of constitutionally sufficient minimum contacts. The constitutional guarantee of due process is all but meaningless if it can be defeated by conclusory allegations that a defendant expected its products to reach the state.

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 and the decision of the circuit court reversed.

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. Interlocutory appeals are available when the order at issue affects a "substantial right."

"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).

The availability of eventual appeal after trial is not dispositive of the issue of immediate appealability. For example, in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court found that an order disqualifying a party's counsel of their choice was an immediately appealable order. The respondent there argued any error could be corrected on appeal after final judgment. Yet the Supreme Court, looking to the reasoning of courts in other jurisdictions concerning the appealability of such an order, held that the order affected a substantial

right and should be immediately appealable, even though appeal after final judgment would be available. *Id.* at 197, 607 S.E.2d at 710.

Other South Carolina appellate cases also have allowed immediate appealability for orders that affected substantial rights. *See, e.g.*, *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (finding that trial court erred by not allowing immediate appeal of an order denying a request for jury trial); *McLaughlin v. Strickland*, 279 S.C. 513, 516, 309 S.E.2d 787, 789–90 (Ct. App. 1983) (allowing immediate appeal of order denying father leave to withdraw his consent to adoption); *see also Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988) (pre-*Midstate* case, which was not specifically overturned, permitting interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction where the sufficiency of minimum contacts was at issue).

B. Denial of a motion to dismiss based on the sufficiency of constitutional due process affects a "substantial right" and *Mid-State* should be modified to the extent it may be construed to say otherwise.

Although the Court previously held in *Mid-State Distributors, 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.

Here—because of the substantial Due Process rights involved in requiring nonresident defendants to participate in the defense of a lawsuit when constitutional minimum contacts are lacking—this Court should make the same limited exception to the general rule barring immediate appeals of interlocutory orders.

C. As it has done in the past, this Court should look to North Carolina cases on immediate appealability.

South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable. *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 Constr. of Beaufort*, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions).

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). *See Bartlett v. Estate of Burke*, 877 S.E.2d 432 (N.C. Ct. App. 2022) (finding in a products liability case that denial of a motion to dismiss for lack of personal jurisdiction affected a substantial right and was immediately appealable as it involved a question of minimum contacts); *Hardee ex rel. White v. Lowe's Cos., Inc.*, 640 S.E.2d 445, at *2 (N.C. Ct. App. 2007) (table) ("[A] substantial right exists where the interlocutory order denying a motion to dismiss for lack of personal jurisdiction 'raises questions concerning due process and minimum contacts.' "); *Love v. Moore*, 305 N.C. 575, 581, 291 S.E.2d 141, 146 (1982) (finding that allowing immediate appeal

only for "minimum contacts" jurisdictional question "ensures that parties who have less than 'minimum contacts' in this state will never be forced to trial against their wishes" and thus protects foreign defendants' constitutional rights and promotes judicial economy). *Cf. Goldston v. American Motors Corp.*, 392 S.E.2d 735, 737–38 (N.C. 1990) (finding that interlocutory order disqualifying attorney involved a substantial right and was immediately appealable) (cited in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005)).

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.

D. The lack of available appellate remedies has led to a dearth of precedent to guide South Carolina's lower courts whereas the availability of appeal in North Carolina (and other states) has not plagued appellate courts with adverse effects.

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, Petitioners would be forced through the entirety of long and expensive litigation despite the absence of minimum contacts supporting personal jurisdiction. 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,[1] 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 based on 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, which is currently on appeal in the Court of Appeals 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.").

By contrast, other courts, such as North Carolina, have been allowing immediate appeal of these cases since at least the early 1980s and have not been overwhelmed with adverse effects, such as flooding the appellate courts with repetitive submission of settled issues of law and fact; delaying progress of the cases for several years; forcing trial courts to spend extra hours refamiliarizing themselves with the case and starting anew (which should not be an issue in South

[1] This Court has not addressed the constitutional sufficiency of minimum contacts for a personal jurisdiction analysis since *Sumatra* was decided in 2008.

Carolina state courts, where most cases are not assigned to particular judges for the duration of a case); and otherwise wasting judicial resources.

For all 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 in violation of due process.

"The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). [2] To meet his burden, Respondent must establish both that the long-arm statute and constitutional due process are satisfied.

A. The circuit court erred in finding that due process was satisfied by the exercise of personal 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).

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*

[2] 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." (Appx. 00014, 00022.)

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 over both Petitioners based on the 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." (Appx. 00015-00016, 00024.) 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. (Appx. 00017, 00025.)

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 formed any contacts with South Carolina that were related to Respondent's claims. 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. (Appx. 00111, 00291.) Neither entity conducted business with Rolling Fog (the retailer where Respondent

allegedly purchased the subject battery at issue in this case), did not direct or control its actions, and never 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*.)

Respondent did not introduce any contrary facts and asked the second circuit court judge (Judge McKinnon) to decide the motion on the basis of the allegations in his complaint and the additional, inadmissible facts set forth in Respondent's unauthenticated "import data" spreadsheet. Taken as true, these showed only 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 issue—regardless of any in-state activities unrelated to those claims, no matter how extensive. *Id*. at 1781.

[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.

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.[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.

No such facts are present here. By contrast, here, LG Chem and LGCAI both introduced admissible evidence—that Respondent did not rebut—showing that neither supplied 18650

[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.

lithium-ion cells to a 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. There were no retailers or dealers supplying LG 18650 lithium-ion cells to consumers as standalone batteries that were authorized by LG Chem or LGCAI. 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.

Accordingly, 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) (recognizing that "[t]he Supreme Court has made clear that the exercise of specific jurisdiction in a products liability case requires a stronger connection than simply doing business in a state."; *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).

2. <u>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.</u>

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), almost sixteen 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 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 Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017); and *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1025 (2021). 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.

Since *Sumatra* was decided in 2008—in addition to *J. McIntyre*, *Bristol-Myers*, and *Ford*—the United States Supreme Court has also addressed issues of personal jurisdiction in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); and *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. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011). 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 denial of Petitioners' motions. (Appx. 00018, 00026.) 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." *Sumatra*, 379 S.C. at 88, 666 S.E.2d at 221.

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

[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. (Appx. 01101, 01110, 01124, 01131-01132.) 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." (Appx. 00029-00031.)

connection among the non-resident defendant, the forum, and the plaintiff's claims, which is missing here. 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. *Id.* at 90, 666 S.E.2d at 223. No such facts exist here.

The facts here 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 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 at issue in this suit arrived in South Carolina for sale to a consumer as a standalone battery solely through the unilateral actions of third parties.

Numerous other state and federal appellate courts – including the Court of Appeals of North Carolina and the Ninth Circuit Court of Appeals – have concluded that due process is not satisfied based solely on allegations that LG Chem placed a product into the stream of commerce with the "expectation" or "awareness" that it might be sold or used in the forum state.[6]

[6] *Grizzard v. LG Chem Ltd.*, No. 2:21CV469, 2022 WL 17076706, at *7 (E.D. Va. Nov. 18, 2022); *Straight v. LG Chem, Ltd.*, No. 2:20-CV-6551, 2022 WL 16836722, at *8 (S.D. Ohio Nov. 9, 2022); *Yamashita v. LG Chem, Ltd*., 62. F.4th 496 (9th Cir. 2023); *Matter of Am. River Transportation Co., LLC*, No. CV 18-2186, 2022 WL 17325899 (E.D. La. Nov. 29, 2022); *Miller v. LG Chem, Ltd*., 2022-NCCOA-55, 868 S.E.2d 896 (N.C. Ct. App. Feb. 1, 2022) (oral argument on petition for review scheduled for April 25, 2023); *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,

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 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 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

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); *But see, LG Chem America, Inc. v. Morgan*, No. 01-19-00665-CV, 2020 WL 7349483 (Tex. App.-Hous. (1 Dist.), Dec. 15, 2020) (affirming order denying LG Chem's and LGCAI's special appearances), *cert. granted* (oral argument presented on March 22, 2023); *Dilworth v. LG Chem, Ltd*., 355 So.3d 201 (Miss. 2022) (finding due process satisfied); *LG Chem, Ltd. v. Lemmerman*, 361 Ga. App. 163, 863 S.E.2d 514 (2021) (concluding that LG Chem had failed to carry its burden of proving the absence of specific jurisdiction in Georgia).

> selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(Appx. 00015-16, 00023-24.) 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). The same is true here. Rather than facts, the Complaint set forth boilerplate legal conclusions of contacts with the state, without any specific facts defining what those contacts supposedly were or how the contacts allegedly related to the claims at issue.

The circuit court erred by concluding that these boilerplate, generic allegations of nonspecific transaction of business could satisfy due process.

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 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 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 business activities in the state that were related in any way to Respondent's claims. Even if the chart were admissible, it showed only 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 that he bought from a vape store for use as a standalone battery.[7]

Without a constitutionally sufficient connection to Respondent's claims, allegations or evidence of shipment to South Carolina of raw chemicals, automotive batteries, or even LG 18650 lithium-ion cells to be packed in battery packs with protective circuitry, does not satisfy constitutional due process. Therefore, the circuit court judge erred by finding that Respondent had introduced admissible evidence supporting the exercise of specific jurisdiction.

[7] Respondent presented the exact same chart to both Judge Maddox and Judge McKinnon. Judge Maddox determined there was not enough information to decide whether minimum contacts existed. Judge McKinnon reached the opposite conclusion based on the same facts, after Respondent argued that he did not need more time to conduct discovery because his allegations and exhibits were enough to meet his burden.

B. 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 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 LG Chem or LGCAI.

C. The circuit court erred in failing to dismiss Petitioners based on failure to satisfy the long-arm statute.

Whereas constitutional due process requires a plaintiff to establish that his claims "arise out of or relate to" the defendant's contacts with the forum, South Carolina's long-arm requires a finding that the plaintiff's claims arise from the defendant's activities falling within the scope of

[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).

the long-arm statute. *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 circuit court found that South Carolina's long-arm statute was satisfied based upon *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (interpreting Maryland's long-arm statute) and *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 335, 594 S.E.2d 878, 886 (2004). *Moosally* involved causes of action for libel, false light privacy, and conspiracy based on a television program (*60 Minutes*) and a book (*A Glimpse of Hell*) describing an explosion on a battleship. The court evaluated the contacts of each defendant separately, finding personal jurisdiction lacking over two of the defendants (Meyer and Thompson) because they lacked specific contacts with South Carolina. The court specifically held that involvement in a national tv show airing in South Carolina was not sufficient. As to the third defendant (W.W. Norton), the court noted that this defendant answered jurisdictional discovery listing 315 South Carolina bookstores (including bookstores at educational institutions) where it sold books – including evidence that it sold at twenty-five copies of *A Glimpse of Hell* to South Carolina bookstores.

No such facts existed here. Rather than pointing to evidence of specific efforts to distribute or sell 18650 lithium-ion battery cells to consumers in South Carolina (which did not exist), the circuit court relied generally on Respondent's conclusory allegations that Petitioners transacted business in South Carolina and inadmissible evidence that Petitioner LG Chem shipped automotive batteries to car manufacturers and that Petitioner LGCAI shipped petrochemical products (<u>not</u> batteries of any type) to manufacturers in South Carolina.[9]

[9] Although courts have stated that the two inquiries collapse into one, South Carolina's long-arm statute retains a causal requirement that is not part of the constitutional due process analysis. Whereas due process requires that a plaintiff's claims must "arise out of or relate to" the defendant's contacts with the state, South Carolina's long-arm statute requires that a plaintiff's claims must "arise out of" the defendant's having engaged in any of the enumerated actions. Based

To the extent the circuit court appears to have collapsed the long-arm analysis into the due process analysis, the circuit court erred by mistakenly concluding that transaction of any type of business in the state could satisfy constitutional due process if the plaintiff claims injury in the state, when the United States Supreme Court has made very clear that conducting even extensive business in a state is not sufficient to subject a non-resident defendant to *specific* personal jurisdiction. *Goodyear,* 564 U.S. at 930 n. 6 ("even regularly occurring sales of a product in a state do not justify the exercise of jurisdiction over a claim unrelated to those sales").

D. The circuit court erred by 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. Public Service Authority 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. (Appx. 00018, 00026.) 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." (Appx. 00009.) Judge Maddox had provided Respondent with the opportunity to conduct jurisdictional discovery in order

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on Petitioners' admissible and uncontroverted evidence showing that they did not serve a consumer market for standalone 18650 batteries, plaintiff's claims could not "arise out of" either LG Chem's or LGCAI's transacting any business within the State, which is what the circuit court appears to have concluded. *See* S.C. Code Ann. §36-2-803(a).

to obtain 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.

(*Id*.) (emphasis added).) 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. (Appx. 00061, 00079, 00081-82, 00093-94.) 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.

E. The circuit court erred in failing to dismiss Petitioner LG Chem based upon lack of proper service.

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.[10] (Appx. 00001.) However, Respondent's failure to serve LG Chem in compliance with the Hague Service Convention rendered service invalid as a matter of law. Without proper service, the Court could not acquire personal jurisdiction over LG Chem consistent with due process.

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-

[10] 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).

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).

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; *accord Bakala,* 352 S.C. at 626, 576 S.E.2d at 163 ("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.").

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 (which is how service was attempted in this case pursuant to S.C. Code Ann. § 15-9-245). *See Boone-Coleman*, 2019 WL 5295567, at *3; *Monagas v. Samsung Elecs. Am., Inc.*, No. 3:13CV927 MPS, 2013 WL 5970977, at *2 (D. Conn. Nov. 8, 2013). Accordingly, South Korean residents, including LG Chem, may only be served through South Korea's designated Central Authority.

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 and dismissed LG Chem from this action on that basis.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals' orders dismissing LG Chem's and LGCAI's appeal based on lack of immediate appealability and remand for an order dismissing the claims against both Petitioners based on lack of service (as to Petitioner LG Chem only) and lack of personal jurisdiction.

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