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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2024-001997
Circuit Court Case No. 2022-CP-40-01265

Sarah J. Plant and Parker Plant, ... Plaintiffs,

v.

Avon Products, Inc.; Amaco, LLC; American Art Clay Co. Inc.; The Bargain Barn, LLC; Beacon CMP Corporation; Belk, Inc.; Block Drug Company, Inc.; Brenntag North America, Inc.; Brenntag Specialties, LLC; Bristol-Myers Squibb Company; Chattem, Inc.; Colgate-Palmolive Company; Color Techniques, Inc.; Conopco, Inc.; Coty Inc.; Dana Classic Fragrances, Inc.; Dillard's, Inc.; Dollar General Corporation; Elizabeth Arden, Inc.; Estee Lauder Inc.; Estee Lauder International, Inc.; The Estee Lauder Companies Inc.; Hamrick's Incorporated; Highwater Clays, Inc.; Houbigant, Inc.; IMI Fabi (Diana) LLC; IMI Fabi (USA) Inc.; IMI Fabi, LLC; Ingles Markets, Incorporated; L'Oreal USA, Inc.; L'Oreal USA Products, Inc.; Lowcountry Grocers LLC; Martin Himmel Inc.; May Kay Inc.; Maybelline LLC; Noxell Corporation; Pfizer Inc.; R.T. Vanderbilt Holding Company, Inc.; Revlon Consumer Products Corporation; Revlon, Inc.; Rite Aid of South Carolina, Inc.; Southeastern Grocers, Inc.; Topco Associates, LLC; Vanderbilt Minerals, LLC; Variety Wholesalers, Inc.; Variety Wholesalers, Inc.; Vi-Jon, LLC; Walgreen Co.; Walmart, Inc.; Whittaker, Clark & Daniels, Inc.; Winn-Dixie Stores, Inc.; Yves Saint Laurent America, Inc. ..... Defendants,

of which

IMI Fabi (Diana) LLC; IMI Fabi (USA) Inc.; and IMI Fabi, LLC are the ..... Appellants.

REPLY BRIEF OF APPELLANTS

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REPLY BRIEF

The strength of the IMI Fabi entities' appeal is revealed by the way the Plants structured their red brief. The IMI Fabi entities identified the absence of personal jurisdiction as Issue 1 in their opening brief, and for good reason: it is a threshold constitutional issue that disposes of this entire case, and it has been disputed since Day 1.

Yet, despite the primacy of that issue and its status as the first issue in this appeal, the Plants do not even mention it until Page 37 of their brief, and they do so only after spending dozens of pages trying to fudge the evidence and procedural posture of the new-trial arguments presented and considered below. And when they finally do acknowledge this issue, the Plants spend four pages begging the Court to deem the issue "not appealable." (Plants Br. at 38–41.) The Plants seemingly want the Court to ignore the facts and assume the worst about the IMI Fabi entities, but then look the other way on the constitutional question of personal jurisdiction that must be answered before the case can move one inch further.

Without jurisdiction, nothing else can happen in this case. And, as revealed by the Plants' return argument, there is no real debate that South Carolina lacks personal jurisdiction over the IMI Fabi entities. There is no evidence that any IMI Fabi entity purposefully availed itself of South Carolina with respect to selling cosmetic talc, and that absence is dispositive.

Similarly, with respect to the substance of the new-trial motion, the Plants fill their brief with rhetoric but ignore both the law and the circuit court's actual explanation for its new-trial ruling. In South Carolina, complaints about discovery responses—which is all that the circuit court's ruling and the Plants' appellate argument amount to—cannot be the basis for a new trial. *Raby Constr., LLP v. Orr*, 358 S.C. 10, 20–21 n.5, 594 S.E.2d 478, 483 n.5 (2004). Reversal is therefore required.

I. There is no personal jurisdiction over the IMI Fabi entities, as nothing connects them to South Carolina with respect to the subject matter of this case.

A. The circuit court's personal jurisdiction rulings are reviewable.

The Plants argue at length that the circuit court's personal jurisdiction rulings are not reviewable on appeal because a co-defendant—Whittaker, Clark & Daniels, Inc. ("WCD"), against which the jury returned a $29 million verdict—commenced bankruptcy proceedings while its own post-judgment motions were still pending before the circuit court. The automatic stay associated with the WCD bankruptcy undoubtedly prevents the circuit court from ruling on the WCD post-judgment motions, and it undoubtedly prevents this case from being retried in any form (with or without the IMI Fabi entities) until the WCD bankruptcy proceedings conclude or the Bankruptcy Court lifts the stay. 11 U.S.C. § 362. But the WCD bankruptcy has no bearing on the circuit court's personal-jurisdiction rulings regarding the IMI Fabi entities, as those are not part of any of the WCD post-judgment motions.

The procedural history on this issue is clear and undisputed: the IMI Fabi entities consistently objected to personal jurisdiction through pretrial and in-trial motions, including asking the circuit court to instruct the jury regarding the issue. The circuit court rejected those arguments at every opportunity and refused to let the question go to the jury. The circuit court's ruling that it had personal jurisdiction over the IMI Fabi entities became final once the circuit court entered the verdict form and denoted it as an order on the Public Index. (R. p. 318; Trial Tr. 110:22–24 (denial of pretrial motion); R. p. 459; Trial Tr. 1562:3–19 (denial of first directed verdict motion); R. p. 467; Trial Tr. 1894:5–20 (denial of second directed verdict motion); R. pp. 461–463; Trial Tr. 1623:1–1625:12 (denial of proposed jury instruction); R. p. 709; Verdict Form.)

Because the jury returned a verdict in their favor, the IMI Fabi entities were not "aggrieved" by the circuit court's rulings. Rule 201(b), SCACR. They did not become so until nearly twenty

months later when the circuit court ordered a new trial. Now that the circuit court has heard, considered, and ruled on the "jurisdictional facts" associated with the remaining IMI Fabi entities and entered final decisions that do aggrieve the IMI Fabi entities, they have standing to appeal that decision. This appeal is proper and timely made.

Two other points reveal the error of the procedural gymnastics offered to avoid appellate review of this threshold constitutional issue. First, the illusory nature of the Plants' argument is demonstrated by their suggestion that the personal jurisdiction rulings below were really part of an unappealable "summary judgment" denial. (Plants Br. at 39.) They go so far as to accuse the IMI Fabi entities of "alter[ing] the trial transcript" to get around the Plants' heretofore unknown procedural argument. (*Id.*)

This is nonsense. Page 23 of the IMI Fabi entities' opening brief doesn't "alter the trial transcript"; instead, they used the standard signal "sic" to flag for this Court's awareness that the trial judge misspoke when she said "I deny the motion for summary judgment" while ruling on a directed verdict motion. This was an obvious misspeak by the judge, as the discussion arose in the middle of a jury trial during arguments in support of a directed verdict motion, and the judge ended her ruling by saying that she was "deny[ing] the motion to direct on personal jurisdiction" based on her view of the "jurisdictional facts" regarding the IMI Fabi entities. (R. p. 459; Trial Tr. 1562:3–25.) To suggest that the IMI Fabi entities have "altered" the transcript to gain some type of procedural advantage is a desperate argument and should be disregarded by this Court.

Second, even assuming for purposes of argument that the Plants' procedural gamesmanship could be colorable (it is not), review of the constitutional threshold question of personal jurisdiction remains entirely proper because there is no doubt that an appealable order is before the Court. *See QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004) ("Although

a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court."); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (providing that "an order that is not directly appealable will be considered if there is an appealable issue before the court").[1] That is clearly the situation here.

It would not serve the parties or judicial economy at all for the Court to defer ruling on the absence of personal jurisdiction here. Consider: this case involves two Tennesseans suing a dormant North Carolina company with its only place of business being in New York (IMI Fabi (Diana)) and a West Virginia company (which was formerly a North Carolina company) with its only place of business being in West Virginia (IMI Fabi, LLC),[2] and the circuit court has granted a new trial because the judge thought that a Massachusetts lawyer had not properly disclosed information about which a witness from Italy ultimately testified. There is no legitimate South Carolina nexus to this case, and there is no possible reason to delay consideration of this Due Process issue that establishes whether a South Carolina court has authority to act in the first place.

B. Contacts that have nothing to do with the sale of cosmetic talc, or nothing to do specifically with South Carolina, are irrelevant to the personal jurisdiction analysis.

The Plants rightly concede in their response brief that they have the burden of proof regarding whether the circuit court could exercise personal jurisdiction over either IMI Fabi entity. (Plants Br. at 41–42.) But they try to carry that burden by both misstating the evidence below and misstating the law governing personal jurisdiction.

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[1] *QZO* and *Cox* involved review of pretrial motions to dismiss. Here, the personal jurisdiction decision on appeal comes after a full trial and verdict. There is simply nothing left to do at the circuit court regarding this issue—it has been fully briefed, fully argued, and resolved by the circuit court with the judge's reasoning stated on the record after a full evidentiary presentation.

[2] The only other defendant to go to verdict was New Jersey-based Whittaker, Clark & Daniels.

Blurring Distinctions in the Evidence: The Plants are counting on this Court to neither understand nor appreciate the distinction between industrial-grade talc (which has nothing to do with this case) and cosmetic-grade talc (which this case is about). They misleadingly present Mr. Fabi's testimony regarding the companies' customers and evidence regarding sales of ***industrial*** talc to this Court as if the testimony and evidence was about ***cosmetic*** talc. (Plants Br. at 43–47.) They repeatedly use generic terminology like "their products" and "their talc" to blur this distinction and blend the two products as if they are interchangeable—which they are not. (*Id.*) And the Plants conclude their argument by claiming without citation (because it is not true) that "[a]t the end of the day, the Fabi Defendants sell *one* product—processed talc ore." (*Id.* at 49 (emphasis in original).)

Industrial talc-versus-cosmetic talc is a key distinction, as the products that the IMI Fabi entities sell are not fungible, and their customers for each product are vastly different. But this is a critical point, as the U.S. Supreme Court has been unequivocal that contacts unrelated to the instant dispute are meaningless to the jurisdictional analysis. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017) ("When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State."); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011) (reiterating that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales").

As explained in their opening brief, IMI Fabi, LLC produces industrial talc "for incorporation in the manufacture of plastic and rubber products." (R. p. 862; Aff. Woods ¶ 19.) And it ships some of its industrial talc directly to its manufacturing customers, including a tiny fraction in South Carolina. (*Id.*; R. p. 391; Trial Tr. 1209:1–16.) Cosmetic talc is an entirely

different product, made to meet different specifications and intended for use in completely different products.

But the Plants do not allege any injury from exposure to plastic or rubber products, or even from any products that contain industrial talc. Instead, the Plants allege injury from exposure to makeup products they alleged contain cosmetic talc. Accordingly, all discussions in the Plants' brief regarding sales of industrial talc (for instance, the table on Page 43), including in South Carolina (for instance, the table on Page 46), are irrelevant.

With respect to cosmetic talc, the evidence is unrebutted. The IMI Fabi entities have a single customer for their cosmetic talc sales: Cosmetic Specialties, Inc., a New Jersey company that picked up the cosmetic talc F.O.B. from an IMI Fabi dock during the relevant time periods of this case. (R. pp. 373–374, 378–379; Trial Tr. 1191:20–1192:13, 1196:23–1197:6.)[3] There is simply no evidence to support any notion that either IMI Fabi entity has ever purposefully directed a single ounce of cosmetic talc for sale in South Carolina, and that is dispositive.

To try to fill that evidentiary hole, the Plants abandon the circuit court's explanation of the so-called "jurisdictional facts" it claimed supported a finding of personal jurisdiction here—including specifically disclaiming the circuit court's erroneous statement that the IMI Fabi entities were members of the Cosmetic, Toiletries, and Fragrance Association. (Plants Br. at 43.) Instead, the Plants generically argue that personal jurisdiction must attach to the IMI Fabi entities because their sole customer for cosmetic talc, Cosmetic Specialties, sells cosmetic talc to its own

[3] The Plants criticize the IMI Fabi entities for pointing out the F.O.B. arrangement, which is designed to ensure the IMI Fabi entities are never mistakenly haled into a jurisdiction where they did not purposefully avail themselves of doing business—like South Carolina. (Plants Br. at 42.) Despite the Plants' dissatisfaction, this Court has previously recognized that the presence of an F.O.B. arrangement can serve as an indicator that contracting party intends to stay within a specific forum or away from other fora. *Digital Ally, Inc. v. Light-N-Up, LLC*, 408 S.C. 101, 108–09, 757 S.E.2d 732, 736–37 (Ct. App. 2014).

manufacturing customers elsewhere in the United States (notably, without proof of any sales specifically in South Carolina). (Plants Br. at 46.)

But what Cosmetic Specialties ultimately does or does not do with cosmetic talc it buys from an IMI Fabi entity or any other talc supplier is irrelevant to determining whether there is personal jurisdiction over the IMI Fabi entities in South Carolina. All that matters is whether the IMI Fabi entities themselves purposefully directed sales of their cosmetic talc into South Carolina, and there is zero evidence of that. *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 291 (2014) (holding that for jurisdictional purposes, "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State"); *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992) ("In addition, the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

The Plants also note that the IMI Fabi entities have previously used a lab in South Carolina to confirm that their talc does not contain asbestos. (Plants Br. at 46.) But that also has nothing to do with whether any IMI Fabi entity ever purposefully directed any sales of cosmetic talc to South Carolina—because they did not, and no evidence suggests that they ever did. *See, e.g.*, *Bristol-Myers Squibb*, 582 U.S. at 264 ("When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State."); *Coggeshall v. Reproduc. Endocrine Assocs.*, 376 S.C. 12, 16, 20, 655 S.E.2d 476, 478, 480 (2007) (explaining that "[s]pecific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum," and holding that the long-arm statute didn't apply to the defendants because "the business activities of REACH and Dr. Crain that occurred in South Carolina, which included billing patients and doing business with vendors, did not give rise to the alleged tort in this case").

Finally, the Plants argue that the IMI Fabi entities are subject to personal jurisdiction in South Carolina because Ms. Plant occasionally purchased makeup when vacationing in South Carolina, and the manufacturer's formula for that makeup showed "Talc 141" as an ingredient. (Plant. Br. at 49 (citing Trial Exhibit 60).) In addition to overlooking the fact that the IMI Fabi entities had nothing to do with the manufacturing of any end-user makeup product or its appearance on a store shelf in South Carolina, the Plants omit two key points about this evidence.

First, the exhibit upon which they base this argument purports to show formulas as late as December 15, 1997—but neither IMI Fabi entity existed then. (*Compare* R. p. 712; Trial Exhibit 60; *with* R. p. 861; Aff. Woods ¶ 3, *and* R. p. 839; Aff. Brown ¶ 3.)

Second, that exhibit is a summary chart, and it shows CoverGirl using ***WCD*** talc during the time periods reflected and makes no reference at all to any IMI Fabi entity. (*See* R. p. 712; Trial Exhibit 60 (reciting the "WC&D talc product number specified").) Accordingly, it too has no relevance to the personal jurisdiction analysis of either IMI Fabi entity.

* * * * *

The circuit court did not identify any evidence that would allow personal jurisdiction to attach to either IMI Fabi entity, and the Plants' efforts to work around the errors in the circuit court's analysis fare no better. Without any evidence to show that either IMI Fabi (Diana) or IMI Fabi, LLC purposefully availed itself of South Carolina with respect to selling the cosmetic talc upon which the Plants base their claims, no personal jurisdiction can attach.

Blurring Distinctions in the Law: Lacking evidence to support purposeful availment, the Plants embrace the circuit court's erroneous "stream of commerce" theory of personal jurisdiction and argue that a company seated at any point in a supply chain can be subject to suit anywhere that the final consumer product may ultimately end up. Truly, despite reciting the phrase "stream of

commerce," the Plants never identify any potential boundaries on this "theory" other than looking to a defendant's "expectation" that its products may wind up in the forum. (Plants Br. at 44–45.)

Even if that were actually the standard, personal jurisdiction still would not attach, as each IMI Fabi entity submitted unrebutted sworn testimony disclaiming any such "expectation" of ever having anything to do with South Carolina regarding sales of cosmetic talc. (R. p. 864; Aff. Woods ¶¶ 35, 42 (IMI Fabi, LLC); R. p. 840; Aff. Brown ¶¶ 35, 46 (IMI Fabi (Diana)).)

But an "expectation" is not the standard. Instead, the standard is much higher and requires "something more" than simply placing a product in the stream of commerce and having personal jurisdiction become a game of chance as to where the product may someday end up. That was the very point of the Supreme Court's decision in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 889 (2011) (concurrence), where the absence of "'something more,' such as special state-related design, advertising, advice, marketing, or anything else" meant that personal jurisdiction could not attach to a foreign manufacturer whose product injured a New Jersey resident.

The Plants try to circumvent this controlling authority by citing *Collett v. Olympus Medical Systems Corp.*, 437 F. Supp. 3d 1272 (M.D. Ga. 2020), as proof that courts should ignore the U.S. Supreme Court's prescription in *J. McIntyre*. Not so. There, the federal trial court held that jurisdiction attached to a Japanese manufacturer that used an "affiliate company" in the United States to sell the manufacturer's medical device directly to a Georgia doctor, who then used the device and caused the plaintiff's injury. *Id.* at 1275. That, of course, bears no resemblance to the instant case, where the IMI Fabi entities do not use an "affiliate company" to distribute their cosmetic talc, and they do not even manufacture the end product that allegedly caused the injury.[4]

[4] *Collett* is obviously distinguishable on its facts. Even still, other courts have specifically rejected *Collett* as not being faithful to *J. McIntyre*. *See, e.g.*, *Farson v. CooperSurgical, Inc.*, Case No. 3:22 CV 716, 2023 U.S. Dist. LEXIS 136384, at *17–18 (N.D. Ohio Aug. 4, 2023) (rejecting

In addition to a trial court decision from Georgia, the Plants also suggest the South Carolina Supreme Court "just affirmed" in *Welch v. Atlas Turner, Inc.*, Op. No. 28284 (S.C.Sup.Ct. filed May 21, 2025) (Howard Adv.Sh. No. 19), that a generic "stream of commerce" theory is sufficient to satisfy Due Process. This is also incorrect.

The *Welch* Court recited that in response to a motion to dismiss, the circuit court "found Atlas Turner placed its products into the stream of commerce with the knowledge or expectation that the products would be sold and used by consumers in South Carolina." *Id.* at 21. But rather than address the particulars of this theory or try to reconcile it with *J. McIntyre*, the *Welch* Court explained the record in that case indicated Atlas Turner sold its insulation ***directly*** "to a Greenville based installer from 1968 to 1973," and that Atlas Turner's asbestos-containing insulation products appeared in the plant where the plaintiff worked. *Id.* at 21–22. That isn't a "stream of commerce" analysis, as the Plants suggest; it is a finding that Atlas Turner entered South Carolina on its own to directly sell products in this state that may have ultimately injured that plaintiff, activity that in no way approximates anything either IMI Fabi entity has done here.

To be sure, the last time the South Carolina Supreme Court addressed the "stream of commerce" theory was in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89 n.5, 666 S.E.2d 218, 222 n.5 (2008). In that pre-*J. McIntyre* decision, the Court refused to require "something more" than placing a product in the "stream of commerce" in order for personal jurisdiction to attach. That analysis is inconsistent with the U.S. Supreme Court's subsequent *J. McIntyre* decision, and *Sumatra*'s treatment by other courts is telling and lays bare the error of the circuit court's "stream of commerce" analysis here.

Collett and finding that the court could not exercise personal jurisdiction over a "foreign company who sells a product throughout the United States at large" without anything indicating that the company directed its conduct "specifically at Ohio," precisely as *J. McIntyre* indicates).

For one, the New Jersey Supreme Court favorably cited *Sumatra* as supporting authority for its expansive view of the "stream of commerce" theory of personal jurisdiction in the very decision that was reversed by the *J. McIntyre* Supreme Court. *See Nicastro v. McIntyre Machinery Am., Ltd.*, 987 A.2d 575, 588 n.11 (N.J. 2010) (citing *Sumatra* as supporting authority for its view of the "stream of commerce" theory), *rev'd* 564 U.S. 873 (2011).

In addition, after *J. McIntyre*, at least one court has specifically recognized that *Sumatra* is inconsistent with the U.S. Supreme Court's analysis—and it did so in a case involving the exact same defendant and the exact same circumstances that were presented to the South Carolina Supreme Court in *Sumatra*. *See State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726,762 n.37 (Tenn. 2013) ("Suffice it to say that, especially in the wake of *J. McIntyre Machinery*, we do not consider it proper to follow South Carolina in eschewing the stream of commerce plus approach that is currently the law of this state. It is our view that the United States Supreme Court's precedents, including all three opinions in *J. McIntyre Machinery*, place a degree of importance on 'how the products arrived' in the state.") (cleaned up).

* * * * *

The circuit court erred by deciding that simply putting cosmetic talc anywhere in the "stream of commerce" without any intentional effort to market or sell that product specifically in South Carolina subjected the IMI Fabi entities to personal jurisdiction in this State. The evidence does not support that ruling, and neither does the law. Because neither IMI Fabi entity is subject to personal jurisdiction here, the Court should vacate the rulings below and dismiss this case.[5]

[5] As noted in Footnote 1 of the IMI Fabi entities' opening brief, the new-trial order on appeal appears to order a new trial against IMI Fabi (USA), which the Plants voluntarily dismissed during trial. (R. pp. 464–465; Trial Tr. 1833:24–1834:7.) In their response brief, the Plants concede that IMI Fabi (USA) is no longer a party to this case. (Plants Br. at 4 n.3.)

II. The Plants' efforts to rehabilitate the circuit court's new-trial order only confirm the impropriety of that decision.

The Plants' attempt to explain away errors in the circuit court's new-trial order fares no better than their argument regarding personal jurisdiction. The IMI Fabi entities' opening brief made four core arguments regarding errors in the new-trial order:

(1) South Carolina law does not allow a new trial to be based on allegedly-deficient discovery responses. (Opening Br. at 28–29, 32–33.)

(2) The "newly-discovered" evidence was either never requested or is no different in kind from the evidence that was already available at trial and upon which the Plants based their arguments to the jury. (*Id.* at 29–34.)

(3) Even with the "newly-discovered" evidence, multiple insurmountable evidentiary gaps exist in the Plants' case. (*Id.* at 31, 35–39.)

(4) It is outrageous to suggest any "fraud" happened here. Mr. Sommerville, a now-retired Massachusetts lawyer, voluntarily appeared in Columbia and testified that he and two associates exercised their professional judgment to produce materials responsive to the Plants' actual discovery requests, not to their post-trial "we wish we would have asked for that" list or discovery requests served by other plaintiffs in other cases. And Mr. Fabi's testimony regarding Cosmetic Specialties being the IMI Fabi entities' sole customer for cosmetic talc was truthful—and was even corroborated by Mr. Grexa, who owns Cosmetic Specialties. (*Id.* at 12–14, 39–44.)

The Plants responded to these arguments in scattershot form across 24 pages of their red brief. (Plants' Br. 13–36.) To bring some structure to the reply, the IMI Fabi entities address the response arguments in the same order in which these points were presented in the opening brief.

A. South Carolina law does not allow a circuit court to overturn a jury's verdict based on allegedly-deficient discovery responses.

In response to the IMI Fabi entities' baseline legal argument, the Plants state as follows: "The Fabi Defendants' assertion is based almost exclusively on their interpretation of a single case. *Raby Construction LLP v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004)." (Plants Br. at 14.) This is puzzling for several reasons.

First, in *Raby Construction*, the South Carolina Supreme Court could not have been clearer that the IMI Fabi entities' argument is correct:

> Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud. . . . Thus, the weight of South Carolina authority clearly leads us to reject the argument that relief from judgment is permitted for intrinsic fraud if raised within one year of the judgment.

358 S.C. at 19–20, 594 S.E.2d at 483. And it then applied the law to those facts precisely how the IMI Fabi entities suggest it should be applied here:

> Thus, Raby's deposition alone establishes Orr became aware that computer records were kept by respondent and had not been produced. Notwithstanding this information, Orr settled this case without further inquiry. We find it obvious that Orr could have discovered the alleged "misconduct" and the "after-discovered" evidence that form the basis of his Rule 60(b) motion. For this additional reason, we affirm the trial court's decision to deny relief from judgment.

Id. at 22–23, 594 S.E.2d at 484. That alleged discovery defects cannot serve as the basis for relief from a judgment isn't the IMI Fabi entities' "interpretation" of *Raby Construction*—these are the exact words of the South Carolina Supreme Court.

Second, the IMI Fabi entities did not rely "almost exclusively" on *Raby Construction*. This point of law has been reiterated several times by South Carolina's appellate courts, and the IMI Fabi entities cited this Court's decisions in *Lanier v. Lanier*, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005), and *Bowman v. Bowman*, 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004), along with *Raby Construction*, in support of this exact same proposition of law. (Opening Br. at 27–29, 33.)

As the *Lanier* Court explained:

> Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial. *Black's Law Dictionary* defines "due diligence" as "the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." "Diligence looks not to what the litigant actually discovered, but what he or

> she ***could*** have discovered." . . . Where a litigant could have discovered the new evidence prior to trial, he or she is not entitled to relief under Rule 60(b)(2).

364 S.C. at 220, 612 S.E.2d at 460–61 (quoting *Black's Law Dictionary* 468 (7th ed. 1999), and 12 *Moore's Federal Practice* § 60.42[5] (3d ed.), and emphasis supplied by the Court).

And as the *Bowman* Court explained:

> We consider it unnecessary to explore the differing standards between Rule 60 (b)(2) and (3) as advanced by Husband, for we conclude that South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.

357 S.C. at 152, 591 S.E.2d at 657.

This is simply not a disputed point of South Carolina law, and the fact the Plants pretend it is up for debate is telling.

Finally, because this is a point of law, the IMI Fabi entities were entirely correct when they explained that this Court reviews such legal errors *de novo* and does not defer to the circuit court's errors of law, as the Plants suggest in their response. (*Compare* Opening Br. at 26 *with* Plants Br. at 13–14.) Notably, the Plants do not dispute the remainder of the standard of review: namely, all reasonable inferences must be given to the IMI Fabi entities, *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996); and the Court should honor the state's "strong policy towards finality of judgments," *Bowman*, 357 S.C. at 152, 591 S.E.2d at 657.

B. The Plants' brief reinforces the new-trial order is based on alleged discovery defects, which they could have addressed through their own "due diligence."

The Plants have to dispute this settled point of law because, as their red brief admits, they seek (and the circuit court granted) a new trial based on perceived discovery deficiencies. But everything they claim is "newly-discovered" evidence is information that was either (a) known to the Plants and never pursued by them or (b) never requested in discovery in the first place.

Despite the circuit court's apparent belief that the IMI Fabi entities' suppressed records in discovery, the Plants' brief rightly acknowledges that the IMI Fabi entities actually did produce a series of documents exchanged with cosmetics manufacturers, though the Plants sheepishly bury that concession among a series of charts. (Plants Br. at 19.)[6] On the page after that concession, the Plants complain that there were approximately a dozen additional documents stretched across two decades showing similar exchanges between the IMI Fabi entities and cosmetics manufacturers that were not produced in advance of trial. (*Id.* at 20 (Chart).) But they don't explain how or when these documents were supposedly requested until Page 24 of their brief, when they list a series of document requests that accompanied their Rule 30(b)(6) deposition notices to the IMI Fabi entities. (*Id.* at 24 (referencing R. p. 1824; Ex. 13 to Plants' Motion for New Trial).)

That notice was sent on February 8, 2023, and demanded production by February 10, 2023—significantly less than the 30 days permitted by Rule 34 of the South Carolina Rules of Civil Procedure—in advance of a corporate-representative deposition to take place on February 15, 2023. (R. p. 1849; Fourth Amended Deposition Notice.).

Despite the unfair time crunch, Mr. Sommerville testified that he and two associates conducted an expedited review of the materials, compared several boxes of archived records to the actual language of the Plants' requests, and exercised their professional judgment in the review process to ultimately produce over 1000 pages of responsive records in time for the deposition. (R. pp. 638, 645–647; Hr'g Tr. 34:4–15, 61:1–15, 63:20–64:12, 65:8–66:10, 70:16–22 (Aug. 21, 2024).)

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[6] Thus, the Plants surely have to concede that the circuit court was simply wrong when it stated in its new-trial order that "IMI Fabi did not provide any correspondence between it and any of the fifteen (15) product manufacturers Plaintiffs named in their discovery requests." (R. pp. 2–3; Am. Order Granting New Trial at 2–3.)

That the Plants now suggest a dozen documents that were similar in kind to what the IMI Fabi entities did produce somehow amount to "newly-discovered" evidence that warrants a new trial is directly rejected by *Raby Construction*, *Lanier*, and *Bowman*.

***First*,** there is no document request seeking the entirety of the IMI Fabi entities' records, but such a wholesale production is what the Plants have essentially argued should have happened. This argument appears to be based on the fact that, on behalf of another client, the Plants' lawyers served the IMI Fabi entities with a discovery request seeking wholesale production of the IMI Fabi entities' records. But the fact that such a request was made elsewhere proves the point: this is discovery that could have been, but was not, served on the IMI Fabi entities in this case.

Second, the "new" records were not necessarily responsive to the Plants' discovery requests that were actually served. The circuit court never identified a particular document request to which any of these materials was allegedly responsive, and the Plants make no effort in their brief to link each "newly-produced" record to any specific document request. Instead, they include a laundry list of requests and apparently expect the Court to figure out for itself to which request each of the handful of "new" records is potentially responsive. (Plants Br. at 24.) The obfuscation inherent in this argument tactic belies the Plants' burden of showing that they exercised the "due diligence" required by Rule 60(b)(2), SCRCP.

For instance, they do not identify to which request "reports" from the IMI Fabi entities were potentially responsive; yet, that is how the Plants describe several of the "newly-discovered" materials. (*Id.* at 20.) If the Plants wanted "reports," they should have served such a request, but they did not. Similarly, the Plants do not identify to which request "samples of talc sold to Cosmetic Specialties" would have been responsive; yet, those were the samples available. (*Id.*) If the Plants wanted samples of talc sold to Cosmetic Specialties, they should have served such a

request, but they did not.[7] As it stands, the Plants have not shown that they exercised "due diligence" to receive the materials they now suggest are "new."

Relatedly, there is nothing in the record showing any effort by the Plants to follow up on the initial production to confirm that there were no other records that may have been overlooked or misfiled in the flurry of activity between service of the deposition notice and document request (February 8, 2023) and the end of trial (March 3, 2023). The record contains no emails, letters, texts, or faxes from counsel requesting additional records; no post-deposition document requests served; and no motions to compel—in short, no "due diligence," Rule 60(b)(2), SCRCP.

In particular, the record is empty as to "due diligence" regarding contracts between the IMI Fabi entities and Cosmetic Specialties that were not produced. Mr. Fabi testified about them during his deposition, and the Plants even assigned them exhibit numbers during that deposition. The circuit court cited these materials as a basis of its new-trial decision, stating: "These agreements and records were never produced." (R. p. 4; Am. Order Granting New Trial at 4.)

But that only tells part of the story; the rest is that, despite fully knowing about the existence of those agreements, the Plants did nothing to obtain those records after the deposition closed. And without any follow up effort—or "due diligence"—nothing distinguishes this case from *Raby Construction* (where a party sought and failed to get relief from judgment based on computer records about which a witness was deposed but which were never produced before settlement, 58 S.C. at 22–23, 594 S.E.2d at 484), or from *Bowman* (where a party sought and failed to get relief from judgment based on documents about which he was aware prior to trial and could have obtained from a third-party source before trial, 357 S.C. at 154, 591 S.E.2d at 658).

[7] The Plants state that "the Fabi Defendants kept talc samples that they organized by manufacturer," but this is simply not true, and there's no testimony in the record at all to corroborate the Plants' statement. (Plant Br. at 20.)

Third, the Plants excuse their own lack of "due diligence" by citing the time pressures of trial. (Plants' Br. at 25–27.) This argument should ring particularly hollow in light of the fact that the Plants have accused (and the circuit court agreed) Mr. Sommerville—a now-retired Massachusetts lawyer with whom they have had practically no interaction—of being a "fraudster" because of how he and his colleagues reviewed several boxes of archived records and produced over 1000 pages in advance of a Rule 30(b)(6) deposition on less than a week's notice.

Setting aside the irony of their argument, it fails on its merits. For instance, the IMI Fabi entities argued in their opening brief that if the Plants wanted to cross-check the IMI Fabi entities' testimony and records with those of Cosmetic Specialties, then they could have (but did not) sought records and a deposition from Cosmetic Specialties itself. (Opening Br. at 29–30.) The Plants responded to that argument by suggesting that it would have been impossible to comply with the "case management order by which the South Carolina asbestos docket is governed" and the ten-day notice period for depositions by Rule 30, SCRCP. (Plants Br. at 25–27.) But their position is entirely belied by the record.

Consider the first version of the Rule 30(b)(6) notice that the Plants served on the IMI Fabi entities. In that notice, the Plants specifically asked for a designee to testify about "Cosmetic Specialties' reliance on IMI resources" and "IMI Fabi's knowledge of Cosmetic Specialties' clientele and the sale of their products in South Carolina." (R. p. 1828; First Notice of Deposition at 4.) That notice was served on January 25, 2023, indicating that the Plants knew about Cosmetic Specialties several weeks before trial. (*Id.* at 2,) And the Plants even concede in Footnote 11 of their response brief that they knew about Cosmetic Specialties at least by January 15, 2023—more than 30 days before trial. (Plants Br. at 25 n.11.) The Plants' failure to serve Cosmetic Specialties with a subpoena for records, for a deposition, or both is not the IMI Fabi entities' fault, but it fully

undercuts any suggestion that the Plants engaged in the requisite "due diligence" to secure the records on which they now base a request to throw out a jury's verdict after a multiweek trial.

So, too, regarding discovery from cosmetic manufacturers. Included within the more than 45 defendants the Plants sued are manufacturers of the very makeup products about which they now claim documents were hidden. (*E.g.*, R. p. 117; Am. Compl. ¶ 61 (Noxell).) For every document an IMI Fabi entity actually sent to a co-defendant, the co-defendant should presumably have a mirror of that document. And the Plants even acknowledge they did indeed obtain some IMI Fabi records through productions by cosmetic manufacturer co-defendants. (Plants Br. at 27.)

The Plants dismiss any obligation to conduct a thorough investigation, claiming: "The fact that Plaintiffs had some stray documents regarding other makeup companies that may have used the Fabi Defendants' talc does not mean that Plaintiffs had to go down every possible rabbit hole." (*Id.*) But the law requires them to go down at least ***one*** rabbit hole—a document request to those manufacturers seeking "any document transmitted to you by any IMI Fabi entity" would have satisfied the basic "due diligence" required by Rule 60(b)(2) for a new-trial request.

Moreover, it is obvious the Plants were on notice to exercise this "due diligence" because their own trial exhibit list included multiple documents from makeup manufacturers showing communications with the IMI Fabi entities. (R. pp. 2945–2963; Plants Trial Exhibits 243, 387, 388, 389, 390, 393, 394; R. p. 652; Hr'g Tr. 90:8–91:21 (Aug. 21, 2204).) The Plants never acknowledge, much less explain, how the IMI Fabi entities' connections to makeup manufacturers could be "unknowable" to them prior to trial when their very own exhibit list contains documents from those same manufacturers showing those connections. This is not an accidental oversight in the Plants' response argument, and their failure to pursue further discovery should be fatal to any notion of a new trial.

Denying a new trial to litigant who failed to pursue discovery is exactly how this Court has previously enforced Rule 60(b)(2). *See, e.g.*, *Bowman*, 357 S.C. at 154, 591 S.E.2d at 658 (denying a party's request for relief from a judgment because it could have, but did not attempt to, acquire the "newly-discovered" evidence from a third party in advance of trial). This case is no different, and the jury's verdict must stand under such circumstances.

* * * * *

The interaction between the briefs in this appeal highlights why the law does not allow a new trial based on rearview-mirror arguments about discovery issues that were never brought to the adverse party's or the circuit court's attention in advance of trial, let alone those that were never raised until a year after the jury returned its verdict. No judgment would truly be final if a disappointed litigant could come back later and demand a new trial based on stray documents it believes should have been produced prior to trial. That's why this Court announced long ago "that South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial." *Id.* at 152, 591 S.E.2d at 657. The circuit court's ruling to the contrary should be vacated.

C. The Plants' brief confirms that the "new" evidence would not impact the outcome.

Along with lacking the requisite "due diligence," the Plants' brief also confirms the circuit court erred in its conclusion that the "new" evidence "probably" would have changed the outcome at trial, as required by *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459.

In their opening brief, the IMI Fabi entities explained that there is no way for the Plants to meet this element of a Rule 60(b)(2) analysis because the "newly-discovered" evidence does not close two gaping holes in the evidence:

(1) There remains no evidence to show that either IMI Fabi entity's cosmetic talc was in a manufacturer's formula for any consumer product on which the Plants' base their claims. Without a manufacturer's formula putting any IMI Fabi cosmetic talc into any product in dispute, there can be no causation. (Opening Br. at 31, 34 n.4.)

(2) There remains no evidence to show that there is asbestos in the cosmetic talc of either IMI Fabi entity. Without any proof that there is asbestos in any IMI Fabi cosmetic talc, there can be no causation. (*Id.* at 33–39.)

The circuit court's order did not address either of these points, and neither did the Plants in their response brief. Instead, the Plants argue that the "new" evidence showed a "link" between the IMI Fabi entities and Procter & Gamble that would have swayed the jury if only it had known. (Plants Br. at 27–30.) This is demonstrably untrue.

Before trial, Mr. Fabi testified at length about Procter & Gamble, including stating an awareness that Cosmetic Specialties sold IMI Fabi cosmetic talc to Procter & Gamble. (R. pp. 496, 499–503; Fabi Dep. 36:14–24, 57:15–70:3.) And the Plants had documents confirming that Procter & Gamble used IMI Fabi cosmetic talc and even filed them with the circuit court during pretrial motions practice. (R. pp. 1137–1157, Exhibits to Plants' Opposition to IMI Fabi Entities' Personal Jurisdiction Motions.)

During trial, the IMI Fabi entities unequivocally told the jury that some of their cosmetic talc ended up being shipped to Procter & Gamble. They made that point in their opening statement (R. p. 319; Trial Tr. 280:13–17); during Mr. Fabi's testimony (R. p. 379; Trial Tr. 1197:19–21); and during closing arguments (R. p. 490; Trial Tr. 2026:11–12). The Plants also examined Mr. Fabi thoroughly on the point. (R. pp. 378–391; Trial Tr. 1196:5–1209:20.)

The jury certainly knew that Procter & Gamble used some IMI Fabi cosmetic talc. That "link" upon which the Plants base their entire "probably would change the outcome" argument was never a secret, was known long before trial, and was specifically disclosed to the jury. The jury rejected the Plants' arguments at trial because the Plants never presented to the jury—and

what remains missing from the record still today—is anything proving that Procter & Gamble used IMI Fabi cosmetic talc in a specific product line with which Ms. Plant ever came into contact.

Procter & Gamble is a huge manufacturer that produces a wide variety of products. Simply drawing a generic, high-level connection between Procter & Gamble and IMI Fabi (through Cosmetic Specialties) obviously doesn't prove that Procter & Gamble ever used any IMI Fabi cosmetic talc in a specific product that Ms. Plant ever purchased or used in South Carolina. That proof—***which still doesn't exist in this record***—can only come from Procter & Gamble, as it alone has the formulas and data it uses to manufacture its various products.

And that's exactly what the IMI Fabi entities told the jury in their closing argument—without that evidentiary link from Procter & Gamble, causation fails. (*See* R. p. 491; Trial Tr. 2027:2–3 ("There's no witnesses from Procter & Gamble. There's no documents. That means no causation.").) Critically, the Plants' response brief ***concedes*** that this is the exact proof—"Plaintiffs have to show that the Fabi Defendants' talc was in products that Mrs. Plant used"—required for them to carry their burden at trial. (Plants Br. at 29.) The "new" evidence is silent on this dispositive point and, for that reason alone, cannot possibly support throwing out the jury's verdict.

Moreover, the Plants, like the circuit court, continue to ignore that without proof that there is asbestos in the IMI Fabi entities' cosmetic talc, their claims fail. This issue was a primary theme at trial, as detailed in the IMI Fabi entities' opening brief. (Opening Br. at 35–39.) The Plants never explain how the "new" evidence can fill this second gaping evidentiary hole—because it doesn't.

Accordingly, the circuit court erred as a matter of law when it ruled that the "new" evidence would "probably" change the outcome at trial. *See, e.g.*, *Morin v. Innegrity, LLC*, 424 S.C. 559, 578–79, 819 S.E.2d 131, 141–42 (Ct. App. 2018) (affirming the denial of a Rule 60(b) motion because the "newly discovered evidence" was not "outcome-changing"); *Jamison v. Ford Motor*

Co., 373 S.C. 248, 272–73, 644 S.E.2d 755, 768 (Ct. App. 2007) (affirming denial of a Rule 60 motion based on the plaintiff's post-trial discovery of a Ford brochure regarding a car model because the brochure still would not have proven the "feasible alternative design" element of the plaintiff's claim). The new-trial order should be reversed and the jury's verdict reinstated.

D. A witness giving truthful answers during a deposition is not "extrinsic fraud."

Finally, the Plants try to rehabilitate the Rule 60(b)(3) ruling by urging this Court to defer to the circuit court's determination of Mr. Sommerville's "credibility." (Plants Br. 36.) But their own argument is entirely lacking in "credibility," as they argue that Mr. Sommerville somehow committed "extrinsic fraud" on the circuit court by hatching a scheme to "intentionally deceive" everyone by underpreparing witnesses for their depositions. (*Id.* at 30–37.) This is ridiculous.

The Plants have to prove "extrinsic fraud" on the court "by clear and convincing evidence." *Gainey v. Gainey*, 382 S.C. 414, 427, 675 S.E.2d 792, 799 (Ct. App. 2009). When put to their proof, though, the best they can muster is that Mr. Fabi testified during his Rule 30(b)(6) deposition that he was aware that Mr. Sommerville maintains custody of the historic IMI Fabi (Diana) records, but that Mr. Fabi doesn't know everything that is contained in those documents. (Plants Br. at 33–34.)[8] That's it.

The Plants do not claim that Mr. Fabi testified untruthfully. They do not suggest that he told any lies, internationally or unintentionally. They simply recite Mr. Fabi's answers regarding being unaware of the full content of those records—which were entirely truthful—and ask this

[8] The Plants recite similar testimony that a different witness gave in a different case in a different state. (Plants Br. at 35–36.) That another witness also truthfully acknowledged that Mr. Sommerville has custody of the IMI Fabi (Diana) documents and that the witness did not know the full content of those records is, of course, irrelevant here, and it is certainly not indicative of a scheme to defraud any court.

Court to extrapolate from that testimony that the IMI Fabi entities, through Mr. Sommerville, were somehow engaged in an "extrinsic fraud" with an intent to "conceal" information.

There is no authority of which the IMI Fabi entities are aware where any court has found that providing truthful answers amounted to "fraud," much less "extrinsic fraud." In South Carolina, "[a]llegations of perjury, failure to produce requested discovery, or use of forged documents amount only to intrinsic fraud" and provide no basis for vacating a verdict and ordering a new trial. *Raby Construction*, 358 S.C. at 21 n.5, 594 S.E.2d at 483 n.5; *see Aaron v. Mahl*, 381 S.C. 585, 593, 674 S.E.2d 482, 486 (2009) (holding "allegations that a party failed to disclose documents generally amount to intrinsic, rather than extrinsic, fraud"). If actual perjury or the failure to produce a requested document is not "extrinsic fraud" as a matter of law, giving truthful answers during a deposition cannot possibly provide a basis for vacating a jury's verdict.

What's particularly troubling about the Plants' accusations of "extrinsic fraud" is that the South Carolina Rules of Civil Procedure gave the Plants every tool they needed to find out the information they claim was "concealed." When a Rule 30(b)(6) designee is not properly prepared to testify about a deposition topic:

- Rule 37(a)(2), SCRCP, instructs the deposing party to move for an order compelling informed answers to questions about that topic;
- Rule 37(a)(4), SCRCP, allows the movant to recover its attorneys' fees and expenses associated with compelling such testimony; and
- Rule 37(b), SCRCP, provides an array of additional penalties and consequences if the witness continues to reman unable to answer questions of a properly-noticed Rule 30(b)(6) topic.

None of this happened here. If Mr. Fabi's answers about not knowing the full content of the IMI Fabi (Diana) records were actually problematic for the Plants to present their case to the jury, they had every resource available to cure that issue. But they never filed a such a motion to

compel. They never wrote a letter or email asking to reconvene the deposition to further explore information about which Mr. Fabi had been uninformed prior to the deposition. They never sent a document request asking for the full set of IMI Fabi (Diana) records to be produced. The Plants simply accepted Mr. Fabi's entirely-truthful answers that he knew Mr. Sommerville had secured those records, but that he didn't know the full content of those records, and they moved on to trial without raising any issue or concern.[9] That is no basis for vacating a jury's verdict under any circumstances, and certainly provides no support for the circuit court's ruling that broadsides Mr. Sommerville's professional standing and Mr. Fabi's credibility.

It simply cannot be the law that a lawyer or her client is deemed a fraudster because a corporate witness truthfully testifies that they don't know all possible information contained in a set of corporate records. That would be an impossible standard for any attorney or litigant to live up to, and the Plants' efforts to paint Mr. Sommerville as having committed "extrinsic fraud" because Mr. Fabi testified that he did not know everything contained in the IMI Fabi (Diana) records should be soundly rejected by the Court. The new-trial order should be reversed.

CONCLUSION

The circuit court lacks personal jurisdiction over each IMI Fabi entity, and the legal theory underlying the circuit court's rulings has been rejected by the U.S. Supreme Court. Further, there is no basis for undoing the jury's verdict after a multiweek trial in March 2023. Nothing in the "new" evidence undermines that verdict, and there is certainly nothing "fraudulent" in play. The circuit court's rulings below should be reversed, and the IMI Fabi entities should be dismissed.

[9] The circuit court indicated an apparent belief that Mr. Fabi testified untruthfully about Cosmetic Specialties being the IMI Fabi entities' exclusive customer for cosmetic talc, an incorrect finding for which there is no evidentiary support, as the IMI Fabi entities fully rebutted in their opening brief. (Opening Br. at 39–44.) The Plants provide no response to this argument in their brief.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

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