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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.

**REPLY BRIEF OF PETITIONERS
LG CHEM, LTD. AND LG CHEM AMERICA, INC.**

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INTRODUCTION

Respondent relies almost entirely on conclusory allegations in his Complaint and an unsworn, unauthenticated, hearsay chart that purports to show that Petitioners shipped products (not the product at issue in this case) into South Carolina using South Carolina ports. The United States Supreme Court's most recent decisions on specific personal jurisdiction make clear that constitutional due process can only be satisfied if the plaintiff shows that his claims "arise out of or relate to" contacts the defendant itself (not third parties) formed with the forum state (not the entire United States). Such a showing cannot be made by interpreting a hearsay chart to mean something it does not say, or by charging the defendant with a failure to introduce admissible evidence proving that an irrelevant and inadmissible chart does not mean something it does not say.

Controlling U.S. Supreme Court case law makes abundantly clear that specific jurisdiction is not satisfied simply because a defendant engages in some business in the forum state, regardless of how extensive. Instead, in a products liability case, the defendant's own business must relate to the specific product and claims at issue. That is not the case here, and this Court's 2008 decision in *Sumatra* cannot be read in a way that conflicts with bedrock principles established by the United States Supreme Court.

The very importance of the constitutional issue presented (a substantial right) and the inadequacy of post-trial appeal as a remedy for the deprivation of constitutional rights render this case immediately appealable under South Carolina Code § 14-3-330. This Court has the power and authority to say what § 14-3-330 means with regard to the question of appealability raised in this appeal. If the Court finds that *Mid-State* precludes this appeal, then *Mid-State* should be overruled.

OBJECTIONS TO RESPONDENT'S COUNTERSTATEMENT OF THE CASE

Petitioners object to Respondent's Counterstatement of the Case, which contains numerous instances of improper argument (*see* S.C. App. Ct. R. 208(b)(1)(C) ("the statement [of the case] shall not contain contested matters") and statements of purported fact that are directly contradicted by the record. The following are by way of example only, and Petitioners will address mischaracterizations of the record and improper arguments in the Argument section below.

- "Petitioners admitted withholding responsive information regarding shipments of the subject battery into South Carolina, incompletely answered interrogatories asking them to identify businesses in South Carolina selling LG products and provide the type of LG products sold, distributed, and imported into South Carolina, and did not directly respond to Respondent's requests for admission." (Resp't's Br. at 6.)
- "Due to Petitioners' strategic refusal to cooperate in jurisdictional discovery, the parties' memoranda were again based on the limited materials that were previously available for Judge Maddox's review at the September 23, 2019 hearing." (Resp't's Br. at 7.)
- "Petitioners' tactical gaming of the discovery process in other lithium-battery cases has been documented by courts in other jurisdictions." (Resp't's Br. at 8, n.3)

ARGUMENT

I. The Court has the power to hear the issues raised in this appeal, both of which were previously certified by this Court for review.

Respondent has re-raised the issues he previously asserted in his Motion to Dismiss the appeal and Motion to Strike portions of Petitioners' Final Brief, both of which were denied without prejudice. As he did before, Respondent again argues that this Court may not address either of the two issues raised in this appeal, despite this Court having previously certified both issues for review.

First, Respondent argues that it would violate the separation of powers doctrine for the Court to interpret § 14-3-330 to allow this appeal to go forward because, according to Respondent, the General Assembly has spoken on the issue of appealability and the statute does not authorize

this appeal. (Resp't's Br. at 16-18.) But Respondent's argument completely ignores that it is squarely within the province of this Court to interpret §14-3-330, as it has done many times before. *See, e.g.*, *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). The question whether or not § 14-3-330 allows this appeal is precisely the issue before the Court. Respondent's argument that the separation of powers doctrine renders the issue unreviewable completely denies the power and authority of this Court to say what the law is, and Respondent does not offer a single authority in support.

Second, Respondent argues that the merits of this appeal (whether the trial court had the power to exercise personal jurisdiction over Petitioners) are not preserved for review because the Court of Appeals never ruled on the merits of the personal jurisdiction issue. (Resp't's Br. at 23.) But that argument ignores the following two important points: (1) Petitioners have raised the lack of personal jurisdiction at every stage of these proceedings (Appx. 00104-37; 00286-309; 00436-41; 00529-625; 00787-91; 00879-950; 01100-1236; 01237-81), but were denied the opportunity to brief the merits of the personal jurisdiction before the Court of Appeals because the Court of Appeals dismissed the appeal before merits briefing; and (2) under Article V, section 5 of the South Carolina Constitution and South Carolina Code § 14-3-310 of the South Carolina Code, this Court has an express grant of authority to issue writs or orders of certiorari which may be used "to correct errors of law, particularly where a trial court exceeded its authority." *State v. Price*, 441 S.C. 70, 75, 893 S.E.2d 286, 289 (2023) (citing *City of Columbia v. S.C. Pub. Serv. Comm'n*, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963) ("A writ of certiorari is used to keep an inferior tribunal within the scope of its powers." (citing *Ex parte Schmidt*, 24 S.C. 363, 364 (1886); *State ex rel.*

Martin v. Moore, 54 S.C. 556, 560, 32 S.E. 700, 701 (1899)) and *State v. Ansel*, 76 S.C. 395, 412, 57 S.E. 185, 191 (1907)).

This Court previously granted review of the two issues raised in Petitioners' Petition for a Writ of Certiorari, which are the same issues set forth in Petitioners' Final Brief, as it had the express power and authority to do. The issues are therefore properly before the Court.

II. The underlying orders are immediately appealable under South Carolina Code § 14-3-330.

A. The orders at issue are immediately appealable because they implicate a substantial right (constitutional due process).

Relying on dicta in a footnote, Respondent argues that *Mid-State* already concluded that denial of a motion to dismiss for lack of personal jurisdiction does not impair a substantial right. (Resp't's Br. at 9-11.) The footnote, however, is explicitly limited to "the present facts" of that case, in which the defendant did not argue (or otherwise raise the issue) that the circuit court's order implicated the substantial right of constitutional due process—the principal issue that LG Chem and LGCAI raised in this case to support appealability. Further, the footnote defined "an order affecting a substantial right" as being an order that would "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Mid-State Distributors,* 310 S.C. at 335, 426 S.E.2d at 780. As numerous other courts such as in North Carolina have acknowledged, however, the constitutional right to due process is a substantial right. *See, e.g.*, *Hardee ex rel. White v. Lowe's Cos., Inc.*, 640 S.E.2d 445 (N.C. Ct. App. 2007) (table); *Bartlett v. Estate of Burke*, 877 S.E.2d 432 (N.C. Ct. App. 2022).[1]

[1] As discussed below in Section II(C), South Carolina courts have frequently relied on North Carolina cases when addressing cases on immediately appealability.

In addition, contrary to Respondent's argument that due process in the context of personal jurisdiction only guarantees protection against "judgments" (Resp't's Br. at 10), due process protects a foreign defendant from the burden of defending itself in a court that lacks power over it, and once deprived, those constitutional rights cannot be restored by simply reversing a judgment on appeal. This alone warrants a finding of finality and allows immediate appealability, as courts in other jurisdictions have recognized in this context. *See, e.g.*, *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); *Scott v. Kemp*, 460 P.3d 1264, 1269 (Ariz. Ct. App. 2020) (Arizona Court of Appeals recognizing that "when the motion to dismiss is based on an absence of jurisdiction, ...an appeal inadequately remedies a trial court's improperly requiring a defense in a matter where it has no jurisdiction"); *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 342 P.3d 997, 1001 (Nev. 2015) ("While an appeal is generally considered to be an adequate legal remedy precluding writ relief, the right to appeal is inadequate to correct an invalid exercise of personal jurisdiction over a defendant."); *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1156 (Nev. 2014) ("As no adequate and speedy legal remedy typically exists to correct an invalid exercise of personal jurisdiction, a writ of prohibition is an appropriate method for challenging district court orders when it is alleged that the district court has exceeded its jurisdiction.").

B. The orders at issue are immediately appealable because appeal after judgment would effectively prevent the appellate court from correcting the error.

Petitioners incorrectly argue that Petitioners did not address this aspect of §14-3-330 in their Final Brief (Resp't's Br. at 12), despite the fact that Petitioners did so and specifically argued that the availability of appeal after judgment is not dispositive, citing *Hagood v. Sommerville*, 362

S.C. 191, 607 S.E.2d 707 (2005) and *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). (Final Br. of Pet'rs' at 8-9.) In fact, as the cases cited by Petitioners show, whether or not the Court analyzed the appealability statute as a "two-step" inquiry the way Respondent does, in each case where the Court found an interlocutory order was immediately appealable, it did so after considering whether the right implicated was "substantial" and whether the order in question effectively prevented the appellate court from correcting the error post-trial. If so, such as in cases where the order involves choice of counsel (*Hagood*) or mode of trial (*Bateman*), the order "in effect determines the action and prevents a judgment from which an appeal might be taken."

Here, requiring a foreign defendant to suffer through a trial and final judgment in a court that lacks power over it violates constitutional due process, an error that cannot be adequately remedied by reversal on appeal. Contrary to Respondent's argument that due process in the context of personal jurisdiction only guarantees protection against "judgments" (Resp't's Br. at 10), due process protects a foreign defendant from the burden of defending itself in a court that lacks power over it, and once deprived, those constitutional rights cannot be restored by simply reversing a judgment on appeal. This alone warrants a finding of finality and allows immediate appealability, as courts in other jurisdictions have recognized in this context.

Respondent, however, asks the Court to ignore these prior precedents and follow the 30-year-old case *Mid-State*, in which the defendant raised different issues than have been raised here. For these reasons, LG Chem and LGCAI have asked the Court to determine if *Mid-State* allows immediate appeal pursuant to § 14-3-330 in the circumstances in this case or, if it does not, to overrule the case. The doctrine of separation of powers does not in any way prevent the Court from doing so.

C. South Carolina courts have properly looked to North Carolina cases when addressing cases on immediately appealability as the Court should do here.

This Court should look to North Carolina decisions for guidance, as South Carolina appellate courts have frequently done. *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 Constr. 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).

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), immediate appeal is permitted when 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); *see also Bartlett v. Estate of Burke*, 877 S.E.2d 432, 438 ¶ 25 (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). The same concerns and points support appealability under South Carolina's appealability statute.

D. The lack of appellate remedies has led to a dearth of precedent to South Carolina lower courts on constitutional minimum contacts, and the disagreement between two circuit court judges on the same constitutional issue further proves why appellate review in this area is necessary.

There has not been another South Carolina appellate decision that addressed the stream-of-commerce doctrine as applied to minimum contacts since *State v. NV Sumatra Tobacco Trading*

Co., 379 S.C. 81, 666, S.E.2d 218 (2008) was decided fifteen years ago. Since *Sumatra* was decided, this one issue has been the basis of six separate lawsuits in South Carolina against at least one of Petitioners alone (with differing outcomes on the personal jurisdiction issue),[2] and has been given significant attention from the United States Supreme Court in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011); *Daimler AG v. Bauman*, 571 U.S. 117 (2014), and numerous other state and federal courts' decisions. The South Carolina Supreme Court, however, has not had the opportunity to weigh in on this critical issue involving significant due process rights since 2008, leaving the lower courts without guidance, as reflected by the fact that two different circuit court judges reached different conclusions on an important matter of constitutional due process in the same case with the same record. This case therefore gives the Court the opportunity to clarify this constantly recurring and constitutionally important issue.

III. The trial court erred when finding that Respondent had satisfied his burden of establishing personal jurisdiction.

A. The second circuit judge improperly overruled the prior circuit judge's order.

Respondent admits that the record before Judge McKinnon was identical to the record before Judge Maddox. Respondent incorrectly blames Petitioners for this fact when it was

[2] *See Reid Fleming v. LG Chem, Ltd.*, Appellate Case No. 2022-000346); *Joshua Holtzendorff v. LG Chem, Ltd et al.*, Case No. 2018-CP-0201518 (Ct. Comm. Pleas, Aiken Cnty, 2020); *Moore v. Planet Vapor, Inc. et al.*, No. 2018-CP-02884 (Ct. Comm. Pleas, Florence Cnty, 2019); *Nicholas Keith Roberts v. LG Chem, Ltd. et al.*, Case No. Civil Action No. 2020-CP-100912 (Ct. Comm. Pleas, Charleston Cnty, 2020); *Williamson v. Pirates Cove Vapor Lounge, LLC, et al.*, Case No. 2019-CP-07-02270 (Ct. Comm. Pleas, Beaufort Cnty, 2019).

Respondent himself who asked Judge McKinnon to rule based upon the same record. (Appx. 00061, 00079, 00081-82, 00093-94, 442.)

But regardless of who was responsible for the state of the record, it is undisputed that the second circuit court judge (Judge McKinnon) reached a different conclusion from the first circuit court judge (Judge Maddox) on the exact same record. That was error. Plaintiff's reliance on *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013), is misplaced. In that case—unlike here—neither of two different circuit judges ruled on the specific issue at hand. Therefore, that case is inapplicable here, in which both judges made specific rulings on personal jurisdiction, based on the same specific evidence.

Further, the fact that two different circuit judges reached different conclusions on an important matter of constitutional due process demonstrates the need for appellate review specifically here and further demonstrates the need for appellate guidance in general on these personal jurisdiction issues.

Here, Judge Maddox found that there was not enough information to support a finding of personal jurisdiction. (Appx. 00007-11.) Judge McKinnon found that the same information supported the exercise of personal jurisdiction. (Appx. 00012-28.) The Court of Appeals erred when failing to reverse Judge McKinnon, both because his order was incorrect as discussed herein and because one circuit judge cannot overrule another circuit judge. *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).

B. Respondent improperly attempts to shift the burden of proof to Petitioners and misstates facts in an unfounded attempt to discredit Petitioners.

Respondent bears the burden of proving personal jurisdiction. *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). Yet, Respondent repeatedly attempts to shift the burden of proof to Petitioners, arguing, for example, that "Petitioners have not introduced competent evidence that the lithium-ion batteries described in the Customs import data are not 18650 batteries." (Resp't's Br., at 25.) It was not Petitioners' burden to disprove hypothetical jurisdictional facts.

In addition, in Respondent's counterstatement of the case, Respondent makes several accusations regarding LG Chem's conduct in this and other, unrelated litigation that are irrelevant, even if they were true, which they are not.

In the July 20, 2020 order, the circuit court (Judge Cordell Maddox) allowed jurisdictional discovery "determine 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." (Appx. 00010.) Disregarding these limitations, Respondent served discovery on LG Chem that went far beyond these issues. (Pl.'s Supp. Appx. 143-159.) (Respondent did not serve any jurisdictional discovery on LGCAI.)

Consistent with South Carolina's rules of civil procedure, LG Chem answered what was proper and objected to anything that was not, giving specific reasons for all objections and timely moving for protective order. Rule 33(a), 34(b), 34(a) SCRCP. (Appx. 00765-86.) Although Respondent now argues (improperly in his Counterstatement of the Case) that Petitioner LG Chem's objections were improper (and mischaracterizes LG Chem's objections and responses), Respondent never filed any response to the motion for protective order and never sought any further discovery. Both Petitioners timely filed their renewed motions to dismiss pursuant to the

July 20, 2020 Order, without any objection by Respondent that the timing was somehow improper. (Appx. 00436-41; Appx. 00787-91.)

When Petitioners' renewed motions to dismiss and LG Chem's discovery motion for protective order came up for hearing, Respondent's counsel expressly informed the circuit court judge that Respondent was withdrawing his discovery requests and asking the court to rule on the jurisdictional motions based upon the record before the court at that time (relying on the allegations of his Complaint and the inadmissible import data chart). (Appx. 00094, 00081-82, 00442.) Therefore, to the extent Respondent now argues that Petitioners were somehow responsible for the state of the record presented to Judge McKinnon, that argument is flatly contradicted by the record. (Appx. 00530, 00532, 00535.)[3]

C. The record does not include facts or allegations that could support a finding of personal jurisdiction over either LG Chem or LGCAI.

1. Respondent's statement of facts includes unsupported and inaccurate assertions.

Respondent's statement of facts includes numerous assertions that have no support and are demonstrably incorrect.

First, Respondent asserts that "the battery had been imported into the United States by LGCAI" (Resp't's Br., at 24), when that is incorrect and there is no basis to support it. Respondent cites to his Complaint to support this statement but fails to address the admissible evidence showing that (1) LGCAI never conducted any business whatsoever with Rolling Fog Vapor (the retailer that allegedly sold the battery to Respondent), and (2) LGCAI never authorized anyone to sell 18650 lithium-ion battery cells to consumers as replaceable, rechargeable batteries for e-

[3] Similarly misleading is Respondent's argument that "Petitioners' tactical gaming of the discovery process in other lithium-battery cases has been documented by courts in other jurisdictions" (Resp't's Br. at 8, n.3) which Petitioners addressed at Appx.000536-37.

cigarette devices. (Appx. 00290-91.) In addition, this assertion disregards another Affidavit of LGCAI's Affiant Mr. HyunSoo Kim that *Respondent* has injected into this case (Respt's Br., at page 2, fn. 1) where Mr. Kim attested that LGCAI never conducted any business in South Carolina pertaining to lithium-ion battery cells of any type. These facts were not developed in this case because Respondent chose not to serve any jurisdictional discovery on LGCAI and affirmatively requested that Judge McKinnon rule based solely upon the vague and conclusory allegations in his Complaint and the unsworn, unauthenticated, hearsay import chart. (Appx. 00081-82.)

Second, Respondent incorrectly asserts that Petitioners' affidavits do not deny that Petitioners distribute, sell, and advertise 18650 batteries for use by individual consumers in South Carolina as rechargeable batteries and do not deny that Petitioners authorize distributors, retailers, and re-sellers distribute and sell 18650 batteries for use by individual consumers in South Carolina. (Resp't's Br., at 26.) Similarly, Respondent incorrectly states that Petitioners have presented no evidence that the subject battery reached South Carolina outside of Petitioners' known and intended chain of distribution. (Resp't's Br., at 25.) Again, this is incorrect, as the evidence submitted with Petitioners' motions to dismiss specifically denies these purported facts. (Appx. 00109-13; 00550-53; 00290-92.) Neither LG Chem nor LGCAI ever sold or authorized anyone to sell LG 18650 lithium-ion battery cells to consumers in South Carolina (or anywhere else) as standalone, replaceable batteries for any purpose. Indeed, publicly available information, including LG Chem's own website, publicly warned consumers not to purchase or use LG 18650 lithium-ion battery cells as replaceable, rechargeable batteries. To the extent Respondent repeatedly argues that these facts are supported only by the arguments of counsel, not by evidence, that is incorrect. (*See e.g.*, Resp't's Br., at 29.)

Third, Respondent asserts that Petitioners' affidavits do not deny that the entries on the import data charts are 18650 batteries. (Respt's Br., at 26.) This is disingenuous. Petitioners' affidavits were submitted in response to Respondent's complaint, which did not ever allege that Petitioners imported 18650 lithium-ion batteries directly into South Carolina using South Carolina ports. And the so-called import charts themselves include a "product description" column which shows that the type of products LGCAI imported were petrochemical products such as synthetic rubber, butyl acrylate, acrylic acid, methyl acrylate, and so on. (Resp't's Supp.. Appx. 00177-213.) The entries referencing lithium ion battery shipments to car manufacturers in South Carolina did not involve LGCAI (and they did not reference 18650 lithium-ion battery cells in any event). (Appx. 01028-29.)[4]

And Respondent did not address (with this Court or with the circuit court) LG Chem's responses to Respondent's discovery requests, which established that shipments of electric vehicle batteries to various car companies referenced on the inadmissible import charts could not have been 18650 lithium-ion battery cells. After refusing to agree to a Confidentiality Order, Respondent waived further jurisdictional discovery regarding whether there were ever shipments of 18650 lithium-ion cells to anyone in South Carolina and told the circuit court judge that *he withdrew any request for additional information* and wanted to proceed on the same record that had been before Judge Maddox. (Appx. 00694; 00094.)

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[4] Respondent includes a footnote referring to statements made in an Affidavit of Mr. HyunSoo Kim, that was submitted on behalf of LG Chem America, Inc. in another matter where Mr. Kim specifically attested that LGCAI's business activities in South Carolina were limited to petrochemical products and not lithium ion batteries of any type. (Resp't's Br., at 2.) That Affidavit is not part of the record in this case and Respondent did not provide it to the Court, and yet Respondent implies that the Affidavit is somehow inconsistent with Mr. Kim's Affidavit in this case, when it is not.

Therefore, none of this was considered by the circuit court when he ruled on the motion because Respondent specifically asked him to decide the jurisdictional issue without the benefit of any jurisdictional discovery.

2. There was no evidence to support a finding of jurisdiction over LGCAI.

To begin with, Respondent fails to distinguish between Petitioner LG Chem (a Korean company with its headquarters in Seoul, South Korea) (Appx. 110) and its separate and independent subsidiary LGCAI (a Delaware company with its headquarters in Atlanta, Georgia). (Appx. 290).

To the extent Respondent relies on the inadmissible import charts as purported evidence that Petitioners were shipping lithium-ion battery cells to South Carolina, there was not a single entry on any of those charts connecting LGCAI to shipment of any type of battery or battery cell to anyone in South Carolina. Instead, the entries referencing LGCAI related solely to shipment of petrochemical products, which was consistent with LGCAI's uncontroverted affidavit evidence that it was never involved in the sale or shipment of any lithium-ion battery cells to anyone in the State of South Carolina. (Resp't's Supp. Appx. 00177-213.) So, even if the import charts were admissible (and they were not), they could not possibly support a finding that Plaintiff's claims had anything whatsoever to do with any activities LGCAI engaged in or directed to South Carolina.

3. There was no evidence to support a finding of jurisdiction over LG Chem.

To the extent Respondent relies on the inadmissible import charts as purported evidence that Petitioners were shipping 18650 lithium-ion battery cells to South Carolina, there was not a single entry on any of those charts referencing 18650 lithium-ion battery cells. The entries reflecting shipment by LG Chem of lithium ion batteries to automotive manufacturers would not support the exercise of jurisdiction even if they had been 18650 lithium-ion battery cells, and

Respondent knows they were not based upon LG Chem's discovery responses that he does not address. Further, LG Chem's admissible evidence showing that it never designed, distributed, advertised, or sold its 18650 lithium-ion cells to individual consumers as replaceable, rechargeable batteries was uncontroverted (Appx. 00110-11; 00290-91), notwithstanding Respondent's inaccurate statements to the contrary in his statement of facts.

D. Respondent's arguments are not supported by facts, evidence, or law.

The question of personal jurisdiction depends on the facts of each case. Here, the undisputed facts establish that neither Petitioner ever distributed, advertised, or sold 18650 lithium-ion battery cells (the type of product at issue in this suit) to consumers in South Carolina (or anywhere else) for use as standalone, replaceable batteries. Based on those undisputed facts, Respondent cannot meet his burden of proving that his claims "arise out of or relate to" contacts formed by each Petitioner with South Carolina specifically.

Faced with this evidence, Respondent reverts to the same argument he has advanced throughout this litigation – that his conclusory allegations in the Complaint are sufficient to require these Petitioners to proceed to trial in a South Carolina court. Constitutional due process, and the precedents discussed at length in Petitioners' opening brief, prevent that unfair result. If the Plaintiff is not required to plead specific, concrete facts that, if true, would support the exercise of personal jurisdiction, then the defense becomes meaningless and every foreign product manufacturer that sells a product anywhere in the United States would be subject to jurisdiction in South Carolina merely based solely upon conclusory allegations like those at issue in Respondent's Complaint. Neither the U.S. Constitution, nor this Court's prior precedents, can tolerate that result.

Even Respondent appears to recognize the fragility of any attempt to rely on *Sumatra* to support a finding of jurisdiction in this case, based upon conclusory allegations that Petitioners

sold and distributed their products throughout the United States with the expectation that they would be used in all fifty states, including in South Carolina. To support his stream of commerce argument, Respondent repeatedly states that there is no evidence to show that the batteries he purchased arrived in South Carolina through the unilateral actions of third parties outside of the Petitioners' known and intended chain of distribution. That is simply incorrect, as discussed above. But it illustrates the point that even Respondent has no choice but to recognize – that the defendant itself must be a part of the decision to direct the product at issue to a consumer market in the forum state. Here, that did not happen, because the undisputed evidence establishes that neither Petitioner directed 18650 lithium-ion battery cells to a consumer market in South Carolina for standalone, replaceable, rechargeable batteries.

Resorting again to the statement that Petitioners have imported "hundreds of its products" into South Carolina (Respt's Br., at 38), Respondent fails to give heed to the very clear statements by the U.S. Supreme Court in the years since *Sumatra* was decided that business activities in the state – even *extensive sales of the same product* in the forum state – cannot satisfy due process if those sales are unrelated to the claims at issue. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty*., 137 S. Ct. 1773, 1780 (2017); *Goodyear*, 564 U.S. at 919 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.")

IV. Even if Constitutional Due Process were satisfied, the circuit court could not acquire jurisdiction over LG Chem absent proper service, which is lacking.

Respondent's service of process argument depends on a factual assertion that has no basis in the record. Respondent states that "the Secretary of State is authorized to accept service in-state on behalf of LG because it controls LGCAI, which is a wholly owned subsidiary corporation that

does business in South Carolina." (Resp't's Br. at 42.) This sentence has no citation to the record. Nor could there be, because nothing in the record supports this statement.

The fact that LGCAI is a wholly owned subsidiary of LG Chem does not mean it is under the legal control of LG Chem for purposes of service rules, and it is not. Control is a legal concept that, under South Carolina law, requires an analysis of numerous factors not satisfied in this case. See *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (1984); *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club,* 310 S.C. 132, 148, 425 S.E.2d 764, 774 (Ct. App. 1992); *see also Burrows v. Gen. Motors Co.*, No. 4:12-CV-02823, 2013 WL 3967115, at *6 (D.S.C. July 31, 2013) (citing *United States ex rel. Vallejo v. Investronica, Inc.*, 2 F. Supp. 2d 330, 335 (W.D.N.Y. 1998) for the proposition that "[t]he law is well settled that service of process on a wholly-owned subsidiary does not constitute service of process on a parent corporation where separate corporate identities are maintained"). A parent corporation is not automatically deemed to control a subsidiary by virtue of mere ownership and, here, the circuit court was not entitled to assume otherwise. *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.,* 275 S.C. 151, 153–54, 268 S.E.2d 42, 44 (1980). Respondent did not plead in his complaint that LGCAI was under LG Chem's control, and it is not. LGCAI is a separate and independent company, with its own headquarters and corporate officers, and its actions must be evaluated separately from LG Chem's.

Respondent's argument that LG Chem failed to preserve this issue for appeal is confusing and contradictory. (Resp't's Br. at 23.) Respondent contends that LG Chem did not "timely" appeal the service issue because a Notice of Appeal was not filed within 30 days after the circuit court held service was proper on September 19, 2023. (Resp't's Br. at 5, 6, 23.) Respondent alternately contends that the orders in this case are not immediately appealable. (Resp't's Br. at 23.) Here, there can be no question that LG Chem preserved its defense of improper service for

appeal, by repeatedly raising it. Respondent has had more than four years to correct the defective service and has chosen not to. LG Chem has never waived its defense that it was not properly served.

In these proceedings, LG Chem raised the issue of insufficient service of process in its Petition for Writ of Certiorari as one of the many reasons supporting the argument that, by 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. The service issue is intertwined with the personal jurisdiction issue, because without proper service, personal jurisdiction cannot attach even if it were constitutionally permissible (and it is not here). Therefore, this issue is fairly encompassed by the Court's grant of certiorari to review the question of whether personal jurisdiction is satisfied.

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 personal jurisdiction.

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