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Nov 20 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Roger M. Young, Sr., Circuit Court Judge

Opinion No. 2025-UP-295 (S.C. Ct. App. filed Aug. 13, 2025)
Appellate Case No. 2022-000346

Reid Fleming, ... Appellant,

v.

The Planet Vape, LLC; SCECIGARETTE, LLC; LG Chem Ltd.; John Doe Distributor #1; John Doe Distributor #2; and John Doe Distributor #3 . . . . . Defendants,

Of which LG Chem Ltd. is the . . . . . Respondent.

REPLY TO RESPONDENT'S RETURN TO THE PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

In this product liability action—where an LG lithium-ion battery exploded in Mr. Fleming's vaping device and permanently injured him—LG Chem has never denied that it manufactured, distributed, and placed the subject battery into the stream of commerce, or that it distributes this type of battery with the reasonable expectation that batteries like the subject battery will be used in South Carolina. Even now, LG Chem does not—and cannot—dispute this.

LG Chem instead asks this Court to endorse a narrow, causation-only theory of "relatedness" in the specific jurisdiction analysis that turns on whether LG Chem itself directly served the market for standalone 18650 lithium-ion batteries, and on whether the particular shipments Mr. Fleming identified for the trial court were labeled in a way Respondents now prefer. *See* Return at 4–6, 14–18. That approach cannot be squared with the standard on a motion to dismiss for lack of personal jurisdiction, the decision in *Ford Motor Co. v. Montana Eighth Judicial District Court,* 592 U.S. 351, 365, 141 S. Ct. 1017, 1028 (2021), this Court's decision in *State v. NV Sumatra Tobacco Trading, Co.,* 379 S.C. 81, 666 S.E.2d 218 (2008), or with the Court of Appeals dissent, which would have held that Mr. Fleming "sufficiently alleges facts that support specific personal jurisdiction" and that this is precisely the kind of LG Chem case dividing courts across the country. *See* Petition at 2–6, 9–15; Op. at 13 (Hewitt, J., dissenting). Petitioner reincorporates all arguments previously presented and will not burden the Court by restating points already fully addressed in the Petition. Accordingly, Petitioner replies as follows:

I. LG Chem still does not deny that it sold the subject battery, and the standard of review issue remains untouched.

What remains overlooked—both in the majority opinion and now in LG Chem's Return—is that LG Chem still has never denied that it manufactured, distributed, and sold the battery that exploded in Mr. Fleming's pocket. *See* Op. at 7. LG Chem only disputes that that the battery was

not authorized by LG Chem for that particular use in a vaping device, and that its own labels do not indicate that 18650 cells including the one that exploded are among the shipments labeled "LITHIUM ION BATTERIES." But LG Chem does not, nor can it, reconcile the evidence of its shipments of lithium-ion batteries through the Port of Charleston to South Carolina cities with the standard on a motion to dismiss for lack of personal jurisdiction. LG does not address the inconsistency. Rather, LG Chem strains credulity to separate even further the terminology LG used to label its shipments headed into our state. Indeed, according to LG Chem now, the test for specific jurisdiction is dependent on what LG itself labels its shipments. Only if the shipping label includes some iteration of "18650 lithium ion batteries for consumer use" can LG Chem be haled into a South Carolina court in a case where a lithium ion battery, an 18650 battery, explodes and injures a South Carolina citizen. Return at 15-16. This cannot be true.

Further, despite LG Chem's insistence throughout this appellate process that Mr. Fleming has offered no evidence that an 18650 battery and a lithium ion battery are one in the same here, LG Chem too cannot support the inverse – that these lithium ion batteries do not include the one that injured Mr. Fleming. What *is* clear from the existing evidence is that LG actively directs substantial lithium-ion battery commerce into South Carolina, including repeated shipments labeled as "lithium-ion batteries" without any indication of size or end-use limitation. At the jurisdictional stage—before any merits-based discovery—Mr. Fleming cannot be expected to determine whether these shipments contained the precise cell model that injured him, and LG is in no position to credibly assert that they did not.

What the record does show, when the factual disputes are resolved in favor of Mr. Fleming, is that LG Chem deliberately and continuously served the South Carolina market with lithium-ion battery products, fully aware that its cells are used in a wide range of consumer applications,

including LG's knowledge of the use in vaping devices at issue here. That level of purposeful forum-directed activity is more than sufficient to support specific jurisdiction when a South Carolina resident is injured in South Carolina by an LG lithium-ion battery.

The factual disputes—over whether LG's own records show lithium-ion battery and 18650 battery shipments into South Carolina to name a few—must be resolved in Mr. Fleming's favor. That is true whether those batteries were destined for EV packs, IQOS device, consumer devices, or any other end use. *Ford* and *Sumatra* turn on whether the defendant "systematically served a market" in the forum for the type of product that malfunctioned there. When resolving the factual disputes in favor of Mr. Fleming, the result is simple: LG targeted South Carolina with its batteries, distributed its batteries in South Carolina, and expected its batteries to be used in South Carolina. By re-labeling Mr. Fleming's battery-shipment evidence as "unrelated business activities," LG simply highlights the factual disagreement the majority improperly resolved against Mr. Fleming.

II. LG misapplies *Sumatra* and *Ford.*

LG injects into *Sumatra* and *Ford* a requirement that neither case contains: that specific jurisdiction exists only when the defendant directly served a discrete consumer market for the *exact* end-use at issue. Return at 16-18. Relying on the Court of Appeals' reasoning, LG Chem repeats that it did not distribute "any 18650 battery cells to anyone for sale as a standalone product to consumers … anywhere." Return at 18. LG Chem argues that under *Sumatra*, in order to be haled into Court in South Carolina, the product must be distributed to the consumers for use only as authorized or intended by the manufacturer. Return at 18-19. But *Sumatra* says nothing about intended or authorized end-use, and LG offers no authority to the contrary.

The same flaw is found in LG Chem's *Ford* analysis. *Ford* did not hold that a defendant must engage in "extensive in-state consumer-directed activities for the specific product at issue"

in order for specific jurisdiction to exist. Return at 15–17. What *Ford* stands for is broader: a plaintiff's claims must "arise out of or relate to" the defendant's forum contacts, and the "relate to" standard is not limited to a strict causal or transactional match. *See Ford*, 592 U.S. at 362–64. *Ford* nowhere suggests that jurisdiction hinges on whether the defendant intended the precise consumer use that eventually caused the injury. *See id.* The *Ford* Court emphasized that jurisdiction should not "ride on the exact reasons for an individual plaintiff's purchase." *Id*. at 368. The relatedness inquiry, in this case, instead asks whether, considering "the relationship among the defendant, the forum, and the litigation," LG's substantial lithium-ion battery market activity in South Carolina is "close enough to support jurisdiction." *Id* at 371. It is.

In its Return, LG tries to thread the needle by downplaying its distribution of lithium-ion batteries while diverting attention from Mr. Fleming's evidence of repeated shipments of those batteries into South Carolina. Rather than confront the record, LG recasts import data as involving only petrochemicals and "shipment of electric vehicle batteries to car manufacturing companies." Return at 15. In doing so, LG mischaracterizes the evidence of multiple shipments of "LITHIUM ION BATTERIES" entering through the Port of Charleston and headed to South Carolina cities. Petition at 3; (R. pp. 18–19 ¶¶ 9-10, 184–242, 243, 292–386.).

LG Chem's entire position rests on the idea that because LG did not authorize 18650 cells to be sold as "standalone" vaping batteries, nothing it did in South Carolina can be "related" to this injury. That is the same kind of narrow framing *Ford* rejected. The question is not whether LG Chem sanctioned Mr. Fleming's particular consumer use; it is whether LG's forum contacts involving lithium-ion battery products are related enough to the claim. That is all *Ford* and *Sumatra* require, and LG's argument adds limitations not imposed. At this posture, Fleming's South Carolina purchase, use, and injury, coupled with LG Chem's lithium-ion battery shipments

and substantial market participation in the battery industry in South Carolina, satisfy the relatedness showing under *Ford* and *Sumatra*.

III. Courts are divided on this issue—supporting, not undermining, certiorari.

LG Chem points to additional decisions from around the country on this exact issue to support its request for this Court to deny issuing a writ of certiorari. *See* Return at 15–16 & n.6. However, the fact that there are more cases on this issue actually supports certiorari. Just as Judge Hewitt observed in the dissent, "this issue is dividing courts around the country. Some courts considering similar cases have found in favor of specific jurisdiction and others have reached the opposite decision. Some of these different outcomes turn on the facts of the particular cases or on the forum's rules for specific personal jurisdiction…." Op. at 7 (Hewitt, J., dissenting). That is precisely the case here. The very fact that courts nationwide have seen a split in these materially similar LG Chem cases, on differing records and under differing state jurisdictional rules, is a reason alone for this Court to grant review, not to deny it.

CONCLUSION

The Petition established every Rule 242(b) ground for review: substantial constitutional questions, direct conflict with *Ford* and *NV Sumatra*, and a reasoned dissent. For these reasons, and those set forth in the Petition, Mr. Fleming respectfully requests that this Court issue a writ of certiorari to review the Court of Appeals' decision.

Most respectfully,

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