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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

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

LG CHEM, LTD. AND LG CHEM AMERICA, INC.'S PETITION FOR REHEARING

Pursuant to Rule 221(a) SCACR, LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") respectfully petition the Court for a rehearing of their May 21, 2021 Notice of Appeal, which this Court denied by Order dated March 10, 2022 based on the Court's decision that the underlying circuit court orders are not immediately appealable.

In reaching the decision to deny Appellants' appeal, this Court relied on *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993), which Appellants contend is not controlling in this case. Specifically, *Mid-State* is not controlling because (1) it is materially distinguishable on the facts; and (2) the arguments that Appellants have made in this case were not raised in *Mid-State*, which does not expressly address whether a ruling that a foreign defendant could be required to defend a lawsuit—based on conclusory allegations that minimum contacts existed even though the conclusory allegations were contradicted by admissible evidence proving

minimum contacts were absent—affects a substantial right, which gives rise to immediate appealability under South Carolina's appealability statute, Code § 14-3-330.

Appellants ask the Court to reconsider and address all the arguments below—which were overlooked and/or misapprehended and left unaddressed by the Court—and grant rehearing, and issue a revised opinion in favor of LG Chem and LGCAI on the issue of appealability. These points below are raised again because if this Court denies rehearing, Appellants intend to seek certiorari review, and therefore raise all arguments here to preserve them for presentation in a certiorari petition, pursuant to the South Carolina Rules of Appellate Procedure. *See* Rule 221(a), SCACR (stating that a petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court"); Rules 242(c) (stating that a decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals").[1]

LAW AND ANALYSIS

The Court has overlooked or misapprehended arguments raised by Appellants on appealability, and as noted in LG Chem's and LGCAI's briefing on appealability, the suit should be dismissed against LG Chem and LGCAI, as jurisdiction is lacking.

I. The South Carolina Code and prior precedent, such as *Mid-State Distributors*, do not foreclose a finding that this case is immediately appealable.

Although the Order found that this case is not immediately appealable—based solely on South Carolina Code Section 14-3-330 and *Mid-State Distributors v. Century Importers*, 310 S.C.

[1] If this Court denies rehearing, Appellants intend to raise the issues raised herein in a petition for writ of certiorari to the South Carolina Supreme Court. Appellants urge that *Mid-State* be distinguished or narrowed in application. Alternatively, Appellants will ask the South Carolina Supreme Court for the alternative relief of modifying its prior precedent if it interprets *Mid-State Distributors v. Century Importers,* 310 S.C. 330, 426 S.E.2d 777 (1993) as controlling on the issue of appealability, which it should not.

330, 426 S.E.2d 777 (1993), the Order overlooked or misapprehended authority and analysis submitted by Defendants showing that the Court should allow immediate appeal in this particular case. Neither the appealability statute nor *Mid-State* require dismissal because (1) this appeal affects Appellants' substantial constitutional rights to Due Process under the appealability statute; (2) *Mid-State* does not require blanket dismissal in all cases, and this case is an exception to the general rule in *Mid-State* because the arguments presented and decided by the Supreme Court in *Mid-State* court are materially different from those in this case; (3) this Court's Order effectively forecloses appeal on personal jurisdiction, and (4) allowing immediate appealability in this case will not "open the floodgates" to the appellate courts.

(1) As allowed by statute and prior precedent, the Order is immediately appealable because it affects a substantial right.

The Order does not explain how Section 14-3-330 requires dismissal, and the language of the statute and prior precedent from the South Carolina Supreme Court *support* immediate appealability in this case. First, Section 14-3-330(2) provides that "[a]n 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." *Id.* Thus, the statute supports immediate appeal rather than dismissal because this Court has previously indicated that an order implicating a party's constitutional rights is immediately appealable because it concerns a substantial right. *See, e.g.*, *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the constitutional guarantee of due process is implicated where the court finds there are sufficient minimum contacts to subject a foreign defendant to the burden of litigation and trial. In this case, the circuit court's orders at issue were based on Respondent's ***conclusory*** allegations that minimum contacts are satisfied, even though Appellants introduced ***admissible, uncontroverted*** evidence showing the constitutional minimum contacts were ***absent*** and even

though Respondent disclaimed any interest or need to pursue discovery to obtain admissible facts to support his burden of proving jurisdiction. This alone warrants a finding of immediate appealability, as explained further below.

South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable. *See, e.g.*, *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86-87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina's appealability statute is similar to South Carolina's and likewise permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting "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), the North Carolina courts have interpreted this right to be ***limited*** to where the appeal raises questions concerning due process and minimum contacts, because those are the questions ***affecting a substantial right***.

As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe's Companies, Inc.*, 640 S.E.2d 445 (N.C. Ct. App. 2007) (table), this is because 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." *Id.* at *2. This ensures that parties who have less than minimum contacts with the state "will never be forced to trial against their wishes," "promotes judicial economy[,] and protects the constitutional rights of foreign defendants." *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points

support appealability under South Carolina's appealability statute, which also permit immediate appeals "affecting a substantial right."

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, immediate appeal is proper in this narrow circumstance in which the question of constitutional minimum contacts is at issue, and especially when, as here, one circuit judge ruled that Respondent's showing ***was not*** enough to determine whether minimum contacts existed and a second circuit judge then decided the ***same*** showing ***was*** enough.

With respect to a ruling affecting a substantial right for appealability purposes, this case should be viewed like *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). In *Hagood*, 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 points made by other courts concerning the appealability of such an order—including a decision from North Carolina—held that the order affected a substantial right and should be immediately appealable.

The orders appealed here require a foreign defendant who has put forth admissible evidence negating any constitutional minimum contacts with South Carolina, to nonetheless defend itself fully in litigation here without any showing by Respondent of admissible facts establishing the defendant engaged in sufficient suit-related minimum contacts with South Carolina to satisfy due process. This affects the substantial right of the foreign defendant to the constitutional guarantee of due process. North Carolina law should again be taken into account and followed with respect to allowing immediate appellate review of such orders.

(2) *Mid-State* does not require dismissal in this case of the appeal.

Although the Order relies on *Mid-State* as authority for finding the order denying Defendants' motion to dismiss is not immediately appealable, the Order overlooks the fact that *Mid-State* did not explicitly require dismissal in all cases in which a defendant appeals a trial court's denial of its motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure. As the Supreme Court has recognized "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) (emphasis added). Therefore, this Court should analyze the circumstances presented here to determine appealability and find that this case is both distinguishable and is also an exception to the *Mid-State* rule.

Although the Supreme Court in *Mid-State* held in 1993 that "the denial of a motion to dismiss under Rule 12(b)(2) is interlocutory and not directly appealable," that case differs materially from the case here. At issue here, are several arguments that Appellants raised to the circuit court that were not before the *Mid-State* court, and Appellants raise arguments regarding appealability itself that were not before the *Mid-State* court. Importantly, *Mid-State* **did not** expressly address whether a ruling that a foreign defendant could be required to defend suit—based on conclusory allegations that minimum contacts existed even though the conclusory allegations were contradicted by admissible evidence proving minimum contacts were absent—affects a substantial right.

As this Court's Order recognizes, *Mid-State* expressly overruled two prior cases (*National Exchange Bank v. Stelling*, 32 S.C. 102, 10 S.E. 766 (1890) and *Agnew v. Adams*, 24 S.C. 86 (1885)) to the extent they conflicted with the *Mid-State* ruling. However, the Order overlooks the fact that the *Mid-State* court did not expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988)—the most recent case of the cases that was cited by the *Mid-State* appellant

(and, unlike *Stelling* and *Agnew*, addressed minimum contacts and denial of a 12(b)(2) motion under the Rules of Civil Procedure and applied post-19th Century U.S. Supreme Court authority)—and which ***permitted*** an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction in which the sufficiency of minimum contacts was at issue, as it is here.

The South Carolina Supreme Court briefing in *Mid-State*, which Appellants submitted in their Memorandum in Support of Immediate Appealability, confirms that the arguments raised by Appellants here were not before the court there. (*See generally* Pets.' Mem. in Supp. of Immediate Appealability, filed July 19, 2021, Ex. D, Br. of Appellant Century Importers, Inc.; Ex. E, Br. of Resp't Mid-State Distributors, Inc.; and Ex. F, Reply Br. of Appellant.) The *Mid-State* appellant did not address appealability in its opening brief. (*See generally* Ex D.)[2] The *Mid-State* respondent, however, challenged appealability in its brief by highlighting the lack of finality and comparing the subject ruling to an order denying a motion to dismiss under 12(b)(6). (Br. of Resp. at 6–7.) The respondent also contended that permitting interlocutory appeal would "open the floodgates" to appeals of orders denying motions to dismiss for lack of personal jurisdiction. (*Id.* at 7–8.) In response to the *Mid-State* respondent's appealability argument, the appellant's reply consisted ***solely*** of a short point citing *Stelling* that the appellant contended supported immediate appealability, along with three subsequent cases that were in accord.[3] (*See* Reply Br. at 1.) The appellant there did not specifically address the respondent's arguments on finality or judicial economy. Most importantly, the appellant there did not raise ***any*** arguments about the sufficiency

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[2] Appellants incorporate by reference to Exhibits filed in support of their Memorandum in Support of Appealability, filed on July 19, 2021.

[3] Notably *Mid-State* did not discuss three cases detailed in the Appellant's reply brief: *Keller*; *Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985); and *Kay v. Meadors*, 216 S.C. 483, 58 S.E.2d 893 (1950).

of a defendant's minimum contacts or due process or provide any analysis regarding whether the challenged rulings implicated a substantial right, which is the basis Appellants raise here. (*See id.*)

Mid-State also came before the Supreme Court under an entirely different procedural posture from this matter. In *Mid-State* the case had been pending 18 months when the motion to dismiss was heard and denied, and the court had previously heard and denied a motion for summary judgment and found there were genuine issues of material fact for trial. The case was nearly up for trial at the time of the hearing on the motion to dismiss in *Mid-State*. (*See* Appellants' Mem. in Supp. of Immediate Appealability, filed July 19, 2021, at Ex. E (Initial Br. of Resp. Mid-State Distributors, Inc., at 1–2 & n.1.) The Court's Order overlooked the fact that the present matter is far different procedurally from *Mid-State*. Here, there has been no merits discovery, the case is likely several years away from a trial, and Respondent specifically argued to the trial court that it could decide the question of jurisdiction based solely on the allegations of the complaint. In fact, after the first circuit judge to consider the issues decided that ***more information was required*** before it could decide the issue of personal jurisdiction, Respondent later argued to the second circuit judge that he did not need additional facts, that he was waiving his opportunity to pursue jurisdictional discovery, and that the issue could–and should–be decided solely on the pleadings.

(3) The Court's Order effectively precludes meaningful appeal by Defendants on constitutional personal jurisdiction grounds and adversely affects Substantial Rights.

The Court has overlooked or misapprehended the effect of its Order, which views *Mid-State* as a blanket rule on the appealability of a circuit court's denial of 12(b)(2) motions, with no exceptions, prohibiting immediate appealability of all orders. The Court's ruling overlooks the effect of such a decision, which forecloses appellants from safeguarding their due process rights in derogation of both the state and federal Constitutions and fails to give guidance to circuit courts

when—as here—the law on personal jurisdiction has changed significantly in the decades since *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), was decided.

A litigant has an arduous road in the absence of immediate appellate consideration of a denial of a motion to dismiss for lack of personal jurisdiction and, particularly, a ruling regarding the sufficiency of minimum contacts. The litigant under such circumstances cannot ever appeal until after final judgment and, only then, if the litigant loses on one or more issues. *See* S.C. Code Ann. § 18-1-30 ("Any party aggrieved may appeal . . . ."); *State v. Looper*, 421 S.C. 384, 388–89, 807 S.E.2d 203, 205 (2017) ("[A]n aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property."). Even if the litigant loses the final judgment and appeals, it must then establish that the order was reversible error. This process would likely take many years, and Appellants would be forced through the entirety of these proceedings all the while being compelled to litigate in the absence of minimum contacts supporting personal jurisdiction.

Further, a litigant who loses at trial will likely have multiple potential appellate issues and must make a tactical decision about which issues—and how many issues—are important enough and strong enough to raise in its appellate brief.[4] And even if a litigant raises a jurisdictional issue on appeal, an 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) (noting an appellate court need not address an issue if its ruling on another issue is dispositive (citing *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999))); *Ledford v. Dep't of Pub.*

[4] *See, e.g.*, *Jones v. Barnes*, 463 U.S. 745, 751–52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues."); *State v. Pelletier*, 552 A.2d 805, 807–08 (Conn. 1989) ("Most cases present only one, two, or three significant questions. . . . Usually . . . if you cannot win on a few major points, the others are not likely to help. . . . The effect of adding weak arguments will be to dilute the force of the stronger ones." (alterations in original) (quoting R. Stern, Appellate Practice in the United States 266 (1981))).

Safety, 428 S.C. 387, 392 n.5, 835 S.E.2d 509, 511 n.5 (2019) (citing *Futch*); *cf. Davis*, 409 S.C. at 281, 762 S.E.2d at 543 (addressing a contempt ruling but declining to address the underlying discovery orders).

The lack of appellate review of circuit court orders finding sufficient minimum contacts creates, in turn, a lack of precedent addressing what is constitutionally sufficient. Trial judges and counsel are left to apply outdated principles with little guidance, as the trial court did here, relying on a decision rendered in 2008 without further guidance as to the three separate decisions issued by the U.S. Supreme Court in 2011, 2017, and 2021 addressing the very constitutional standard at issue in this case. Published decisions addressing the modern confines of personal jurisdiction will create uniformity and stability within the state judicial system, avoid disparate treatment by the trial bench, and reduce costs because litigants will not fight over matters governed by precedent.

The guarantees of due process are illusory if there is no opportunity for appellate review until after final judgment simply because a trial court finds a plaintiff's conclusory allegations of minimum contacts are sufficient to proceed with subjecting the foreign defendant to the burden of litigation. Recognizing this potentially harsh result, the federal courts and a number of states permit interlocutory appeal of jurisdictional orders, whether by right,[5] by direct application to an intermediate appellate court,[6] or by asking the trial court to certify the issue for discretionary appellate review.[7] South Carolina, however, has no such discretionary procedure, other than direct

[5] *See, e.g.,* N.Y. C.P.L.R. § 5701(a)(2)(v); Fla. R. App. P. 9.130(a)(3)(C)(i); N.C. Gen. Stat.§ 1-277(b); Texas Civil Practice and Remedies Code § 51.014(a)(7).

[6] *See, e.g.,* N.J. R.A.R 2:2-4; Mich. Ct. R. 7.203(b); Ill. R. S. Ct. 306.

[7] *See, e.g.*, 28 U.S.C. § 1292(b) (permitting district judge to certify issue for interlocutory appeal where it presents a controlling question of law as to which there is substantial ground for difference of opinion and immediate appeal from the order may materially advance the ultimate termination of the litigation); Ga. O.C.G.A. § 5-6-34(b); C.A.R. 4.2(b); M. R. A. P. 5; Pa. R.A.P. 311(b) (permitting interlocutory appeal as of right of order sustaining personal jurisdiction where the

petition to the Supreme Court for an extraordinary writ of certiorari in its original jurisdiction. Therefore, because this matter implicates Appellants' substantial constitutional right to due process, the facts of this case illustrate why interlocutory review as of right is appropriate when, as here, the U.S. Constitution limits the authority of the trial court to subject a foreign defendant to the burden of litigation and trial.

4. Recognizing the propriety of immediate review regarding sufficiency of minimum contacts will not "open the floodgates" to the appellate courts.

To the extent the Court was concerned with the potential ramifications of approving of an immediate appeal in this matter, the facts of this case both highlight the necessity for a foreign defendant to have access to appellate review when its constitutional rights are at stake and illustrate that opening the door here will not "open the floodgates" to the appellate courts.

The South Carolina Supreme Court has long recognized that "[w]ithout minimum contacts, the court does not have the "power" to adjudicate the action." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005) (quoting *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).)

This Court has also previously recognized that, in order to establish a prima facie case based on the allegations in his complaint, a plaintiff must set forth ***specific facts***, not just conclusory allegations, to establish the minimum contacts constitutionally necessary to invoke

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lower court finds a substantial issue of jurisdiction is presented); Ind. R. App. P. 14(B)(1) (permitting interlocutory appeal upon trial court's certification if one of three grounds are met: (1) appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment; (2) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or (3) the remedy by appeal after final judgment is otherwise inadequate); Tenn. R. App. P. 9 (permitting interlocutory appeal by permission where discretionary approval is given by both the trial court and appellate court and where there is a need "to prevent irreparable injury," "to prevent needless, expensive, and protracted litigation," and "to develop a uniform body of law").

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 *Mid-State*, the Supreme Court recognized that this standard was modeled after the federal court rule and commented that "[i]t is sound public policy to modify the procedure currently in place and conform our case law to the established limits of constitutionality." 310 S.C. at 335. Appellants submit that "a correction is needed to conform the case law to the established limits of constitutionality." [8]

Federal law is in accord with this Court's precedent establishing that facts (as opposed to conclusory allegations) are needed to make a prima facie showing of minimum contacts, *including* numerous federal courts that have *granted* motions to dismiss filed by LG Chem in cases involving materially indistinguishable facts. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397, 403 (4th Cir. 2003) (affirming order dismissing defendant for lack of personal jurisdiction and finding no abuse of discretion when trial court denied request for jurisdictional discovery "based on bare allegations in the face of specific denials made by defendants"); *Reyes v. Freedom Smokes, Inc.*, No. 5:19-CV-2695, 2020 WL 1677480, at *2 (N.D. Ohio Apr. 6, 2020) (dismissing LG Chem, Ltd. from a similar action, the Ohio federal court stated, "[w]hen faced with a properly supported 12(b)(2) motion, "the plaintiff may not stand on his pleadings but must, by

[8] Numerous federal and state appellate courts in other jurisdictions have found that constitutional due process is not satisfied by the exercise of personal jurisdiction over Appellant LG Chem, Ltd. in other states based on similar facts, including the Supreme Court of Missouri, which found personal jurisdiction lacking in a writ proceeding challenging a trial court's order that had been decided on a similarly erroneous view of stream of commerce jurisdiction, *State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020), and a California Court of Appeal that affirmed the dismissal of LG Chem from a case for lack of personal jurisdiction in a case where the trial court initially denied LG Chem's motion seeking dismissal but that decision was vacated after the California Court of Appeal granted LG Chem relief in an extraordinary writ proceeding, *Kadow v. LG Chem, Ltd.*, No. B309854, 2021 WL 5935657 (Cal. Ct. App. Dec. 16, 2021), *review filed* (Jan. 24, 2022); *see also, Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020) (unpublished); *Schexnider v. E-Cig Central, LLC*, No. 06-20-00003, 2020 WL 6929872 (Tex. Ct. App. Nov. 25, 2020), *reh'g denied* (Dec. 15, 2020); *Miller v. LG Chem, Ltd. et al.*, 2022-NCCOA-55 (N.C. Ct. App. Feb. 1, 2022) (affirming trial court's order granting LG Chem, Ltd.'s and LG Chem America, Inc.'s motions to dismiss for lack of personal jurisdiction).

affidavit or otherwise, set forth specific facts showing that the court has jurisdiction."); *Walsh v. LG Chem Am.*, No. CV-18-01545-PHX-SPL, 2019 WL 4394550, at *1 (D. Ariz. Sept. 13, 2019), *aff'd sub nom. Walsh v. LG Chem Ltd.*, 834 F. App'x 310 (9th Cir. 2020) (dismissing LG Chem, Ltd. from a similar action, the Arizona federal court stated, "[t]he Court may not, however, "assume the truth of allegations in a pleading that are controverted by affidavit.")) Under the federal rule, if a court postpones the decision to permit discovery (which is what the first circuit judge did here), the plaintiff's burden at that point shifts to a preponderance of the evidence standard. *Informaxion Sols., Inc. v. Vantus Grp.*, 130 F. Supp. 3d 994, 998 (D.S.C. 2015).

Here, the circuit court found the following conclusory allegations were sufficient to meet Respondent's burden:

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

(Ex. A, Compl., filed 3/4/19, ¶ 7.) These allegations were comparable to the allegations this court found to be insufficient in *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), and amount to nothing more general legal conclusions, unsupported by a single fact. Respondent argued that the above conclusory allegations were sufficient to satisfy the standard in this state, and the second circuit judge agreed, even after the first circuit judge found Respondent's showing was not sufficient to decide the issue. By contrast, Appellants' introduced ***admissible, uncontroverted*** evidence establishing that they did not serve a consumer market in South Carolina for the product at issue in this case (lithium ion battery cells sold as standalone, replaceable batteries) and that they did not engage in any activities in or directed to South Carolina related in any way to Respondent's claims.

The constitutional protections guaranteed by the Due Process Clause of the United States Constitution, and the above-cited authorities of this Court, demand more than subjecting a foreign defendant to the burdens of litigation in the courts of this state simply based on conclusory and formulaic allegations in a complaint, unsupported by ***admissible*** evidence, particularly when the defendants introduced ***admissible, uncontroverted*** evidence showing that constitutional minimum contacts were lacking.

Conclusion

This Court should grant Appellants' petition for rehearing to correctly recognize that South Carolina Code Section 14-3-330 and *Mid-State Distributors* do not support a finding that this case is not immediately appealable and to allow this appeal to go forward on the merits.

Respectfully submitted,

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Columbia, SC
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v.

Rolling Fog Vapor Company, LLC,

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

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified, pursuant to the Supreme Court Order 2021-08-2502, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **LG Chem, Ltd. and LG Chem America, Inc.'s Petition for Rehearing**

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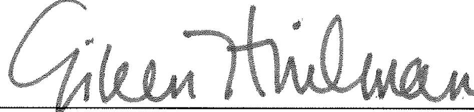

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March 25, 2022

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Subject: Dwayne Thompson v. LG Chem, Ltd.
Attachments: Thompson (SC) LGC's and LGCAI's Petition for Rehearing (Court of Appeals).pdf; Thompson Proof of Service.pdf

Good afternoon.

Attached for service upon you in the above matter please find LG Chem, Ltd. and LG Chem America, Inc.'s Petition for Rehearing and Proof of Service. Service is made via email pursuant the Supreme Court's August 25, 2021 Administrative Order.

Thank you

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