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S.C. SUPREME COURT

IN 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.

LG Chem, Ltd., LG Chem America, Inc.,
and Rolling Fog Vapor Company, LLC, ...Defendants,

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

RESPONDENT'S MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondent Dwayne Thompson respectfully moves this Court for an Order dismissing the above-captioned Appeal for lack of subject matter jurisdiction. For the following reasons, this Appeal must be dismissed.

FACTUAL/PROCEDURAL BACKGROUND

This Appeal arises from a products liability action in which Dwayne Thompson sustained serious burns after an e-cigarette lithium-ion rechargeable battery manufactured by Petitioners LG Chem Ltd. and LG Chem America, Inc. suddenly exploded and burst into flames while in his pocket. (App. pp. 36-44).

Thompson purchased the e-cigarette with batteries at Defendant Rolling Fog, LLC's store in Spartanburg, South Carolina. (*Id.*). Thompson filed his products liability action in the Union County Court of Common Pleas on March 4, 2019. On April 24, 2019, in lieu of answering, Petitioners filed motions to dismiss the Complaint due to a purported lack of contacts with South Carolina, despite the fact that according to customs records, since 2006 Petitioners have imported hundreds of shipments of its products into South Carolina through the Port of Charleston. (App. pp. 104-13, 286-92; 138-285). The Circuit Court predictably denied their motions in several written Orders.[1] (App. pp. 1-6). When a foreign manufacturer and distributor makes minimum contacts with South Carolina through the stream of commerce in an effort to reach the South Carolina market either directly or indirectly, it can reasonably anticipate that it might be haled into a South Carolina court when one of its products tortuously injures a South Carolina citizen within the political boundaries of South Carolina.

Petitioners filed and served a Notice of Appeal of the Orders on May 19, 2021. (App. pp. 1237-1241). Petitioners also petitioned this Court for a writ in the Court's original jurisdiction or in the alternative, to certify the appeal directly to this Court. The petition and motion were denied by the Court. (Ex. A, Court Orders). The Court of Appeals dismissed the appeal on March 10, 2022, ruling that since it was an appeal from an order denying a motion to dismiss for lack of personal jurisdiction that it was not immediately appealable. (App. p. 32). Petitioners petitioned the

[1] After jurisdictional discovery, Petitioners renewed their motions, which were subsequently denied by the Circuit Court. (App. pp. 12-28).

Court for a writ of certiorari, and certiorari was granted by the Court on March 7, 2023.

ARGUMENT

The Court should dismiss this Appeal for the simple fact that it does not have appellate jurisdiction. The Court

> [I]s constituted a court for the correction of errors of law in law cases, and the only method of exercising its power of review is by appeal; hence in the exercise of that power it is obliged to exercise in a limited way its appellate jurisdiction. The Constitution provides that the correction of errors of law shall be conducted under "such regulations as the General Assembly may by law prescribe"; and the General Assembly by section 11, subd. D, of the Code 1912, has prescribed the method of appeal.

Sandel v. State, 128 S.C. 178, 122 S.E. 571 (1922).

Section 11, subd. D of the 1012 Code is currently codified at S.C. Code Ann. section 14-3-330(2) and defines the Court's appellate jurisdiction when correcting errors of law in law cases. It proscribes the immediate appeal of interlocutory orders in a case such as this, even if the order affects a "substantial right", when the order does not "in effect determine[] the action and prevent a judgment from which an appeal might be taken or discontinue[] the action." Even if the Court were to buy Petitioners' reasoning that the interlocutory Orders at issue in this case are immediately appealable solely because they impact a substantial right, it will be violating the plain text of the appellate jurisdiction statute by not immediately dismissing this Appeal, as Petitioners have wholly failed to argue that the Orders in any reasonable way determine the underlying action.

This would clearly implicate the separation of powers doctrine and infringe upon the General Assembly's constitutional duty to prescribe the appellate jurisdiction of this Court. Further, Petitioners argue directly against this Court's prior precedents, which dictate that an order denying a motion to dismiss for lack of personal jurisdiction is not immediately appealable under two subsections of the appellate jurisdiction statute. Even the cases that Petitioners superficially cite as supporting their argument that the subject Orders are immediately appealable are inapposite when read in detail.

Lastly, Petitioners' reliance on North Carolina law to support the immediate review of interlocutory orders denying a motion to dismiss for lack of personal jurisdiction is flawed because (1) North Carolina's appellate jurisdiction statute differs from South Carolina's and grants its appellate courts authority to review orders solely if they impact a substantial right, with no other requirements, and (2) it appears that North Carolina and Minnesota are the only states in the entire country that allow immediate review of such orders as a right, with the overwhelming majority of states finding that the practice is antithetical to judicial economy and the speedy resolution of cases.

I. The Circuit Court's Orders do not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.

South Carolina courts have long recognized that for the subject orders to be immediately appealable, they must satisfy two prongs of section 14-3-330(2). While the first prong requires that an order affect a substantial right, the second prong requires that an order "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).

> To bring the case within this second subdivision of Section 11, it must appear to be an order affecting a substantial right, made in an action, when such order in effect determines the action, and prevents a judgment from which an appeal might be taken, and when such order grants or refuses a new trial. **It must therefore appear that the order in question is such as to prevent a judgment in an action**. The present order is not of that character. At most if affects the security of the plaintiff for the satisfaction of any judgment he may obtain, but does not preclude him from proceeding to judgment against the defendant.

Allen v. Partlow, 3 S.C. 417, 418 (1872) (emphasis added). "For the order to be appealable, it must not only affect a substantial right, but it must also in effect determine the action and prevent a judgment from which an appeal could be taken . . . ." *Garlington v. Copeland*, 25 S.C. 41, 43 (1886). The second prong of section 14-3-330(2) is not superfluous; it is mandatory.

Here, it is clear that the subject Orders do not in any way determine Thompson's action, discontinue it, or prevent a final judgment from which Petitioners could appeal the personal jurisdiction issue. Petitioners have not even attempted to set forth in their Final Brief how the subject Orders in effect resolve the action and prevent an appealable final judgment, because they cannot. In response to this Motion, Petitioners are likely to argue that due to the weight and significance of the due process rights implicated by personal jurisdiction, the Circuit Court's Orders in effect eradicate their ability to seek meaningful redress by appeal. In other words, by the time this case reaches final judgment, by being forced to litigate this action in a South Carolina court Petitioners' due process rights will

have been trampled upon to such an extent that any favorable outcome on appeal would be meaningless.

There is a certain emotional appeal to this argument, but its logic is unsound and again ignores the second prong of section 14-3-330(2). Under this rationale, virtually every interlocutory order affecting a substantial right would be immediately appealable, regardless of whether it in effect determines the action. Interlocutory discovery orders affecting trade secrets, confidential private information, confidential business information, or involving expansive, costly discovery would be subject to the same logic, as would interlocutory orders involving jurisdictional issues such as service of process and sufficiency of process, privilege, and orders granting or denying motions to change venue. By their very nature, every interlocutory order affecting a substantial right is going to lead to some infringement upon that right for the remaining duration of the litigation; this does not mean those orders in effect determine the action or foreclose the losing party from seeking redress on appeal.

Such an interpretation of the statute would render its second prong superfluous, would open virtually all Rule 12(b) motions to immediate appeal, and would constitute legal error. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law."); (Ex. B, Guide to

Appealability of Interlocutory Orders, Appellate Rules Committee p. 3) ("The substantial-right doctrine is the door through which many – if not most – interlocutory orders are appealed. Most of the appellate decisions highlighted in this Guide are based on the substantial-right doctrine"). Every time a substantial right is affected by an order, of necessity that right will be impacted throughout the duration of litigation; this does not mean that the order in effect determines the action and prevents a judgment from which the right-holder can appeal, which is the only circumstances under which such an order is immediately appealable.

Additionally, if Petitioners were to make this argument, it misrepresents the substantial right implicated by the personal jurisdiction doctrine's due process concerns. Due process within the context of personal jurisdiction does not guarantee an individual the right to be free from litigation and its associated costs in a forum that does not have jurisdiction over him. Instead, the Due Process Clause only protects an individual's liberty interest "in not being **subject to the binding judgments of a forum** with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528 (1985) (emphasis added). If personal jurisdiction does not in fact exist over Petitioners, then their substantial right interest in not being subject to a binding judgment of the Union County Court of Common Pleas can be adequately protected by an appeal after final judgment, or even a later filed motion for summary judgment, and in fact the substantial right is not even implicated until after an adverse final judgment has been entered by the Circuit Court.

There are no mental gymnastics Petitioners can lead the Court through to somehow arrive at the conclusion that the subject Orders have effectively determined the underlying action. Instead, Petitioners solely focus on the substantial right prong, then pivot to North Carolina law in an attempt to distract the Court from the section 14-3-330(2)'s second requirement. However, North Carolina's appellate jurisdiction statute does not contain the second prong of section 14-3-330(2), and it only requires that an order affect a substantial right by causing it to be lost, prejudiced, or inadequately preserved in order for it to be immediately appealable. Thus, while North Carolina appellate courts have been granted jurisdiction to review such interlocutory orders by their legislature, South Carolina appellate courts have specifically had their jurisdiction more narrowly curtailed by our General Assembly.

II. Ignoring section 14-3-330(2)'s requirements that an interlocutory order must in effect determine the action and either prevent a judgment from which an appeal might be taken or discontinue the action would violate the separation of powers doctrine.

By having the Court essentially ignore the second prong of section 14-3-330(2), Petitioners would have this Court venture into forbidden territory. The Constitution of South Carolina describes the appellate jurisdiction of the Supreme Court over legal claims as follows: "[t]he Supreme Court shall constitute a court for the correction of errors at law **under such regulations as the General Assembly may prescribe**." S.C. Const. Art. V § 5 (emphasis added). The General Assembly has, beyond question, the duty and authority to define the Court's appellate jurisdiction to correct errors at law.

The General Assembly has mandated that the Court does not have appellate jurisdiction to review some interlocutory trial court rulings until the appeal of a final judgment. S.C. Code Ann. § 14-3-330 defines the appellate jurisdiction of this Court as well as the Court of Appeals, and only permits the immediate appeal of an order affecting a substantial right when the order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, grants or refuses a new trial or strikes out an answer or any part thereof or any pleading in any action. Granting certiorari to review an interlocutory order affecting a substantial right that does not effectively determine an action and prevent a judgment would judicially expand the Court's appellate jurisdiction beyond its outer limits as defined by the General Assembly.

Article I, section 8 of the Constitution of South Carolina provides that "[i]n the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The separation of powers mandate encompasses Article V, which preserves for the General Assembly the power to define the Court's appellate jurisdiction in law cases. *See State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

> One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws. History

> reveals that there has been much litigation at the national level and at the state level because of conflicts which have arisen relative to the usurpation of power by one of the three branches of government.

Id. at 312-13, 295 S.E.2d at 636.

Petitioners' arguments as to why the immediate appeal of the subject Orders is permitted by section 14-3-330 are problematic because they encourage the Court to usurp the General Assembly's authority to define the Court's appellate jurisdiction. It would be one thing if Petitioners sought to convince the Court that the second prong of section 14-3-330(2) had been met, and that they have been prevented from effectively seeking an appeal of a final judgment in this case. However, Petitioners have not done so, and in fact do the opposite, suggesting to the Court that "[t]he availability of eventual appeal after trial is not dispositive of the issue of immediate appealability." To the contrary, the key issue is whether Petitioners retain the opportunity to meaningfully appeal and have their contacts with South Carolina reviewed, and binding South Carolina law instructs that when a motion to dismiss for lack of personal jurisdiction is denied by an order, the order does not in effect determine the action, prevent a final judgment from which an appeal might be taken, or discontinue the action.

III. South Carolina precedent prohibits the immediate appeal of an interlocutory order denying a motion to dismiss for lack of personal jurisdiction.

The Court should not take lightly Petitioners' suggestion that it overrule its prior decisions and hold that interlocutory orders denying a motion to dismiss for lack of personal jurisdiction are immediately appealable. Stare decisis is used to foster stability and certainty in the law, and applies "with full force with respect to

questions of statutory interpretation". *McLeod v. Starnes*, 396 S.C. 647, 655, 723 S.E.2d 198, 203 (2012). Petitioners correctly note that the Court previously held in *Mid-State Distribs., Inc. v. Century Imps., 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 assert that in this case, the *Mid-State Distributors* decision is not applicable because it solely focused on whether the subject order "involved the merits" under section 14-3-330(1), whereas here, Petitioners are arguing that the Circuit Court's Orders affect a substantial right under section 14-3-330(2).

However, this Court has also previously determined that an order analogous to an order denying a motion to dismiss for lack of personal jurisdiction does not satisfy the second prong of section 14-3-330(2). In *Agnew v. Adams*, 24 S.C. 86 (1885), the appellant moved for nonsuit on the grounds that he had not "been made a party to the action in the manner prescribed by law." *Id.* at 87-88. The Court analyzed whether such an interlocutory order was subject to immediate appeal under the predecessor to section 14-3-330(2):

> The second subdivision of that section provides for an appeal from "an order affecting a substantial right made in an action, when such order, in effect, determines the action, and prevents a judgment from which an appeal might be taken, or discontinues the action, when such order grants or refuses a new trial, or when such order strikes out an answer, or any part thereof, or any pleading in an action . . . ." **It is very clear that the refusal of a motion for non-suit cannot be brought under any of the cases provided for in subdivision 2, for while it may affect a substantial right, it does not in effect determine the action, or prevent a judgment from which an appeal might be taken, nor does it discontinue the action; and it certainly does not fall under any of the other cases provided for in that subdivision.**"

Id. at 88 (emphasis added); *see also Nejman v. Charney*, 8th Dist. Cuyahoga No. 102584, 2015-Ohio-4087, 2015 WL 5781169, at *6 (Ohio Ct. App. Oct. 1, 2015) ("This court has long held that an order denying a motion to dismiss for lack of personal jurisdiction does not determine the action, does not prevent judgment, and is not a final, appealable order"). The *Agnew* Court went on to find that even though the order would not be immediately appealable under subdivision 2, it would be immediately appealable under the language of section 14-3-330(1); however, this holding was specifically overturned by *Mid-State Distributors*. (App. p. 32). Thus, while *Agnew*'s holding that the subject Orders are immediately appealable under section 14-3-330(1) has been abrogated, its holding that the subject Orders should not be immediately appealable under section 14-3-330(2) is still good law. Petitioners would argue directly against this precedent and mislead the Court into exercising appellate jurisdiction in a case where there is none.

Again, Petitioners would have the Court ignore the entire second prong of section 14-3-330(2), and Petitioners ignore that *Mid-State Distributors* provides an explanation of why the subject Orders do not in effect determine the action by preventing an appeal or discontinuing the action:

> Carlton has not arrived at the end of the road. **A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial** . . . . If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.

Id. at 334-35, 426 S.E.2d at 780 (citations omitted) (emphasis added). Therefore, according to this Court, the denial of Petitioners' motions did not in effect determine the action, prevent an appeal, or discontinue the action, as **Petitioners have forfeited nothing**. Petitioners cannot satisfy their burden of proving that all of the requirements of section 14-3-330(2) have been met, and consequently the Court does not have appellate jurisdiction.

Petitioners make passing reference to several South Carolina authorities in order to convince the Court that it is permissible in this instance to immediately review the Circuit Court's Orders. Petitioners rely primarily on *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Petitioners urge the Court to ignore section 14-3-330(2)'s second prong and point to *Hagood* as an instance in which the Court supposedly ignored this requirement to find that an interlocutory order was immediately appealable solely because it affected a substantial right. The Court did no such thing.

In *Hagood*, the Court held that an order disqualifying a party's counsel of choice was an immediately appealable order. The Court found that such an order affected a substantial right, satisfying the first prong of section 14-3-330(2). *Id.* at 197, 607 S.E.2d at 710. The Court then found that such an order also satisfied the second prong of the statute, stating that an appeal after final judgment following an order disqualifying a party's counsel of choice would not adequately protect a party's interests because it would be "impossible" for an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney, thus it was one of

the "rare" orders which in effect could determine the action and prevent a judgment from which an appeal might be taken or could discontinue the action, due to the impact on the attorney-client relationship. *Id.* at 197-98, 607 S.E.2d at 710. In other words, such an order would have a determinative impact on the outcome of the litigation that could never be effectively appealed by the litigant.

In their Final Brief, Petitioners provide no explanation for how an order denying a motion to dismiss for lack of personal jurisdiction effectively determines the action or creates a result that would be impossible for an appellate court to resolve, because they cannot. *Mid-State Distributors* adequately explains why Petitioners cannot offer any explanation for how the Circuit Court's Orders have effectively ended the action: because Petitioners have "forfeited nothing", they have not lost the action and they have not lost the ability to have the Orders effectively reviewed. In fact, the entire thrust of Petitioners' argument is that under *Hagood*, Petitioners and the Court can choose to ignore the second prong of section 14-3-330(2) and solely focus on the "substantial right" prong. *Hagood* is unavailing to Petitioners' arguments. It would not be "impossible" for the Court of Appeals to resolve whether Petitioners have sufficient minimum contacts with South Carolina after final judgment; therefore, *Hagood* is inapposite and unpersuasive.

Petitioner also cites to *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) to support its argument that an order may be immediately appealable if it solely affects a substantial right. In *Bateman*, the court found that an order denying a request for a jury trial involved the mode of trial and was

immediately appealable. First, the court found that the order affected a substantial right. *Id.* at 674, 596 S.E.2d at 390. Then, relying on *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), the court found that an order denying a request for a jury trial involved the mode of trial and was immediately appealable. The court did not examine the second prong of section 14-3-330(2) or conduct a further analysis of its appellate jurisdiction.

In turn, *Lester* leads back to a line of cases holding that an order denying a request for a particular mode of trial is immediately appealable. This line of cases stretches back to *Alston v. Limehouse*, 61 S.C. 1, 39 S.E. 192 (1901). None of the cases purport to analyze the proposition that an order involving the mode of trial is immediately appealable under section 14-3-330(2) or any of its predecessors. Instead, they all make a blanket assertion that orders involving the mode of trial are immediately appealable as a matter of course. However, 1902 Code of Civil Procedure of South Carolina, Title II, section 11 indicates that *Bateman's* presumption that an appeal from an order involving the mode of trial is permitted by section 14-3-330(2), based on the line of historical cases back to *Alston*, is incorrect.

The 1902 Code sets forth examples of immediately appealable interlocutory orders "involving the merits" under section 14-3-330(1), and lists orders affecting the mode of trial as an example of an order involving the merits under the predecessor of section 14-3-330(1).[2] (Ex. C, 1902 Code of Civil Procedure, Title II, Section 11). Thus, the historical reasoning embraced by *Bateman* is not even

[2] The language of the 1902 code section is identical to the statute's current language.

applicable in this case, as the subject order in *Bateman* was immediately appealable under section 14-3-330(1), and not section 14-3-330(2). The *Bateman* court's reasoning that the order was immediately appealable under section 14-3-330(2) was flawed, based on an erroneous assumption that prior precedents had historically analyzed the subject order under section 14-3-330(2), and failed to conduct its own analysis of the second prong of section 14-3-330(2). *Bateman* is unpersuasive.

In *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983), the Court of Appeals found that a family court order denying a request for leave to file a late answer and permission to withdraw a signed consent to adoption affected a substantial right and foreclosed the litigant's ability to contest the case on the merits and was therefore immediately appealable, citing section 14-3-330 and *Ayer v. Chassereau*, 18 S.C. 597 (1882), without further explanation. *McLaughlin*, 279 S.C. at 516, 309 S.E.2d at 790. *Ayer* held that an order denying a motion for leave to file a late answer and granting default judgment is appealable. *Ayer*, 18 S.C. at 597. Therefore, both decisions stand for the proposition that an order which effectively prevents a defendant from contesting the merits determines or discontinues the action, and if a substantial right is also affected, then the order is immediately appealable. *But see Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 636, 856 S.E.2d 150, 151 (noting that an order denying a motion to set aside an entry of default is not immediately appealable). *McLaughlin* and *Ayer* are easily distinguishable from this case because nothing about the subject Orders prevent Petitioners from contesting the merits of Thompson's claims.

Lastly, Petitioners rely on *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), a case in which the Court of Appeals reviewed a family court order denying the appellant's motion to dismiss for lack of personal jurisdiction. First, it is not entirely clear from the text of *Keller* if the order was immediately appealed or if it was appealed after a final judgment. The decision does not address the issue of immediate appealability of interlocutory orders and does not even refer to section 14-3-330, leaving one to assume that the order was not appealed until after a final order was entered by the family court, which would explain why it was not specifically overruled by *Mid-State Distributors*. *Keller* is essentially irrelevant to Petitioners' current Appeal and is unhelpful in determining whether the subject Orders are immediately appealable because of the missing details concerning the procedural posture of the case. Petitioners' reliance on *Keller* is misplaced.

When read in detail, it becomes apparent that none of the authorities cited by Petitioners in support of their arguments in any way set forth that the second prong of section 14-3-330(2) can be ignored, that the only important factor supporting immediate appealability is the presence of a substantial right, or that this Court's prior precedents stretching back over 100 years, including *Mid-State Distributors* and *Agnew*, should be overruled. Permitting the immediate appeal of orders denying motions to dismiss for lack of personal jurisdiction is not permitted by section 14-3-330 or this Court's precedents, and would open the floodgates to the immediate appeal of a large variety of interlocutory orders.

IV. North Carolina's practice of permitting such appeals represents an extreme minority approach that is only advocated by two states, and unlike here, does not run afoul of its appellate jurisdiction statute.

Petitioners' reliance on North Carolina law to support that the appellate courts of this State should entertain immediate appeals from all orders affecting a substantial right, without further requirements, is misguided and encourages the Court to overstep its constitutional constraints. N.C. Gen. Stat. Ann. section 7A-27(b)(3) provides that a litigant may appeal any interlocutory that does **any** of the following: "a. Affects a substantial right. b. In effect determines the action and prevents a judgment from which an appeal might be taken. c. Discontinues the action. d. Grants or refuses a new trial." While South Carolina's General Assembly has required that an interlocutory order satisfy both (a.) **and** one of either (b.) or (c.) to be immediately appealable, North Carolina's legislature has permitted the immediate appeal of interlocutory orders that only satisfy (a.). Petitioner's argument for following North Carolina's model is fatally flawed in that it ignores this key distinction between the boundaries of appellate jurisdiction in North Carolina and appellate jurisdiction in South Carolina.

North Carolina's model of permitting appeals from interlocutory orders such as the subject Orders also appears to be an extreme minority position on the issue. To the undersigned's best knowledge, North Carolina and Minnesota are the only states that permit the immediate appeal of interlocutory orders denying a motion to dismiss for lack of personal jurisdiction as a right without some sort of interlocutory certification or application procedure. And contrary to Petitioners' assertions, the

allowance of the immediate appeal of interlocutory orders affecting a substantial right has opened the floodgates in North Carolina to interlocutory appeal, leading the North Carolina Bar Association's Appellate Rules Committee to observe that the majority of appeals from interlocutory orders in North Carolina result from the substantial right doctrine, which arguably encompasses orders based on sovereign immunity, legislative or quasi-judicial immunity, the public-duty doctrine, absolute privilege, and a range of other issues. (Ex. B).

Contrary to Petitioners' arguments, there is not a dearth of case law describing South Carolina's personal jurisdiction doctrine or the contours of what is sufficient to meet the constitutional requirement of sufficient minimum contacts. The requirement of sufficient minimum contacts has been addressed so thoroughly by both South Carolina and federal courts that it is unnecessary to provide a lengthy citation to all of the relevant case law. Needless to say, the burden on the Court of Appeals to review the denials of countless motions to dismiss for lack of personal jurisdiction that would surely result from Petitioners' proposed system outweighs any supposed benefit that could be derived from having more reported decisions drilling further down into the minutiae of minimum contacts, a concept that has been present in our State and federal jurisprudence for at least 80 years. *See generally International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

In fact, the United States Supreme Court has published a doctrinal specific personal jurisdiction decision as recently as 2021. In *Ford Motor Co. v. Mont.*

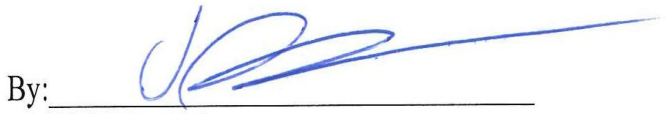
Eighth Jud. Dist. Ct., ---- U.S. ----, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021), the Court further defined what constitutes a "connection" between a plaintiff's suit and a defendant's forum contacts. This followed numerous recent decisions from the Supreme Court of the United States further defining the personal jurisdiction requirements, including minimum contacts as drawn from *International Shoe*, and are binding decisions for the purposes of the specific personal jurisdiction analysis. Petitioners' argument that there are not enough appeals of personal jurisdiction issue to create sufficient law is not based in reality. In his concurrence in *Ford Motor Co.*, Justice Gorsuch encouraged litigants and the lower courts to help the Court in the future to determine a modern analysis of personal jurisdiction in light of the changing economy and the historical nature of the Constitution. *Id.* at 1039 (Gorsuch, J., concurring). He did not express a concern that not enough cases were being appealed to create such law. *Id.* There is no valid reason to open the floodgates within this State to interlocutory appeals outside of Petitioners' own self-serving interests.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss this Appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

By: 

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