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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Opinion No. 6127 (S.C. Ct. App. filed Dec. 3, 2025
and rehearing denied Mar. 13, 2026)

Gloria Ormand-Ward by and through her
Guardian and Conservator, CDM Corporation,
Through its Representative, Stephen Mantell . . . . . Petitioner

vs.

David Litt, Homedebone, LLC, Rosaria A. Alagna aka
Rose Alagna; Chris Parker; Chicago Land Agency Services,
Inc.; Chicago Title Insurance Company; Pereira Partners,
LLC; NB Labor, LLC d/b/a Newman Brothers General
Contractors; John Newman; and Toorak Capital, LLC . . . . . Defendants

Of Which

Chicago Title Insurance Company is the . . . . . Respondent

PETITION FOR A WRIT OF CERTIORARI

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Gloria Ormand-Ward, by and through her guardian and conservator, CDM Corporation, through its representative, Stephen Mantell ("Petitioner")[1], respectfully petitions this Court for a writ of certiorari, pursuant to Rule 242, SCACR, seeking review of the decision of the Court of Appeals affirming the circuit court's dismissal of Chicago Title Insurance Company ("Chicago Title") for lack of personal jurisdiction.

QUESTIONS PRESENTED FOR CERTIORARI

1. WHETHER THE COURT OF APPEALS ERRED BY CONSTRUING S.C. CODE ANN. § 38-5-70 (2015) AS A MERE SERVICE OF PROCESS STATUTE RATHER THAN A CONSENT TO JURISDICTION STATUTE, IN CONFLICT WITH LEGISLATIVE INTENT AND SOUTH CAROLINA AUTHORITY DESCRIBING THE STATUTE AND ITS PREDECESSORS AS A METHOD FOR OBTAINING JURISDICTION OVER FOREIGN INSURERS.

2. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING DISMISSAL OF CHICAGO TITLE INSURANCE COMPANY FOR LACK OF SPECIFIC JURISDICTION BY REQUIRING PETITIONER TO PROVE, RATHER THAN MAKE A PRIMA FACIE SHOWING OF, A PARTNERSHIP RELATIONSHIP, WITH CHICAGO LAND AGENCY SERVICES, INC., DESPITE EVIDENCE THAT SHOWS THAT CHICAGO TITLE INSURANCE COMPANY, THROUGH ITS RELATIONSHIP WITH CHICAGO LAND AGENCY SERVICES, INC. ENGAGED IN TORTIOUS CONDUCT IN SOUTH CAROLINA.

INTRODUCTION

The Petitioner has pled that Ormand-Ward, lost her home in Myrtle Beach as a result of fraud when a fraudulent deed conveying her home to Homedebone, LLC was filed in the Horry County Register of Deeds office. The defendant, Chicago Land Agency

[1] Stephen Mantell is the principal of CDM Corporation and serves as the court-appointed Guardian and Conservator of Gloria Ormand-Ward, who was declared incapacitated by Order dated and filed on September 24, 2021 in the Horry County Probate Court Case No. 2021-GC-00069. (R., p. 2). For the purpose of this Petition, CDM Corporation is the Petitioner but Gloria Ormand-Ward ("Ormand-Ward") is the real party in interest and the factual references relate to Ormand-Ward.

Services, Inc., ("CLAS"), located in Chicago, Illinois, electronically filed the fraudulent deed to Ormand-Ward's home. Chicago Title sells title insurance throughout the country, including in South Carolina. It is licensed to sell title insurance in South Carolina. CLAS and Chicago Title, on their website, proudly announced that they are a joint venture partnership in providing real estate services.

Personal jurisdiction is exercised as "general jurisdiction" or "specific jurisdiction" *Coggeshell v. Reproductive Endocrine Associates of Charlotte*, 376 S.C. 12, 655 S.E.2d 476, 478 (2007). The circuit court dismissed Chicago Title, finding that it did not have either general or specific jurisdiction over Chicago Title, notwithstanding its registration as a licensed foreign insurance carrier in this state and that at the pleading stage, the Petitioner made a prima facie showing that Chicago Title and CLAS are partners.

This case presents a foundational and unresolved question of South Carolina law: whether compliance with S.C. Code Ann. § 38-5-70 (2015) (hereinafter § 38-5-70) constitutes consent to general jurisdiction. The Court of Appeals determined that South Carolina appellate courts have not directly interpreted § 38-5-70 to confer general jurisdiction over a foreign insurer. *Ormand-Ward v. Litt*, 447 S.C. 341, 348-349, 926 S.E.2d 259, 263 (2025) ("... South Carolina courts have not interpreted the statute as imposing that condition.").

The issue is of exceptional state-wide importance. It affects every foreign insurer admitted to do business in South Carolina and defines the scope of the state's regulatory authority over insurers operating within its borders. Absent review, the decision below effectively renders § 38-5-70 a non-jurisdictional statute reducing it to a mere service mechanism by disregarding its historical function.

Additionally, the Court of Appeals erred in concluding that the court does not have specific jurisdiction over Chicago Title, which does extensive business in South Carolina on a continuous and systematic basis. It is subject to personal jurisdiction because of its partnership relationship with CLAS, which partnership engaged in tortious conduct in South Carolina. The Court of Appeals required the Petitioner to show a greater degree of evidence than a *prima facie* showing, which violates the standard required in deciding a Rule 12(b)(2), SCRCP motion to dismiss.

STATEMENT OF THE CASE

The facts contained in the Court of Appeals are generally correct (*Id.*, S.C. at 346-347, S.E.2d at 261-262). By way of synopsis, Ormand-Ward, who was 77 years old at the time, was the victim of a fraud which resulted in the loss of her home. As pled, Ormand-Ward Docusigned a deed to her home (she did not personally sign the deed with a wet signature or with a notary or any witnesses present), for the stated consideration of one hundred dollars ($100.00)[2] (R., p. 225). Subsequently, a fraudulent warranty deed bearing her alleged DocuSigned signature was electronically filed with the Horry County Register of Deeds (R., p. 224), conveying her home to Homedebone, LLC, a terminated limited liability company from Utah (R., p. 204). As a result, Ormand-Ward became homeless. (R., p. 200).

On November 18, 2021, Ormand-Ward, by and through the Petitioner, filed this action in the Court of Common Pleas for the Fifteenth Judicial Circuit, Horry County, Case

[2] There was no closing with an attorney, and the stated consideration was not conveyed to Ormand-Ward.

No. 2021-CP-26-07668 (R., p. 37). On April 26, 2022, Petitioner amended her Complaint to add Chicago Title as a party defendant (R., p. 67).

Petitioner amended her complaint to include Chicago Title, alleging that it was engaged in a joint venture partnership with Chicago Land Agency Services, Inc. ("CLAS"). This was based on the CLAS/Chicago Title website which explicitly proclaims that "CLAS is a joint venture partnership with Chicago Title Insurance Company, the marquee name in title insurance" found at www.ctclas.com. Evidence showed that Chicago Title owns a 49.9% share in CLAS (R., p. 19) that three of CLAS's six officers were affiliated with Chicago Title (R. p. 206), and that both entities shared the same office address in Chicago (R. p. 27). Petitioner alleged that the Chicago Title/CLAS partnership committed a tortious act in South Carolina by using CLAS's electronic portal to e-record the fraudulent warranty deed with the Horry County Register of Deeds (R., p. 245), constituting negligence and the unauthorized practice of law.

On June 1, 2022, Chicago Title filed a Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6), SCRCP, and for lack of personal jurisdiction pursuant to Rule 12(b)(2), SCRCP (R., p. 177). Following a hearing on September 19, 2022, the Honorable Michael G. Nettles, Circuit Court Judge, issued an Order on October 12, 2022, granting Chicago Title's Rule 12(b)(2), SCRCP Motion to Dismiss on the basis that the court lacked personal jurisdiction over the insurance company (R., p. 17).

On October 21, 2022, Petitioner filed a Rule 59(e), SCRCP, Motion for Reconsideration (R., p. 331), which the circuit court denied on January 17, 2023 (R., p. 31). Petitioner filed a Notice of Appeal on February 16, 2023. The South Carolina Court of Appeals heard argument on February 11, 2025, and issued its opinion (Opinion No. 6127)

on December 3, 2025, affirming the circuit court's order dismissing Chicago Title for lack of personal jurisdiction. Petitioner filed her Petition for Rehearing on January 16, 2026, which was denied on March 13, 2026.

The Court of Appeals affirmed the circuit court's dismissal, holding that compliance with § 38-5-70 does not confer general jurisdiction over a foreign insurer and that Petitioner failed to establish specific jurisdiction through the alleged partnership between Chicago Title and CLAS.

Petitioner seeks a writ of certiorari to review the Court of Appeals' decision.

ARGUMENT

1. The Court of Appeals Erred in Ruling That a Foreign Insurer, in Complying with S.C. Code Ann. § 38-5-70, Did Not Consent to Jurisdiction in South Carolina.

Insurance is a highly regulated industry by the state. See S.C. Code § 38-1-10, *et seq*. (2015) (known as the "Insurance Law"). A foreign insurer can only sell insurance within this state legally, if it secures a license to do so. To secure the license, the foreign insurer must consent to the state's regulation of anything from the insurer's name and capitalization to its handling of realized profits. 1 Couch on Insurance (3D), §§ 2:20-37.

In South Carolina, the Insurance Law sets specific requirements that a foreign insurer must meet in order to obtain and maintain a license to sell insurance, including that the foreign "insurer's dealings are fair and equitable". S.C. Code Ann. § 38-5-90(k) (2015) and that "the insurer conducts its business in a manner not contrary to the public interest." S.C. Code Ann. § 38-5-90(l). A foreign insurer in applying for its license to sell insurance consents to the jurisdiction of the South Carolina Department of Insurance to regulate it on

all these issues. This understanding is confirmed in § 38-5-70, which requires the insurer to appoint the Director of Insurance as its attorney for service of all process in this state.

A. The Statute

In order to become licensed in South Carolina, a foreign insurer must comply with § 38-5-70, which states:

> Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted.

The statute mandates that the insurer agree in writing that "any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer." The plain language applying to "any action or proceeding" evidences legislative intent to establish general jurisdiction over foreign insurers.

B. Legislative Intent

§ 38-5-70 should be interpreted in light of the legal framework in which it was enacted. Under *Pennoyer v. Neff*, 95 U.S. 714 (1877) jurisdiction depended on service of process **within** the forum state. See *Hendrix v. Hendrix*, 296 S.C. 200, 371 S.E.2d 528, 530 (1988) ("... *in personam* jurisdiction over a nonresident could be conferred only by personal service within the state in which the action is commenced.") There was no

analytical distinction between service of process and personal jurisdiction; in-state service was personal jurisdiction.

In *Littlejohn v. Southern Railway Co.*, 45 S.C. 96, 22 S.E. 761 (1895), this Court recognized that jurisdiction over defendant present within the state arises through service of process, explaining: "If an individual comes within the limits of the state and thus places himself within reach of our courts, he surely can be made a party to an action by serving him with process while here; and we do not see why the same principle cannot be applied to a foreign corporation." *Id.*, 45 S.C. 96, 104, 22 S.E. 761, 764. This principal reflects the *Pennoyer*-era understanding that service of process within the state was itself jurisdiction-conferring. If the corporation could be served in the state, the courts had personal jurisdiction over the corporate defendant.

This is the historical and legislative context for § 38-5-70. Statutes which require foreign insurers to appoint the insurance commissioner to receive service of process must be understood against that backdrop, which explains the legislative intent behind § 38-5-70. By appointing the insurance commissioner as its lawful attorney in South Carolina, the foreign insurance company was "present" in the state. As a result, by serving the insurance commissioner, the plaintiff obtained personal jurisdiction over the foreign insurer. Thus, the Legislature created a simple and easy method to obtain jurisdiction over a foreign insurance company.[3]

[3] A more complete history of the previous versions of § 38-5-70 can be found in *Murray v. Sovereign Camp, W.O.W*, 192 S.C. 101, 5 S.E.2d, 560 (1939).

C. The Wording of § 38-5-70

The *Ormand-Ward* Court held that § 38-5-70 does not create consent-to-jurisdiction because the statute "does not expressly indicate" that an insurer agrees to submit to jurisdiction and further concluded that consent exists only if: (1) the statute expressly provides for jurisdiction; or (2) state courts have previously interpreted it that way. *Ormand-Ward, supra*, S.C. at 351, S.E.2d at 264. This holding conflicts with the controlling precedent.

Neither the United States Supreme Court or this court has required that a statute use the phrase "general jurisdiction" or other similar wording to operate as a consent statute. The seminal case (and on point) is *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), the U.S. Supreme Court upheld jurisdiction based on a statute substantially similar to § 38-5-70 requiring appointment of an agent for service of process, without any modern jurisdictional terminology.

In *Pennsylvania Fire*, the plaintiff sued an Arizona insurance company in Missouri over an insurance claim insuring property in Colorado. *Id.,* 243 U.S. at 94-95. Like South Carolina, Missouri required every insurer licensed in Missouri to name the Superintendent of the Insurance Department as the insurance company's agent for service of process "so long as [the insurance company] should have any liability outstanding in the state." *Id.*, 243 U.S. at 94. The insurance company argued that finding it was subject to personal jurisdiction in Missouri by applying the statute to a policy that had no connection to Missouri was a violation of its constitutional due process rights under the Fourteenth Amendment. Id. The Supreme Court ruled that the insurance company's constitutional rights were not

violated. *Id.* at 95. Justice Holmes, for the Supreme Court, found that even though there were no suit-related contacts in Missouri, the statute [appointing the Superintendent of the Insurance Department] "did not deprive the defendant of due process of law even if it took the defendant by surprise." *Id.* Justice Holmes explained that the insurer had agreed it could be sued in Missouri" *Id.* at 96. ("[W]hen a power is actually conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts.

The result of *Pennsylvania Fire* was that when the insurer appointed the Missouri Superintendent of Insurance as its attorney for service of process, it consented to general jurisdiction in Missouri.

Another U.S. Supreme Court decision affirmed the role that consent plays in establishing general jurisdiction. In *Ex Parte Schollenberger*, 96 U.S. 369 (1877), the U.S. Supreme Court, confronting a substantially similar statute involved in *Pennsylvania Fire*, issued a Writ of Mandamus ordering the trial court to exercise jurisdiction over the insurers. The Court explained the law in terms of a bargain: The insurers had, "in express terms, in consideration of a grant to the privilege of doing business within the state, agreed they may be sued there." *Id.* at 376. The bargain with the state was that for the privilege of selling insurance in the state, the insurer would consent to general jurisdiction in the state.

In *Mallory v. Norfolk Southern Ry. Co.*, 600 U.S. 122, (2023), the U.S. Supreme Court reaffirmed that *Pennsylvania Fire Co.* remains good law and that consent-by-registration statutes are constitutionally valid. Most importantly, *Mallory* did not impose an express language requirement, *Id.,* 600 U.S at 136 at n. 5 ("and neither *Pennsylvania Fire*,

nor our later decisions applying it, nor our precedents approving it have ever imposed some sort of 'magic words' requirement").

As explained above, § 38-5-70 was enacted in a legal era governed by *Pennoyer,* when personal jurisdiction depended on in-state service, and there was no distinction between service and jurisdiction. Accordingly, the statute's requirement that insurers appoint an in-state agent for service was the mechanism by which jurisdiction was created, not merely a procedural convenience. The Court of Appeals insistence on modern "express consent" language ignores this historical reality and violates settled interpretive principles.

The Court of Appeals' rule--requiring explicit textual consent to "general jurisdiction"– is a judicially created limitation that appears nowhere in controlling precedent. In construing § 38-5-70, the Court of Appeals departed from settled principles of statutory interpretation recognized by this Court. In *Meyer v. Paschal*, 330 S.C. 175, 179, 498 S.E.2d 635, 637 (1998), the Court explained that statutory interpretation requires consideration of the statute's purpose and the context in which it was enacted, particularly where that context bears directly on the problem the statute was designed to address. *Meyer, supra*. The Court did not apply a purely literal reading; instead, it examined the historical circumstances surrounding the statute and the function it was intended to serve.

Meyer is especially instructive here because it places statutory interpretation within the jurisdictional framework existing at the time of enactment. The Court recognized that, under *Pennoyer*, personal jurisdiction depended on in-state service of process, and that statutes enacted during that period must be understood in that context. *Id*. at 179–181, 498 S.E.2d at 637–38. § 38-5-70 and its predecessors were enacted in precisely that

environment. The statute's requirement that a foreign insurer appoint the insurance commissioner to receive service "in any action or proceeding" functioned as the mechanism by which such insurers could be brought within the jurisdiction of South Carolina courts—not merely as a procedural convenience.

Nor does *Meyer* support the narrowing approach adopted by the Court of Appeals. *Meyer* limited a tolling statute only after concluding that its purpose—preserving claims when defendants were beyond the reach of process—had been altered by the expansion of modern jurisdictional doctrine. *Meyer, Id.* at 182–84, S.E.2d at 639–40. § 38-5-70, by contrast, has not been displaced. It continues to operate as a condition on a foreign insurer's authority to transact business in South Carolina. Properly construed under *Meyer*, § 38-5-70 must therefore be given effect consistent with its purpose—ensuring that foreign insurers are subject to suit in this State—rather than reduced it to a nullity through a reading divorced from its jurisdictional function.

D. South Carolina Precedents

South Carolina courts have long recognized that insurance service statutes are jurisdictional in nature. In *Wofford v. Prudential Ins. Co. of America*, 65 F.Supp. 637 (W.D.S.C. 1946), a Kansas citizen brought a lawsuit in South Carolina's federal district court against Prudential, a New Jersey corporation, to recover disability benefits under two life insurance policies. Prudential filed a motion to dismiss, contending that the court lacked subject matter jurisdiction, venue, or that venue was improper and service of process was insufficient because neither party resided in South Carolina and the cause of action did not originate in South Carolina. The *Wofford* court dismissed the subject matter jurisdiction

challenge. In addressing venue and personal jurisdiction, the Court highlighted that Prudential had qualified to conduct business in South Carolina by formally designating the state's insurance commissioner as its agent of service of process. *Wofford, supra.* By making this appointment, the foreign insurer effectively consented to being sued in both state and federal courts located in South Carolina.

In *Equilease Corp. v. Weathers*, 275 S.C. 478, 272 S.E.2d 789 (1980) Equilease initiated a lawsuit against the lessees (Weathers and Ledford) and the insurer (Kentucky Insurance Company) arising out of a leased truck that had been stolen. The insurer made an appearance through its legal counsel. The lessees later attempted to serve a cross-complaint against the insurer by serving the South Carolina Chief Insurance Commissioner, which resulted in a default when the insurer did not answer the cross-claim. This Court focused on the appropriate application of the applicable substituted service statute.

In the insurance context, this Court described substituted service statutes as designed "to obtain jurisdiction" over foreign insurers and explicitly recognized that "These statutes were designed by the legislature to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company". *Equilease, supra*, at S.C. 481 and S.E.2d 491. Furthermore, this Court noted that "once jurisdiction has been acquired over such insurance company, these code sections have no further applicability" confirming that substituted service mechanism's primary function is conferring personal jurisdiction.

In *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014) White Oak, a nursing home, settled a malpractice claim and filed suit against its insurer,

Lexington, for coverage. The nursing home served the insurer directly via certified mail based on a specific "service-of-suit" clause contained within the insurance contract. Following a default, the insurer argued that judgment should be set aside on the grounds that South Carolina law strictly requires service on a foreign insurer to be completed by service on the Director of the Department of Insurance.

This Court analyzed whether the statutory provision requiring service on the Department of Insurance was the exclusive method of acquiring personal jurisdiction over an insurer, or if the parties possess the right to contractually agree to alternative methods. This Court established that a summons serves to acquire personal jurisdiction and provide notice, both of which are rights that a defendant may consent to waive. The Court noted that the substituted service statute was designed to create a simple mechanisms for insureds to establish jurisdiction over foreign companies, rather than serving as a legal shield for insurers seeking to avoid explicit terms that they had drafted into their own policies. This Court reiterated that the insurance service statutes are "designed by the legislature to provide an simple and easy method of jurisdiction over a foreign insurance company. *White Oak Manor, supra,* at S.E.2d 541.

E. Conflation With Corporate Registration Codes

The *Ormand-Ward* Court of Appeals committed reversible error of law by conflating the specific, mandatory regulatory scheme governing the insurance industry with general corporate registration statutes. In ruling that § 38-5-70 does not constitute a foreign insurer's express consent to personal jurisdiction, the court below improperly applied case law designed for general business registrations, ignoring the unique and binding framework established by the South Carolina legislature for foreign insurers.

The *Ormand-Ward* Court of Appeals anchored its decision on *Builder Mart of America, Inc. v. First Union Corp.*, 349 S.C. 500, 563 S.E.2d 352 (2002) and *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124 (4th Cir. 2020), both of which evaluated jurisdiction under South Carolina's general business registration statute, S.C. Code Ann. § 33-15-101 *et seq*. *Builder Mart* and *Fidrych* both stand for the general proposition that solely registering to do business in a state is insufficient, standing alone, is insufficient to establish that the foreign company has consented to jurisdiction in South Carolina.

However, the regulatory framework governing the privilege of selling insurance in South Carolina is fundamentally different. § 38-5-70 specifically mandates that every foreign insurer appoint the Director of the Department of Insurance as the agent upon whom process must be served. The statute requires the insurer to formally "agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer". This is not a mere registration to conduct business; it is an express, written appointment of an agent for the specific purpose of effectuating service and submitting to the state's legal process.

As explained above, the Court of Appeals erred by disregarding longstanding state and federal precedents that recognize the unique jurisdictional implications of insurance service statutes.

Rather than following the specific state-law principles articulated in *Wofford, Equilease* and *White Oak*, the Court of Appeals explicitly relied on a recent federal district court decision, *In re Aqueous Film-Forming Foams Prod. Liab. Litig.*, 2023 WL 6846676 (D.S.C. 2023), to reject the *Wofford* precedent. In doing so, the Court of Appeals endorsed

a fundamentally flawed analysis. In *In re Aqueous*, the federal district court erroneously imported the Fourth Circuit's holding in *Fidrych*—a general corporate registration case—directly into the insurance context, bypassing the specific language of § 38-5-70 and its legislative context.

By allowing the reasoning of *In re Aqueous* and *Fidrych* to override the intent of the South Carolina legislature and the rulings of this Court, the Court of Appeals improperly eroded the distinction between general corporate entities and the heavily regulated insurance industry.

F. *Moore v. Christian Fidelity* Demonstrating Current Missouri Law

The decision in *Pennsylvania Fire* arose out of a Missouri Supreme Court decision so it is appropriate to review a Missouri Court of Appeals precedent on this issue. In *Moore v. Christian Fidelity Life Insurance Co.*, 687 S.W.2d 210 (Mo. App. W.D. 1984), the Missouri Court of Appeals, Western District, addressed whether compliance with a state's insurance registration and appointment statute confers personal jurisdiction over a foreign insurer by express consent, independent of a due process "minimum contacts" analysis. In *Moore*, an Iowa resident sued a Texas insurance company in Missouri state court for breach of an employment contract. The plaintiff invoked jurisdiction under Mo. Rev. Stat. § 375.906, RSMo Cum. Supp. 1984, which mandated that foreign insurance companies execute an irrevocable power of attorney appointing the director of the division of insurance to receive service of process as a condition of transacting business in the state.

The trial court dismissed the action, reasoning that the foreign insurer lacked sufficient "minimum contacts" with Missouri to satisfy due process. The Missouri Court

of Appeals reversed, holding that the trial court had improperly focused on long-arm "minimum contacts" jurisprudence. The appellate court clarified that personal jurisdiction over the nonresident under the registration procedure "is based upon the express consent of the foreign insurer ... to authorize the director of the division of insurance to acknowledge and receive service of all lawful process". By complying with the statute, the insurer made an "intentional waiver of the question of adjudicatory jurisdiction," rendering the traditional fairness principles of *International Shoe* v. *Washington*, 326 U.S. 310 (1945) entirely inapplicable because jurisdiction rested purely on express consent.

The holding in *Moore* directly applies a foundational jurisdictional doctrine that originated in Missouri. The state statute analyzed in *Moore* is the direct descendant of Missouri Rev. Stat. § 7042, which was exactly the statute validated by the United States Supreme Court in *Pennsylvania Fire*.

In conclusion, § 38-5-70 constitutes a valid, independent, and constitutionally sound statutory basis for general personal jurisdiction. This Court's own historical analysis in *Meyer*, together with the case law of *Wofford, Equilease* and *White Oak*, demonstrate that such statutes were designed to confer personal jurisdiction and the Supreme Court in *Mallory*, in reaffirming *Pennsylvania Fire*, has confirmed that this mechanism remains fully vital and constitutional today.

2. The Court of Appeals Erred in Misapplying the *Prima Facie* Standard for Specific Jurisdiction at the Pleading Stage

The Court of Appeals committed reversible error by misapprehending the procedural standard governing specific jurisdiction under Rule 12(b)(2), SCRCP. By

requiring the Petitioner to conclusively prove the existence and scope of a partnership at the pleading stage, the lower court erroneously resolved substantive questions of fact prior to discovery.

The Court of Appeals committed reversible error by improperly escalating the evidentiary burden required to establish specific jurisdiction at the pre-trial, Rule 12(b)(2) stage. Under well-established South Carolina law, a plaintiff is only required to make a *prima facie* showing of jurisdiction to survive a motion to dismiss. The proper standard demands that "factual disputes arising by affidavit will be resolved in favor of the non-moving party." *M.B. Khan Construction Co. v. Three Rivers Bank & Trust Co.*, 354 S.C. 412, 415, 581 S.E.2d 481, 482 (2003). At this preliminary stage, the moving party is only required to make a *prima facie* showing, rather than prove the issue on the merits. *Compton v. South Carolina Dep't of Corr.*, 392 S.C. 361, 369, 709 S.E.2d 639, 644 n.3 (2011)(discussing the evidentiary requirements for a preliminary injunction).

Despite acknowledging this standard, the Court of Appeals erroneously held that "... Ormand-Ward has failed to set forth facts showing the existence of a partnership and thus failed to establish that CLAS acted as Chicago Title's agent in recording the fraudulent deed." (*Ormand-Ward, Id.*, S.C. 270, S.E.2d 362). By mandating that the Petitioner "establish" the agency relationship and the exact scope of the partnership as a matter of conclusive fact at the pleading stage, the lower court improperly collapsed the preliminary *prima facie* inquiry into a premature merits determination.

South Carolina's long-arm statute authorizes the exercise of personal jurisdiction over a defendant who acts "directly or by an agent" in relation to a cause of action

arising from the commission of a tortious act in whole or in part within the state. S.C. Code Ann. § 36-2-803(A)(3). Once personal jurisdiction is properly obtained over a partnership, a South Carolina court may hold a foreign partner personally liable for the partnership's obligations. *Young v. Jones*, 816 F. Supp. 1070, 1076 (D.S.C. 1992). Furthermore, the foreign partner may be held jointly and severally liable for tortious acts attributable to the partnership. *Id.*

The Petitioner presented facts satisfying the *prima facie* burden that Chicago Title and CLAS operated as a partnership or joint venture, and that this partnership committed a tortious act in South Carolina. The record explicitly demonstrates the following ties:

1. Public Declarations of Partnership: CLAS's own website prominently markets the entity as a "joint venture partnership with Chicago Title Insurance Company," noting that the relationship positions CLAS to provide title insurance accurately and timely.

2. Shared Management and Personnel: Three of the six officers of CLAS hold affiliations with Chicago Title. This includes Michael Cusack, who serves concurrently as a director of CLAS and an Executive Vice President of Chicago Title.

3. Shared Location: CLAS and Chicago Title's metropolitan Chicago office operate out of the same office building located at 1620 W. Belmont, Chicago, IL.

4. Financial Interest: Chicago Title holds a 49.9% ownership share in CLAS. Under S.C. Code Ann. § 33-41-220(4), the receipt of a share of a business's profits serves as *prima facie* evidence that the recipient is a partner in that business.

The Court of Appeals committed error by treating Chicago Title's 49.9% ownership stake as dispositive evidence against a partnership, concluding that ownership of shares meant Chicago Title "cannot also be in a partnership with CLAS." Minority ownership does not preclude the existence of a joint venture or agency relationship. Ths South Carolina Business Corporation Act of 1988 empowers any corporation to "be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity." S.C. Code Ann. § 33-3-102. The definition of partnership is "an association of two or more persons to carry on as co-owners of business for profit ... ". S.C. Code Ann. § 33-41-210. Chicago Title and CLAS are capable of being partners notwithstanding who owns what percentage of the other.[4]

A foreign corporate shareholder may be subject to jurisdiction upon a showing of direct personal involvement in the actions related to the injury. *Springs Industries, Inc. v Gasson,* 923 F. Supp. 823 (D.S.C. 1996).

The Court of Appeals further compounded its procedural error by improperly narrowing the scope of the alleged joint enterprise, demanding evidentiary proof of subjective intent and profit-sharing details that are inappropriate for a Rule 12(b)(2) determination. The court reasoned that "no evidence showed that under these circumstances, the recording of the deed was related to the business of the partnership or that CLAS and Chicago Title joined together for the purpose of recording deeds".

[4] It should be noted that Chicago Title and CLAS are sophisticated businesses in the realm of real estate transactions. It stands to reason that each knows exactly what they are saying on their website.

(*Ormand-Ward, Id.*, S.C. at S.C. 261, S.E.2d at 279. Additionally, the Appeals Court faulted the Petitioner for alleging "no facts showing the sharing of profits and losses, community of interest in capital or property, or community of interest in control and management between the two entities". *Id.*, S.C. at 270, S.E.2d at 362.

This analysis is unduly restrictive and fails to comply with the mandate of the prima facie standard. The Petitioner alleged that Chicago Title and CLAS prominently announce their "joint venture partnership" on their shared website. This public representation constitutes clear *prima facie* evidence of a partnership.

Recording a deed is a foreseeable component of the title process, and requiring proof that the parties specifically "joined together for the purpose of recording deeds" improperly fragments the alleged enterprise and resolves inherently factual scope questions on a bare pleading record. Furthermore, under South Carolina law, agency may be established by circumstantial evidence and implied from the conduct of the parties. *Bramlette v. Charter-Medical-Columbia*, 302 S.C. 68, 71 393 S.E.2d 914, 916 (1991). The Court of Appeals' demand for explicit evidentiary proof of the partnership's internal mechanics—such as community of interest in control and profit-sharing—at the pleading stage ignores the Court's duty to draw reasonable inferences and constitutes a reversible error of law.

The Court of Appeals committed a clear error of law by requiring conclusive proof of the partnership's existence and scope, rather than evaluating the sufficiency of the Petitioner's *prima facie* showing. The facts presented—including explicit public statements of a joint venture, shared executive leadership, shared physical locations,

and shared financial interests—are more than sufficient to establish a *prima facie* case to support the exercise of specific jurisdiction over Chicago Title at this preliminary stage.

CONCLUSION

The above and foregoing reasons, the Petitioner prays that this Court grant its Petition for Writ of Certiorari.

Respectfully Submitted,

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