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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2019-CP-44-00054

Dwayne Thompson, Respondent,

v.

LG Chem, Ltd.; LG Chem America, Inc.; and Rolling Fog
Vapor Company, LLC..... Defendants,

Of which LG Chem, Ltd. and LG Chem America, Inc., are
the..... Petitioners.

PETITION FOR A WRIT OF CERTIORARI

Petitioners LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) (collectively, “Petitioners”) ask this Court to review the lower court ruling in this case permitting this litigation to go forward against them despite the absence of minimum contacts with South Carolina as required to support the exercise of personal jurisdiction. Petitioners first request that this Court declare that personal jurisdiction rulings denying constitutional rights are immediately appealable, as they are in North Carolina (this Court has cited approvingly to North Carolina immediate appealability jurisprudence several times), by modifying this Court’s decision in *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993)¹. Failing that, if this

¹ Petitioners have filed and served a notice of appeal of the lower court’s ruling and moved to certify or transfer that appeal from the Court of Appeals to this Court because of the precedent of *Mid-State Distributors*. This Court, rather than the Court of Appeals, is better positioned to address the scope of *Mid-State Distributors* and whether it should be narrowed in application.

Court maintains its interpretation of S.C. Code Ann. Section 14-3-330 in *Mid-State Distributors* and holds such an order is not immediately appealable, Petitioners request that this Court exercise its extraordinary powers pursuant to Rules 245 and 240 of the South Carolina Appellate Court Rules, to grant a writ of certiorari to review the lower court's ruling.

This Petition involves a March 19, 2021 Order denying Petitioners' motions to dismiss and an April 21, 2021 ruling denying Petitioners' motions to reconsider. However, these proceedings present exceptional circumstances and raise critical issues that both affect the public interest and have a significant impact on Petitioners'—and other similarly situated defendants'—fundamental rights, including their rights to due process and their rights to avoid expensive, burdensome, and serial litigation before a court that patently lacks jurisdiction over them. Moreover, granting review will provide this Court with the opportunity to clarify or potentially overrule its lone opinion on the “stream of commerce” theory of personal jurisdiction—an opinion that predates three United States Supreme Court opinions that demonstrate this Court's earlier opinion in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) is not an accurate statement of the law. Thus, this Court's immediate review will prevent South Carolina circuit courts from continuing to exercise jurisdiction where none exists and will thereby serve the interests of judicial economy.

INTRODUCTION

In this products liability action, Respondent Dwayne Thompson seeks recovery for injuries allegedly sustained when a lithium ion battery cell allegedly exploded in his pocket. Respondent alleges that he purchased the battery cell from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), as a battery to use with his e-cigarette device. Respondent also alleges, generically and in conclusory fashion, that Petitioners LG Chem, Ltd. (“LG Chem”) and LG Chem America,

Inc. (“LGCAI”) designed, manufactured, supplied, sold, imported, and distributed the subject battery and expected the battery to be sold in South Carolina.

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia. LGCAI is a wholly-owned subsidiary of LG Chem, and is a separate and independent corporate entity. Petitioners do not design, manufacture, distribute, advertise, or sell lithium ion battery cells to consumers for use as standalone, replaceable batteries— with e-cigarette devices or for any other purpose. Petitioners have never conducted any business with Rolling Fog and have never sought to serve a consumer market for such standalone, replaceable batteries in South Carolina—or anywhere else. Instead, it appears that third parties have acquired industrial component battery cells manufactured by LG Chem (and other manufacturers) and diverted those cells from their intended chain of distribution into an unauthorized and unintended consumer marketplace for standalone, replaceable batteries used to power e-cigarette and vaping devices.

Notwithstanding these facts, Respondent successfully argued to the circuit court that Petitioners are subject to specific personal jurisdiction in South Carolina under a “stream of commerce” theory. In making this argument, Respondent relied almost entirely on this Court’s opinion in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) and its holding that a defendant’s “nationwide contacts” are sufficient to confer specific personal jurisdiction in South Carolina. *Id.* at 90, 666 S.E.2d 218, 222–23 (“It is clear Sumatra has minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown Sumatra has minimum contacts with South Carolina.”). Respondent further argued that he was only required to allege in his complaint that Petitioners placed its product into the stream of commerce and expected that it would make its way to South Carolina.

However, Plaintiff's conclusory allegations should have been held insufficient to satisfy his burden of establishing personal jurisdiction, as the *first* circuit court judge to hear the motion initially found when ordering that discovery should be conducted to determine who manufactured the battery and whether the defendants had sufficient contacts with South Carolina to establish personal jurisdiction. No such contacts were adduced in jurisdictional discovery. To the contrary, Respondent Plaintiff expressly asked a *second* circuit court judge to decide the motions on the same facts Respondent initially presented and which the *first* circuit court judge found insufficient to decide the question of jurisdiction.

The circuit court then denied Petitioners' motions to dismiss, concluding, erroneously, that Respondent satisfied his burden of establishing a *prima facie* case of jurisdiction. The circuit court stated that *Sumatra* controlled his decision and that more recent decisions by the United States Supreme Court addressing specific personal jurisdiction, including *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) and *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) did not support a different outcome.

But the principles set forth in these cases confirm that the "stream of commerce" metaphor cannot support the exercise of personal jurisdiction where, as here, the plaintiff's claims do not "arise out of or relate to" the defendant's contacts with the forum state. This is precisely what the Supreme Court of Missouri concluded last year when issuing a Permanent Writ of Prohibition in favor of LG Chem in a unanimous, en banc decision reversing a Missouri circuit court's decision to the contrary. *See State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020). Similarly, the Washington Court of Appeals recently affirmed a trial court's order dismissing LG Chem from a similar suit for lack of personal jurisdiction, despite Plaintiff's similar "stream of commerce" argument and despite Washington's similar acceptance of Justice Breyer's "stream of

commerce” (not “stream of commerce plus”) jurisdictional test. *Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020).

This issue is not an isolated one. Plaintiffs in four other recent lawsuits have successfully made a similar argument to other South Carolina circuit courts, defeating LG Chem’s and LGCAI’s motions to dismiss for lack of personal jurisdiction in those cases based solely on similarly deficient conclusory allegations and irrelevant facts regarding unrelated business activities touching South Carolina ports.² By contrast, other states’ appellate courts, federal circuit courts, and numerous state and federal trial courts have recognized that constitutional due process is not satisfied by exercising personal jurisdiction over Petitioners based on allegations like those at issue here.

Thus, unless this Court corrects its now-outdated discussion of stream of commerce jurisdiction, South Carolina circuit courts will continue to find foreign and out-of-state defendants subject to personal jurisdiction in South Carolina even when doing so is inconsistent with United States Supreme Court precedent, as articulated and clarified in cases decided since *Sumatra*.

This practice infringes on manufacturers’ and suppliers’ due process rights, harms foreign relations, and further burdens an already overburdened court system. Petitioners and other manufacturers and suppliers should not be forced to incur the expense and burden of litigating five separate lawsuits in South Carolina circuit courts that lack jurisdiction over them. *See World–Wide*

² *Joshua Holtzendorff v. LG Chem, Ltd. et al.*, No. 2019-CP-0201518 (Aiken Cnty.) (as to LG Chem); *Ranee Moore v. LG Chem, Ltd., et al.* (No. 2018-CP-21-02884) (as to LG Chem and LGCAI); *Eric Williamson v. LG Chem, et al.* (No. 2019-CP-0702270) (Beaufort Cnty.) (as to LGCAI); *Nicholas Roberts v. LG Chem, et al.*, No. 2020-CP-100912 (Charleston Cnty.) (as to LG Chem and LGCAI). In the *Roberts* case, the plaintiff recently dismissed LG Chem and LGCAI after his expert determined that LG Chem did not manufacture the battery cell at issue.

Volkswagen Corp. v. Woodson, 444 U.S. 286, 291–92 (1980) (holding that due process “protects the defendant against the burdens of litigating in a distant or inconvenient forum”).

STATEMENT OF THE CASE

In this products liability case, Respondent Dwayne Thompson alleges he was injured on July 27, 2018, when an “LG Brown Hg2 INR 18650 3000mAh” model lithium ion battery cell, which he purchased to use in his electronic cigarette vaping device, exploded in his pocket. (**Ex. A**, Compl. ¶¶ 2, 8, 11–12.) Respondent alleges that LG Chem and LGCAI designed, manufactured, supplied, sold, imported, and distributed the subject battery cell (*id.* ¶ 5) and that he purchased the battery cell from Rolling Fog, a retail vape store with its principal place of business in Spartanburg, South Carolina (*id.* ¶¶ 2, 5, 9).

I. Petitioner LG Chem.

LG Chem is a Korean company headquartered in Seoul, South Korea. (**Ex. B**, Aff. of Sung Han Ryu, filed April 24, 2019, ¶ 4; Compl. ¶ 3). Although South Korea is a signatory to the Hague Service Convention, Respondent instead attempted to serve LG Chem with the Summons and Complaint by certified mail on March 22, 2019 to the South Carolina Secretary of State. (**Ex. C**, Certificate of Service, filed April 11, 2019.) LG Chem introduced facts establishing that it lacks systematic contacts in South Carolina and no “exceptional circumstances” exist that would render it “at home” here. (**Ex. A**, Ryu Aff. ¶¶ 4–11.)

LG Chem manufactured 18650 lithium ion battery cells for use by sophisticated, industrial manufacturers in specific applications and never sought to serve a consumer market for standalone, replacement e-cigarette batteries. LG Chem introduced admissible, uncontroverted evidence that: (1) LG Chem never designed, manufactured, distributed, advertised, or sold 18650 lithium-ion battery cells for use by individual consumers as replaceable, rechargeable batteries in electronic

cigarette devices, (**Ex. A**, Ryu Aff. ¶ 13); (2) LG Chem never conducted any business with the alleged retail vape store (Rolling Fog) and did not direct or control its actions, (*id.* ¶ 15); and (3) LG Chem never authorized Rolling Fog or any distributor, wholesaler, retailer, or re-seller to advertise, distribute or sell 18650 lithium-ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id.* ¶¶ 15–16.)

II. Petitioner LGCAI.

LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia. (**Ex. D**, Aff. of HyunSoo Kim, filed April 24, 2019, at ¶ 5; Compl. ¶ 4). Respondent served LGCAI with the Summons and Complaint through its registered agent, Corporation Service Co., on March 22, 2019. LGCAI introduced facts establishing that no “exceptional circumstances” exist that would render it “at home” here. (**Ex. D**, Kim Aff., ¶¶ 5-9.)

LGCAI primarily sells and distributes various petrochemical materials and products including ABS resin, Engineered Plastic (EP), Rubbers, Acrylate, Super Absorbent Polymer (SAP), and Specialty Polymers. (*Id.* ¶ 4.) LGCAI does not have any manufacturing plants and does not manufacture any products. (*Id.*)

LGCAI introduced admissible, uncontroverted evidence that: (1) LGCAI could not have manufactured the subject battery because it does not manufacture any products, **Ex. D**, Kim Aff. ¶ 10; (2) LGCAI never designed, manufactured, distributed, advertised, or sold 18650 lithium-ion battery cells for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices, (*Id.* ¶ 13); (3) LGCAI never conducted any business with the alleged retail vape store (Rolling Fog) and did not direct or control its actions, (*id.* ¶ 12); and (4) LGCAI never authorized Rolling Fog or any distributor, wholesaler, retailer, or re-seller to advertise, distribute

or sell 18650 lithium-ion cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices. (*Id.* ¶¶ 12-13.)

III. Procedural History.

Respondent filed this action on March 4, 2019 asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

1. LG Chem’s and LGCAI’s motions to dismiss before the Honorable J. Cordell Maddox, Jr.

On April 24, 2019, LG Chem filed a Motion to Quash Service of Process and Motion to Dismiss for lack of personal jurisdiction. On the same day, LGCAI filed a Motion to Dismiss for lack of personal jurisdiction. The Honorable J. Cordell Maddox, Jr. heard LG Chem’s and LGCAI’s motions on September 23, 2019. At the hearing, Judge Maddox ruled from the bench stating a denial of LG Chem’s and LGCAI’s motions to dismiss without prejudice and stated in his oral ruling, “I think factually, there’s not enough information to grant or deny at this point.” (**Ex. E**, Sept. 23, 2019 Hr’g Tr. at 12:6–10.) Following the September 23, 2019 hearing, Respondent submitted proposed written orders on LG Chem’s and LGCAI’s motions, which Judge Maddox signed and entered on December 6, 2019 and December 23, 2019, respectively. (**Ex. F**, 12/6/19 Order (LG Chem); **Ex. G**, 12/23/19 Order (LGCAI).) In these orders, Judge Maddox denied both LG Chem’s and LGCAI’s motions to dismiss for lack of personal jurisdiction without prejudice and denied LG Chem’s motion to quash service, concluding that service on the Secretary of State was sufficient under § 15-9-245(b).

Following entry of the Orders, Respondent took the position that the written orders did not limit discovery to jurisdictional issues, as Judge Maddox had ruled at the hearing. Accordingly, LG Chem and LGCAI moved for reconsideration, or in the alternative, for clarification of Judge

Maddox’s December 6, 2019 and December 23, 2019 written orders.³ Over Respondent’s opposition, Judge Maddox granted LG Chem’s and LGCAI’s motion for clarification with regard to the jurisdictional issue, entering a written order on July 20, 2020 that expressly confirmed that the Court’s prior ruling was that the Court “needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case.” (Ex. H, 7/20/20 Order at 3.) Judge Maddox then allowed 90 days of jurisdictional discovery regarding “whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina.”⁴ (*Id.* at 4.)

Respondent never served any jurisdictional discovery requests on LGCAI. Respondent did serve written discovery requests on LG Chem—which LG Chem answered in part and also filed a motion for a protective order to the extent certain of Respondent’s discovery requests were outside the scope of Judge Maddox’s July 20, 2020 Order. Respondent never pursued any depositions or sought documents from third parties by way of subpoena, and the time period to conduct jurisdictional discovery expired on October 19, 2020 under Judge Maddox’s July 20, 2020 Order. When LG Chem’s Motion for Protective Order came on for hearing, Respondent did not file any response or opposition and later informed the court he was not seeking any further discovery but requested a ruling based on the same record that had been presented to Judge Maddox.

³ LG Chem and LGCAI also timely filed Answers to Respondent’s Complaint on December 20, 2019 and January 3, 2020, respectively, timely asserting and preserving their defenses of lack of personal jurisdiction.

⁴ LG Chem also moved to reconsider the decision on the service issue, which Judge Maddox again denied. LG Chem maintains that service was not proper. Respondent has never attempted to cure this defect in service.

2. LG Chem’s and LGCAI’s renewed motions to dismiss before the Honorable William A. McKinnon.

On November 2, 2020, following the discovery period and deadline for filing the renewed motions to dismiss set by Judge Maddox, LG Chem and LGCAI timely filed their renewed motions to dismiss Respondent’s complaint for lack of personal jurisdiction.

The Honorable J. William A. McKinnon heard LG Chem’s and LGCAI’s renewed motions to dismiss on February 1, 2021. After oral argument, Judge McKinnon indicated he would deny LG Chem’s and LGCAI’s motions and asked Respondent’s counsel to prepare proposed orders. Judge McKinnon allowed LG Chem and LGCAI to submit their objections to Respondent’s proposed orders, which they filed on March 2, 2021. On March 19, 2021, Judge McKinnon denied LG Chem’s and LGCAI’s renewed motions to dismiss. (**Ex. I**, 3/19/21 Order Denying LG Chem’s Motion to Dismiss; (**Ex. J**, 3/19/21 Order Denying LG Chem’s Motion to Dismiss.)

LG Chem and LGCAI moved for reconsideration on March 29, 2021, and on April 21, 2021, Respondents received written notice by Form 4 Order that the Judge McKinnon had denied their motions to reconsider (**Ex. K**, 4/21/2021 Order denying motions for reconsideration).

ARGUMENT

I. The Court should find that an order that denies constitutional due process rights and improperly allows the exercise of personal jurisdiction despite the absence of minimum contacts is immediately appealable.

A. A finding of sufficient minimum contacts implicates a defendant’s substantial constitutional right to due process, which North Carolina law expressly recognizes.

Petitioners seek review from this Court of these Orders on an immediate basis, whether through appeal or, failing that, via this writ request. With respect to immediate appealability, S.C. Code Ann. § 14-3-330(2) provides that “[a]n order affecting a substantial right” is immediately appealable if it “in effect determines the action and prevents a judgment from which an appeal

might be taken or discontinues the action.” This Court has recognized that “by its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). This Court should analyze the circumstances presented here and determine appealability.

Although the Court first held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRCPP, is interlocutory and not directly appealable,” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993), Petitioners here raise several arguments to the lower court that were not before the *Mid-State Distributors* court. Importantly, in *Mid-State Distributors*, the Court’s opinion focused solely on the whether the subject order was sufficiently final such that it “involved the merits.” See *Mid-State Distributors*, 310 S.C. at 336-37, 426 S.E.2d at 780-81. The court **did not** expressly address whether a ruling that the defendant had sufficient minimum contacts—such that exercising personal jurisdiction would comport with due process—affects a substantial right. *Mid-State* expressly overruled two prior cases to the extent they conflicted with the current definition of “involving the merits.” Notably, however, the court **did not** expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which permitted an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction where the sufficiency of minimum contacts was at issue. *Mid-State* also came before the Court under an entirely different procedural posture from the present case.

South Carolina courts have previously indicated that an order implicating a party’s constitutional rights is immediately appealable because it concerns a substantial right. *E.g.*, *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the constitutional guarantee of due process is implicated where the court finds there are sufficient

minimum contacts and denies a motion to dismiss for lack of personal jurisdiction on that basis. This alone warrants a finding of immediate appealability.

Furthermore, South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86-87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina's appealability statute is similar to South Carolina's and likewise permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting "immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be **limited** to where the appeal raises questions concerning due process and minimum contacts, because those are the questions **affecting a substantial right**.

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

support appealability under South Carolina’s appealability statute, which also permit immediate appeals “affecting a substantial right.”

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, Petitioners submit that immediate appeal is proper in this narrow circumstance.

B. The lack of available appellate remedies has led to a dearth of precedent to guide the lower courts.

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

Further, a litigant who loses at trial will likely have multiple potential appellate issues and must make a tactical decision about which issues—and how many issues—are important enough and strong enough to raise in its appellate brief.⁵ And even if a litigant raises a jurisdictional issue

⁵ *See, e.g., Jones v. Barnes*, 463 U.S. 745, 751–52 (1983) (“Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.”); *State v. Pelletier*, 552 A.2d 805, 807–08 (Conn. 1989) (“Most cases present only one, two, or three significant questions. . . . Usually . . . if you cannot win on a few major points, the others are not likely to help. . . . The effect of adding weak arguments will be to dilute the force of the stronger ones.” (alterations in original) (quoting R. Stern, *Appellate Practice in the United States* 266 (1981))).

on appeal, an appellate court may not reach the issue. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 428 S.C. 638, 643 n.1, 837 S.E.2d 485, 488 n.1 (2020) (noting an appellate court need not address an issue if its ruling on another issue is dispositive (citing *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999))); *Ledford v. Dep't of Pub. Safety*, 428 S.C. 387, 392 n.5, 835 S.E.2d 509, 511 n.5 (2019) (citing *Futch*); *cf. Davis*, 409 S.C. at 281, 762 S.E.2d at 543 (addressing a contempt ruling but declining to address the underlying discovery orders).

The lack of appellate review of orders finding sufficient minimum contacts creates, in turn, a lack of precedent addressing what is constitutionally sufficient. Trial judges and counsel are left to apply outdated principles with little guidance. Published decisions addressing the modern confines of personal jurisdiction will create uniformity and stability within the state judicial system, avoid disparate treatment by the trial bench, and reduce costs because litigants will not fight over matters governed by precedent. As this Court has acknowledged, *stare decisis* best takes hold when a “series of decisions” exists, as opposed to an “exemplar” such as *Mid-State*. *See McLeod v. Starnes*, 396 S.C. 647, 654, 723 S.E.2d 198, 203 (2012) (“[S]tare decisis is far more a respect for a body of decisions as opposed to a single case standing alone.”).

C. Permitting appellate review regarding sufficiency of minimum contacts will not open the floodgates to the appellate courts.

Existing law and rules allow the Court to place controls to prevent an influx of appeals from run-of-the-mill orders. First, by filing a notice of appeal, counsel certifies that the appeal is not frivolous or taken solely for delay. *See* Rule 269, SCACR (“Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and

discouragement of like conduct in the future may require.”). An appeal is not frivolous if counsel has a good-faith basis for asserting that the defendant lacks sufficient minimum contacts with the forum. Accordingly, if the Court finds counsel does not have a good-faith basis for appealing, it has the power to issue sanctions. Further, North Carolina courts permit immediate appeals under these circumstances, and no uncontrolled rash of appeals has ensued.

D. Immediate appeal is appropriate in this narrow circumstance.

For all of these reasons, the Court should hold that an order finding that a party has sufficient minimum contacts such that exercising personal jurisdiction would comport due process implicates a substantial right supporting immediate appeal under S.C. Code Ann. § 14-3-330.

II. The circumstances warrant the Court exercising its discretionary authority to grant an extraordinary writ.

If the Court declines to find that immediate appeal is appropriate, and declines to modify *Mid-State Distributors*, it should grant a writ of certiorari in this case.

The South Carolina Constitution provides that “[t]he Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.” S.C. Const. Art. V, § 5; *see also* S.C. Code Ann. § 14-3-310 (same). Rule 245(a) of the South Carolina Appellate Court Rules allows an extraordinary writ to be issued “[i]f the public interest is involved, or if special grounds of emergency or other good cause exist why the original jurisdiction of the Supreme Court should be exercised.” Rule 245(a), SCACR. The decision to issue a writ of certiorari is discretionary with the Court. *Floyd v. Thornton*, 220 S.C. 414, 68 S.E.2d 334 (1952). This Court has exercised its discretion to issue extraordinary writs in appropriate circumstances.⁶ Further, this Court has held that, “[w]ith regard

⁶ *See, e.g., Hollman v. Woolfson*, 384 S.C. 571, 683 S.E.2d 495 (2009) (granting writ a second time in the same proceeding to review circuit court’s discovery ruling); *In re: Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (1998) (granting writ of certiorari to

to the function and scope of the writ, it has been settled in this state from an early period that it will only lie to prevent an encroachment, excess, usurpation, *or improper assumption of jurisdiction on the part of an inferior court or tribunal*” *New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972) (quoting *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931)).

Here, an inferior court is improperly assuming jurisdiction over Petitioners. As discussed below, just as the Supreme Court of Missouri exercised its discretionary authority to grant a writ in the analogous *Bishop* case, this Court should do the same, and it should do so for the same reasons. *See State ex rel. LG Chem, Ltd. v. McLaughlin*, No. SC 97991, 2020 WL 2845764 (Mo. banc June 2, 2020). Indeed, the Supreme Court of Missouri’s reasoning applies with equal force to the facts of this case. *See id.*

Further weighing in favor of granting the writ are similar cases with analogous jurisdictional facts pending before South Carolina circuit courts, and the fact that these cases involve an issue of law—namely, the stream of commerce theory of personal jurisdiction—that this Court has not addressed in more than twelve years. And, critically, this Court’s lone opinion on stream of commerce jurisdiction is inconsistent with more recent United States Supreme Court precedent. This Court should grant the writ to clarify the law on the stream of commerce theory of personal jurisdiction and to expressly overrule *Sumatra*. Otherwise, South Carolina’s lower courts will continue following *Sumatra*, forcing Petitioners and other foreign and domestic defendants to

review circuit court’s decision related to medical device litigation involving numerous issues of public import); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 439 S.E.2d 257 (1993) (reviewing circuit court order requiring production of confidential hospital documents); *S.C. Dept. of Parks, Recreation, and Tourism v. Brookgreen Gardens*, 309 S.C. 388, 424 S.E.2d 465 (1992) (granting writ pursuant to Rule 229); *Breeden v. S.C. Democratic Executive Committee*, 226 S.C. 204, 84 S.E.2d 723 (1954) (writ granted to make final determination as to who would be lawful nominee for public office).

litigate claims in South Carolina despite the absence of personal jurisdiction. Such a result will damage foreign relations and will further burden South Carolina's court system. On the other hand, granting discretionary review in this case serves the interests of judicial economy by eliminating future trials and appeals in cases where personal jurisdiction does not exist. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471–72, 674 S.E.2d 154, 160–61 (2009) (“The instant case presents such exceptional circumstances [warranting issuance of a writ of certiorari] as it involves a novel question of law in a matter that has been the subject of numerous claims in state and federal courts. A decision by this Court at this time best serves the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.”).

Moreover, LG Chem is a foreign manufacturer. As held by the United States Supreme Court in *Asahi*: “The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.” *Asahi Metal Indus. Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987). In *Asahi*, the Supreme Court also held:

The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. “Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.”

Id. at 115. Further, in the United States, due process “protects the defendant against the burdens of litigating in a distant or inconvenient forum.” *World-Wide Volkswagen*, 444 U.S. at 291-92.

Forcing Petitioners to defend, and the South Carolina circuit court to manage, this case and the four other pending cases through trial will be a waste of time and resources for both Petitioners

and the South Carolina circuit courts. LG Chem in particular will face significant burdens in defending these cases in a foreign judicial system. The witnesses and evidence relevant to LG Chem's alleged manufacturing of the lithium-ion cell are in South Korea. It would be unfair and unreasonable to subject LG Chem to personal jurisdiction in South Carolina based on the unilateral actions of third parties apparently responsible for bringing its product to South Carolina, when LG Chem is not "at home" in South Carolina and formed no contacts with South Carolina related to the subject matter of this suit. It would likewise be unfair and unreasonable to subject LGCAI to personal jurisdiction in South Carolina when LGCAI is "at home" in Georgia and Delaware (where it can be sued on any cause of action) but formed no contacts with South Carolina related to the subject matter of this suit.

III. This Court should grant the writ to provide immediate, pre-trial review, as the circuit court erred in finding that Respondent had established a prima facie showing of personal jurisdiction over LG Chem and LGCAI.

Personal jurisdiction is exercised as "general jurisdiction" or "specific jurisdiction." *Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). General jurisdiction allows the court to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the state. *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n.15 (1985)). *Id.* Specific jurisdiction allows the court to exercise personal jurisdiction over causes of action that relate specifically to a defendant's contacts with the forum. *Id.* (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005)). At the pretrial stage, the plaintiff has the burden of proving personal jurisdiction over a nonresident by a prima facie showing of jurisdiction. *Id.*

A. General jurisdiction was not in dispute.

The rule on general jurisdiction is well settled: "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them

when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (“A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.”). Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of an exceptional case is when war forces a “corporation’s owner to temporarily relocate the enterprise from the Philippines to Ohio,” which becomes “the center of the corporation’s wartime activities.” *Id.* (quoting *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952)).

Here, Petitioners introduced admissible, uncontroverted evidence showing that neither is “at home” in South Carolina, and the circuit court observed that “Plaintiff did not dispute [LG Chem’s and LGCAI’s] argument as to general jurisdiction.” (**Ex. I**, 3/19/21 Order at 1 n. 1 (LG Chem); **Ex. J**, 3/19/21 Order at 3 n. 2 (LGCAI)).

B. The circuit court erred in failing to address that there can be no specific jurisdiction because South Carolina’s long-arm statute was not satisfied.

The circuit court did not address the fact raised by Petitioners that South Carolina’s long-arm statute was not satisfied. To subject a foreign defendant to specific personal jurisdiction, the plaintiff must establish both that the long-arm statute is satisfied and that constitutional due process is satisfied. South Carolina’s long-arm statute requires a finding that the plaintiff’s claims arise from the defendant’s activities. *See* S.C. Code Ann. § 36-2-803(A)(4); *see Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (construing similar provision in South Carolina’s long-arm statute). Here, no such finding can be made, because the

uncontroverted evidence submitted in support of Petitioners' motion illustrates that there is no connection between any alleged activity they took and Respondent's claim, and Respondent cannot establish that his claim arose from an enumerated act in the long-arm statute. Therefore, the 37-year-old *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) case cited in the circuit court's March 19, 2021 Orders, interpreting the Maryland long-arm statute, does not apply here, and *Moosally*, 358 S.C. at 335, 594 S.E.2d at 886, is distinguishable, where the defendant admitted that it sold 25 copies of the book at issue in South Carolina and its employees distributed its books widely in this state. 358 S.C. at 335, 594 S.E.2d at 886.

C. The circuit court erred in finding that Respondent had established a prima facie showing of specific jurisdiction over LG Chem and LGCAI.

1. Standard to establish personal jurisdiction.

Under South Carolina law, “[t]he determination of whether the requirements of due process are satisfied involves a two-prong analysis: (1) the ‘power’ prong, in which minimum contacts provide courts the ‘power’ to adjudicate the action; and (2) the ‘fairness’ prong, which requires the exercise of jurisdiction to be ‘reasonable’ or ‘fair.’” *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

To meet the power prong, the suit must arise out of or relate to the defendant's contacts with the forum. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–94, 611 S.E.2d 505, 509–10 (2005); *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433–35, 665 S.E.2d 660, 665–67 (Ct. App. 2008); *see also Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017) (emphasis added) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011)). Specifically, the court must “find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131. Specific

personal jurisdiction cannot exist if the cause of action is unrelated to the defendant's contacts with the forum. *Id.*; *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665.

In addition, it is undisputed that Respondent bears the burden to establish jurisdiction. The circuit court concluded that Respondent satisfied his burden solely based on the conclusory allegation of his complaint that Petitioners had “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (**Ex. I**, 3/19/21 Order (LGC), at 4; **Ex. J**, 3/21/21 Order (LGCAI) at 5.) Alternatively, the circuit court concluded that an inadmissible spreadsheet, apparently prepared by Respondent's counsel, which purported to show shipment (by LG Chem) or receipt (by LGCAI) of unrelated products (primarily petrochemical materials) into South Carolina ports could support Respondent's burden.

These conclusions are directly at odds with controlling U.S. Supreme Court authorities and, to the extent the circuit court was correct in concluding that *Sumatra* supported this result, *Sumatra* is unconstitutional and should be overruled.

2. Respondents' Motions to Dismiss should have been granted because Respondent's claims do not “arise out of or relate to” any conduct Petitioners directed to South Carolina.

In support of their Motions to Dismiss, Petitioners submitted admissible evidence to show that neither had any suit-related contacts with South Carolina. Specifically, neither entity designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for use by individual consumers as standalone, replaceable batteries in electronic cigarette devices. (**Ex. A**, Ryu Aff. ¶ 13; **Ex. D**, Kim Aff. ¶ 10.) Neither entity ever conducted any business with Rolling Fog, the retailer where Respondent alleges he purchased the subject battery at issue in this case, and did not

direct or control its actions. (**Ex. A**, Ryu Aff. ¶¶ 15; **Ex. D**, Kim Aff. ¶ 12.) Neither entity ever authorized Rolling Fog, or anyone else, to advertise, distribute, or sell LG 18650 lithium-ion cells for use by individual consumers as standalone, replaceable batteries in e-cigarette devices or for any other purpose. (**Ex. A**, Ryu Aff. ¶ 16; **Ex. D**, Kim Aff. ¶ 13.)

Even taken as true, the allegations of Respondent’s complaint, and the additional, inadmissible facts set forth in the spreadsheet prepared by counsel, at best showed that Petitioners engaged in unrelated business activities in South Carolina. In *Bristol-Myers*, the U.S. Supreme Court expressly held that specific jurisdiction could not be based on the defendant’s unrelated business activities in the state, no matter how extensive. In that case, the plaintiffs alleged that they were injured by a pharmaceutical product, Plavix. Bristol-Myers had sold almost 187 million Plavix pills in the state, through an in-state distributor, and took in more than \$900 million from those sales between 2006 and 2012. 137 S. Ct. at 1778. Additionally, in California the company owned five research and laboratory facilities, employing a total of approximately 160 employees; employed about 250 sales representatives; and maintained a state-government advocacy office—all involving the very same product at issue—the drug Plavix. *Id.* Despite all these contacts with the state, including the defendant’s sale to others of the same product at issue, the Court found that the plaintiffs’ claims against the company were not connected to those contacts.

In so doing, the Supreme Court expressly rejected the California Supreme Court’s “sliding scale” approach to specific jurisdiction. *Bristol*, 137 S. Ct. at 1778. Under that approach, California had allowed a weaker connection between the defendant’s activities and the claims at issue when the defendant had other, unrelated contacts with the forum. Rejecting this approach, the U.S. Supreme Court emphasized the importance of the connection between the defendant’s in-

state activities and the claims at issue— regardless of any in-state activities unrelated to those claims, no matter how extensive. *Id.*, 137 S. Ct. at 1781.

Additionally, in its most recent pronouncement on specific jurisdiction, the U.S. Supreme Court again reiterated earlier this year in *Ford* that specific jurisdiction must be determined based on the contacts the defendant itself formed with the forum state—not contacts formed by others, as is the case here. In *Ford*, which consolidated two cases that originated in Montana and Minnesota state courts, the Supreme Court found that those two states had properly exercised personal jurisdiction over Ford in cases in which a consumer plaintiff asserted product liability claims against the company based on use of a Ford vehicle that had arrived in the forum state (where the accident occurred) as the result of consumer relocations and resales, and was not designed, manufactured, or sold in the forum by Ford. Ford argued that the “relatedness” element of the specific jurisdiction analysis imposed a specific causation requirement. Although the Supreme Court rejected Ford’s argument that a strict causal link was required, the Supreme Court nevertheless reiterated that its decision should not be interpreted to mean that “anything goes when it comes to the relatedness standard.” Instead, the relatedness element “incorporates real limits, as it must to adequately protect defendants foreign to a forum.” 141 S. Ct. at 1026.

In *Ford*, although Ford did not bring the specific vehicles to the forum states, Ford itself engaged in extensive and wide-ranging activities in the forum state in furtherance of its undisputed intention to serve a consumer market for the very same type of vehicles at issue. It was Ford, not unauthorized third parties, that supplied consumers in Minnesota and Montana with Ford vehicles (and specifically Explorers and Crown Victorias); it was Ford that advertised those vehicles to in-state consumers on TV and billboards and by “every means imaginable”; and it was Ford that licensed dealers to sell, maintain, and repair Ford cars in Minnesota and Montana. *Ford*, 141 S.

Ct. at 1028. Ford had “a veritable truckload” of relevant, suit-related contacts with the forum States. *Id.* at 1031.

By contrast, here, neither LG Chem nor LGCAI had a single suit-related contact with the forum state. Both introduced admissible evidence—that Plaintiff did not rebut—showing that neither sought or attempted to serve a consumer market in South Carolina (or anywhere in the U.S.) for standalone, replaceable 18650 lithium ion batteries. Here, it was unauthorized third parties—not LG Chem or LGCAI—that supplied consumers in South Carolina with 18650 lithium ion battery cells through retail stores that had no connection to either LG Chem or LGCAI. There were no retailers licensed by LG Chem or LGCAI to supply LG lithium ion battery cells directly to consumers. There were no dealers authorized by LG Chem or LGCAI to repair or replace lithium ion battery cells for consumers. There were no TV or billboards or other advertisements whereby LG Chem or LGCAI “urged” consumers to purchase lithium ion battery cells as standalone, replaceable batteries for any purpose. Any connections that exist between South Carolina and this lawsuit were formed entirely by Plaintiff and other third parties; none by LG Chem or LGCAI.

The South Carolina federal district court recently considered *Ford* when dismissing a case against two Texas defendants for lack of personal jurisdiction. In *Santiago v. Venezio*, No. 9:21-CV-158-MBS, 2021 WL 1791500, at *5 (D.S.C. May 5, 2021), the Honorable Margaret B. Seymour quoted *Ford* for the principle that the contacts necessary for a finding of specific jurisdiction “**must be the defendant's own choice and not ‘random, isolated, or fortuitous.’**” The contacts must show that the defendant deliberately “**reached out beyond its home—by, for example, exploiting a market in the forum State or entering a contractual relationship centered there**”; but even then, the forum State may exercise jurisdiction only when

the claims “**arise out of or relate to the defendant's contacts**” with the forum.” *Id.* (bold in original) (citations omitted).

Here, there was nothing in the record to support a finding that Respondent had met his burden of showing Petitioners had sufficient suit-related minimum contacts with South Carolina to satisfy due process, and the motions to dismiss should have been granted.

3. *State v. NV Sumatra Tobacco Trading Co.*, as applied here, is based on outdated law that the U.S. Supreme Court has since discredited and fails to account for more recent cases reaffirming the necessity of showing that the defendant formed a suit-related connection with the forum state.

This Court addressed the “stream of commerce” theory of jurisdiction most recently in *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), more than twelve years ago. There, the Court held that a foreign tobacco manufacturer was subject to personal jurisdiction in South Carolina based on its analysis that the foreign defendant purposefully availed itself of the privilege of doing business in each of the fifty U.S. States, including South Carolina. Ignoring the U.S. Supreme Court’s pronouncements on specific jurisdiction that were issued after *Sumatra*, the circuit court erred in finding that he was “bound by” *Sumatra* and denied Petitioners’ motions on that basis. (**Ex. I**, 3/19/21 Order at 7 (LG Chem); **Ex. J**, Order at 7 (LGCAI).)

Since *Sumatra* was decided in 2008—in addition to *J. McIntyre, Bristol-Myers*, and *Ford*—the United States Supreme Court has spoken several times on issues of personal jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Taken together, these cases reinforce the two principles that should have guided the circuit court’s decision: (1) a non-resident defendant cannot be subject to personal jurisdiction in a state based on the unilateral actions of third parties; and (2) the exercise of specific jurisdiction

requires a plaintiff to establish that his claims are sufficiently related to minimum contacts formed by the defendant with the forum state to satisfy due process.

Further, the U.S. Supreme Court rejected “nationwide” stream of commerce jurisdiction in *J. McIntyre*, decided three years after *Sumatra*. Indeed, the argument advanced by Respondent — that, irrespective of how a product arrived in the state, specific jurisdiction exists in every state when a manufacturer targets the United States—is precisely the argument that the New Jersey Supreme Court accepted in *Nicastro v. McIntyre Machinery America, Ltd.*, 987 A.2d 575, 592 (N.J. 2010), but which the U.S. Supreme Court later reversed. Notably, in reaching its conclusion, the New Jersey Supreme had cited to this Court’s opinion in *Sumatra* in support. 987 A.2d at 588, n. 1. Also of note, two years later, the Tennessee Supreme Court reached the opposite conclusion as this Court in *Sumatra*, “especially in the wake of *J. McIntyre Machinery*.” *See State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, 762 n.37 (Tenn. 2013).

Sumatra does not support the exercise of specific jurisdiction over Petitioners in South Carolina. First, the decision has not been reviewed since the United States Supreme Court’s clarifying pronouncements in *J. McIntyre*, 564 U.S. 873 (2011), *Bristol-Myers*, 137 S. Ct. 1773 (2017), and *Ford*, 141 S. Ct. 1017 (2021).⁷ To the extent circuit courts, like the circuit court here, interpret *Sumatra* to allow the exercise of personal jurisdiction based solely on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina, that reading would be inconsistent with the United States Supreme Court’s decisions.

⁷ *Ford* was issued on March 25, 2021, and LG Chem and LGCAI included a discussion of the case in their Motions to Reconsider, filed March 29, 2021. The circuit court’s Form 4 Order was filed on April 21, 2021 and did not address any arguments in the motions to reconsider and, instead, stated only that the motions were denied “for the reasons stated by the Court in its prior orders.” **Ex. K.**

Second, regardless of whether *Sumatra* can withstand constitutional scrutiny after these decisions, it is distinguishable because in this case, the subject product arrived in South Carolina through the unilateral actions of third parties, not as the result of or related to any action of LG Chem or LGCAI directed to South Carolina. The “stream of commerce” metaphor, even if applied broadly, is not a substitute for establishing the constitutionally required connection among the non-resident defendant, the forum, and the plaintiff’s claims. This Court itself in *Sumatra* recognized that “[t]he question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case,” 379 S.C. at 88, 666 S.E.2d at 221 (emphasis added) (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005)).

The facts of the case before this Court are more similar to *Cockrell*, in which this Court held that our state courts lacked specific personal jurisdiction over a Massachusetts baseball center and its director, which had certified aluminum baseball bats that caused injury in South Carolina. The court found that the bats did not arrive in South Carolina through the non-resident defendants’ efforts, but instead through the unilateral efforts of third parties. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09; *see also Helicopteros*, 466 U.S. at 417. Here, similar to *Cockrell*, the 18650 battery arrived in South Carolina as the result of the unilateral actions of third parties and not as the result of or related to any conduct by LG Chem or LGCAI directed to South Carolina. (See **Ex. A**, Ryu Aff., ¶¶ 13–16; **Ex. D**, Kim Aff., ¶¶ 12–13.)

Numerous other state and federal appellate courts have concluded that due process is not satisfied by allegations that LG Chem placed its product into the stream of commerce with the “expectation” or “awareness” that it might be sold or used in the forum state—even in cases where the plaintiffs specifically alleged that LG Chem placed 18650 lithium ion battery cells into the stream of commerce (which is not the case here, where Respondent alleged only that LG Chem and LGCAI

placed “products” into the stream of commerce).⁸ This includes discretionary writ proceedings in Missouri and California. *See State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020) (en banc) (issuing permanent writ of prohibition to prevent trial court from enforcing its order overruling LG Chem’s motion to dismiss because plaintiff’s allegations that LG Chem should have known third parties were selling its battery cells to consumers across the United States was insufficient to satisfy due process); *LG Chem, Ltd. v. Superior Ct. of the Cnty. of Los Angeles (Kadow v. LG Chem, Ltd.)*, No. B307192, Cal. Court of Appeal, Second Appellate District, Division One (October 6, 2020) (issuing Palma Notice for trial court to vacate its finding that personal jurisdiction existed based on LG Chem’s unrelated contacts with California—including sales of 18650 lithium ion cells to sophisticated, industrial customers in California—and the trial court then entered a new order granting LG Chem’s motion to quash for lack of personal jurisdiction, resulting in dismissal of writ proceeding) (attached as **Exhibit L**, as the orders are unavailable online); *Cf. Harb v. LG Chem, et al.*, No. CV 19 917268, *sub nom. LG Chem, Ltd. v. Hagan*, No. 2020-0154, 159 Ohio St. 3d 1428 (Ohio July 1, 2020) (although the Ohio Supreme Court dismissed LG Chem’s Complaint for a Writ of Prohibition without an opinion, dissenting Justice Kenney wrote a lengthy opinion articulating why the writ should have issued).

⁸ *Walsh v. LG Chem, Ltd.*, 834 Fed. App’x 310 (9th Cir. Nov. 2, 2020) (affirming order dismissing LG Chem for lack of personal jurisdiction from similar suit in Arizona); *Eriksen v. ECX, LLC*, 15 Wash. App. 2d 1001, 2020 WL 6395534 (Ct. App. Wash. Nov. 2, 2020) (affirming order dismissing LG Chem for lack of personal jurisdiction from similar suit in Washington); *Schexnider v. E-Cig Central, LLC*, No. 06-20-00003, 2020 WL 6929872 (Tex. Ct. App. Nov. 25, 2020), *reh’g denied* (Dec. 15, 2020) (affirming order granting LG Chem’s special appearance and dismissing LG Chem from similar suit in Texas for lack of personal jurisdiction); *see also, Davis v. LG Chem, Ltd. and Fullerton v. LG Chem, Ltd.*, Case Nos. 20-13837 and 20-13838 (consolidated), 2020 WL 981418 (11th Cir. March 16, 2021) (affirming orders dismissing LG Chem for lack of personal jurisdiction from similar suit in Georgia based on failure to satisfy Georgia long-arm statute); *Cf. LG Chem America, Inc. v. Morgan*, No. 01-19-00665-CV, 2020 WL 7349483 (Tex. Ct. App. Dec. 15, 2020) (affirming order denying LG Chem’s and LGCAI’s special appearances), *pet. for reh’g filed* (Feb. 12, 2021) *and answering brief ordered* (May 11, 2021).

This is because personal jurisdiction cannot be based on a defendant’s knowledge or expectations; rather, the exercise of personal jurisdiction depends on the defendant’s own actions. “[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *Helicopteros*, 466 U.S. at 417. The “defendant’s conduct [] must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014); *see also Cockrell*, 363 S.C. at 491–92, 611 S.E.2d 505, 508 (2005) (“[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents’ efforts.”); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 334, 594 S.E.2d 878, 885 (Ct. App. 2004) (“The fruits of [defendant’s] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.”).

4. It was error to conclude that Respondent met his burden simply by making conclusory allegations that Petitioners placed “products” into the stream of commerce and expected those products to arrive in South Carolina.

The circuit court found that the following conclusory allegations in the complaint—completely devoid of supporting facts—were sufficient to meet Respondent’s burden:

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

(**Ex. I**, 3/19/21 Order at 4 (LG Chem); **Ex. J**, 3/19/21 Order at 5 (LGCAI) (quoting Compl. ¶ 7)).

In so ruling, the circuit court contradicted controlling precedent that requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436,

665 S.E.2d 660, 665–67 (Ct. App. 2008); *Sonoco Prods. Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398, 406–07 (D.S.C. 2012).

In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Paragraph 7 of Respondent’s complaint:

[E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

Id. at 148, 723 S.E.2d at 835.

The South Carolina Court of Appeals held that, even with a liberal construction of the statute and the complaint, the plaintiff had “failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina.” *Id.* at 151, 723 S.E.2d at 839 (emphasis added). Here, as in *Sullivan*, merely alleging general legal conclusions, without alleging a single fact to support the conclusions, requires the circuit court to grant a Rule 12(b)(2) motion. *Id.*

Further, the complaint does not allege any connection between Respondent’s claims and any action allegedly directed by LG Chem or LGCAI to South Carolina specifically, as required by constitutional due process. Therefore, the complaint itself is insufficient to meet Respondent’s prima facie burden, and the circuit court incorrectly found that Paragraph 7 of the complaint, with no supporting facts, was sufficient to show specific jurisdiction under the long-arm statute and due process.

5. It was error to conclude that Respondent met his burden based on his inadmissible and irrelevant exhibit of dissimilar imports.

Outside of Respondent's insufficiently pleaded complaint, Respondent submitted an unauthenticated chart, of unknown origin, which was attached as an exhibit to his opposition to Petitioners' motions to dismiss. The chart purported to show that LG Chem imported automobile batteries to a few South Carolina companies such as the car manufacturer Volvo. In addition to being inadmissible under S.C. R. Evid. 801(c) and 901, the chart did not support a finding that Petitioners engaged in any suit-related activities in South Carolina. Instead, even if it were accurate and admissible, at most, the chart suggested that Petitioner LG Chem had shipped automotive batteries to a car manufacturer through Charleston and that Petitioner LGCAI had received shipments of raw chemicals through Charleston. These activities have nothing to do with Plaintiff's claims and nothing to do with a consumer market for standalone, replaceable 18650 lithium ion batteries.

First, Respondent presented the chart to the first circuit court judge, who concluded the information was insufficient to determine the issue of jurisdiction. Then, Respondent presented the same chart to the second circuit court judge, who concluded Plaintiff had made his prima facie case.

Regardless of whether raw chemicals, automotive batteries, or even LG 18650 battery cells were shipped to South Carolina (which were not on Respondent's chart), Respondent still failed to make any connection between those alleged shipments and his claims against LG Chem and LGCAI when the subject battery was brought to South Carolina and sold in a South Carolina retail store as the result of the unilateral actions of third parties and when neither LG Chem nor LGCAI ever sought to serve a consumer market in South Carolina for such standalone, replaceable

batteries. Therefore, the circuit court judge erred by finding this chart supported the exercise of specific jurisdiction.

D. The circuit court erred in finding that the fairness prong was satisfied.

The circuit court's conclusion that the fairness prong was satisfied was erroneous for two reasons. First, the circuit court should not have addressed the fairness prong because Respondent did not meet his burden of proof for either general or specific jurisdiction:

[E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Bristol-Myers, 137 S. Ct. at 1780–81 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 276, 294 (1980)); see also *United States v. M/V Santa Clara I*, 859 F. Supp. 980, 990 (D.S.C. 1994).

In addition, the circuit court's decision on the fairness prong addressed only one of the factors required under *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992),⁹ and the decision was based on evidence that is irrelevant to the fairness factors, such as Petitioners' having defended cases around the country outside of South Carolina and three other courts in this state having found personal jurisdiction over this defendant (and ignoring the prior circuit court's order in this case and the numerous cases in which courts across the country have dismissed LG Chem and LGCAI for lack of personal jurisdiction based on controlling U.S. Supreme Court precedents and other similar facts and law as before this Court).

⁹ Specifically, the fairness factors "the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies." *S. Plastics*, 310 S.C. at 263, 423 S.E.2d at 132 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

Also the circuit court did not address the unfairness of subjecting Petitioners to personal jurisdiction in South Carolina based solely on the fact that third-party actors directed the product to a consumer market for standalone, replaceable batteries, when LG Chem and LGCAI never sought to serve that consumer market in South Carolina (or anywhere else). Therefore, the circuit court erred by finding that Respondent met his burden of meeting the fairness prong.

III. This Court should grant the writ to provide immediate, pre-trial review, as the circuit court erred by impermissibly overruling a prior circuit court’s decision regarding a prima facie showing of jurisdiction over LG Chem and LGCAI.

“There is a long-standing rule in this State that one judge of the same court cannot overrule another.” *See Charleston Cnty. Dep’t of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) (“[W]e hold a successor judge may not substitute his own judgment for that of a trial judge”); *Tisdale v. Am. Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949) (“It is axiomatic [that] a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge.”); *see also Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003) (upholding denial of a motion to intervene based on Judge Perry M. Buckner, III’s “finding that to do so would substantially alter or affect Judge [Gerald C.] Smoak’s prior orders”).

This Court set forth the rationale for this long-established rule:

The Court of Common Pleas is a unity, although its jurisdiction is administered by a number of judges who are, in some sense, the exponents of the court. When one of these judges makes a decision on the merits of a matter within his jurisdiction, that is not merely the personal opinion of the judge, but a judgment of the Court of Common Pleas, which exhausts the power of the court upon that subject and must stand until reversed or set aside in the manner prescribed by law. . . . One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit. Otherwise, there would be no end to litigation.

Steele v. Charlotte, Columbia & Augusta R.R. Co., 14 S.C. 324, 329 (1880) (emphasis added).

Here, the circuit court incorrectly stated that the order of the Honorable J. Cordell Maddox, Jr. “declin[ed] to decide” the issue of personal jurisdiction. (**Ex. I**, 3/19/21 Order at 7 n.3 (LG Chem); **Ex. J**, 3/19/21 Order at 7 n.4 (LGCAI)). However, Judge Maddox’s order made an affirmative decision that Respondent had not submitted enough information for the court to base a decision on personal jurisdiction. Relatedly, Judge Maddox had provided Respondent with the opportunity to conduct jurisdictional discovery in order to obtain that information. Because Respondent bears the burden of proof regarding personal jurisdiction, the determination of insufficiency of information by Judge Maddox necessarily meant that if Respondent failed to obtain any additional information, he would fail in his burden of proving personal jurisdiction. Specifically, Judge Maddox’s Order stated as follows:

As set forth in the Court’s oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties’ submissions do not provide enough information upon which to base a decision as to whether the battery at issue was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information remains an issue that prevents a decision on personal jurisdiction.

(**Ex. H**, Order dated 7/20/2020 (emphasis added)). By way of clarification, Judge Maddox expressly agreed with LG Chem and LGCAI that he had found Respondent’s allegations and the facts presented to him insufficient on the issue of personal jurisdiction, but had given Respondent the opportunity to conduct jurisdictional discovery to collect additional information, rather than simply granting dismissal.

Respondent then chose to come before the circuit court on February 1, 2021 stating that Respondent did not want any further discovery and that he wanted the Court to render its decision based only on the same record that had been presented to Judge Maddox. Because Respondent presented no new facts or information to the circuit court following jurisdictional discovery—affirmatively choosing not to introduce the discovery responses LG Chem had previously served—

Judge Maddox’s determination of the insufficiency of Respondent’s submissions still stands. The circuit court’s determination that Respondent had met his burden of proof—based on the exact same facts (including the same allegations and the same import data chart upon which the Order was based) as were presented to Judge Maddox—is a direct reversal of a previous court’s decision. Finding otherwise rendered Judge Maddox’s decision meaningless. This was error, and the circuit court was not empowered to reverse Judge Maddox.

IV. This Court should grant the writ to provide immediate, pre-trial review, as service of process was invalid for failure to serve LG Chem through the Hague Convention.

The circuit court incorrectly found that service on LG Chem was valid through service on the South Carolina Secretary of State under South Carolina Code § 15-9-245.¹⁰ (**Ex. H**, 7/20/20 Order.) However, because LG Chem is a foreign company, Respondent was required to serve it through the Hague Service Convention. His failure to do so renders service invalid as a matter of law.

“The Hague Service Convention is an international treaty that **pre-empts inconsistent methods of service prescribed by state law in all cases** where service abroad is required.” *Bakala v. Bakala*, 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988) (emphasis added)). Both South Korea and the United States are signatories to the Hague Convention. See <https://www.hcch.net/en/states/hcch-members/details1/?sid=48>; see also *Boone-Coleman v. SCA, Inc.*, No. 3:18-CV-776-ECM, 2019 WL 5295567, at *3 (M.D. Ala. Oct. 18, 2019).

¹⁰ Section 15-9-245 itself states that this code section does not prescribe the “necessarily required means” of serving a foreign business not authorized to do business in this State. S.C. Code Ann. § 15-9-245(f).

By virtue of the Supremacy Clause, the Hague Convention applies “**in all cases**, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.” 20 U.S.T. 361, art. 1 (emphasis added). The Hague Convention requires that each country establish a central authority to receive requests for service from other countries, serve the documents, and provide certificates of service. *See id.* at Arts. 2–6; *accord Bakala*, 352 S.C. at 626, 576 S.E.2d at 163. A country may consent to foreign methods of service other than a request to its central authority, if it affirmatively chooses not to object to article 10. *Id.* at Art. 10(a); *accord Bakala*, 352 S.C. at 626, 576 S.E.2d at 163. Accordingly, service abroad by mail is only permissible if the receiving country has not lodged an objection to Article 10. *Id.*, 352 S.C. at 626.

South Korea objected to article 10 of the Hague Service Convention and does not permit the sending of judicial documents by postal channels directly to persons abroad. *See* Declarations and Reservations ¶ 2, HCCH, available at <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=408&disp=resdn>; *see also Boone-Coleman*, 2019 WL 5295567, at *3 (“South Korea’s express opposition to Article 10(a) makes the Respondent’s attempt to serve Defendant Kim by mail insufficient.”); *Monagas v. Samsung Elecs. Am., Inc.*, No. 3:13CV927 MPS, 2013 WL 5970977, at *2 (D. Conn. Nov. 8, 2013) (granting motion to dismiss attempted mail service on South Korean company because it violated the Hague Service Convention). Accordingly, South Korean residents, including LG Chem, may only be serviced through South Korea’s designated Central Authority. Respondent’s failure to comply with the requirements of the Hague Convention rendered Respondent’s attempted service invalid, and Respondent never made any effort to correct service through the Hague Convention.

Because Respondent's attempted service on LG Chem was invalid as a matter of law, the court never acquired personal jurisdiction of this defendant. Accordingly, the court should have quashed Respondent's attempted service of process on LG Chem and dismissed it from this action.

CONCLUSION

This Court should grant the motion to certify and transfer the appeal taken as to these lower court orders from the Court of Appeals to this Court. It should then modify *Mid-State Distributors* and hold that an order denying constitutional rights and permitting personal jurisdiction is immediately appealable. If this Court does so, briefing pursuant to the South Carolina Appellate Court rules can ensue before this Court. Failing that, if this Court declines to modify *Mid-State Distributors* and holds that the lower court orders here are not immediately appealable, this Court should grant the Petition for Writ of Certiorari requested hereby and reverse the circuit court's orders denying Petitioners' motions to dismiss for lack of personal jurisdiction.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ C. Mitchell Brown

C. Mitchell Brown
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Columbia, SC 29201
(803) 799-2000

*Attorneys for Petitioners LG Chem, Ltd. and LG Chem
America, Inc.*

Columbia, SC
May 21, 2021

EXHIBIT A
(Complaint)

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)
DWAYNE THOMPSON,)
)
Plaintiff,)
)
v.)
)
LG CHEM, LTD., LG CHEM AMERICA,)
INC., and ROLLING FOG VAPOR)
COMPANY, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-44-

SUMMONS
(Jury Trial Requested)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 101 Mulberry Street East, Post Office Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

-signature page to follow-

Alexander P. Lewis
SC Bar No. 78991
W. Blake Cummings
SC Bar No. 80067
Cummings & Lewis, LLC
Post Office Box 5766
Spartanburg, South Carolina 29304
Phone: (864) 573-9688
alex.lewis@cummingslewis.com
blake.cummings@cummingslewis.com

-and-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: s/Austin H. Crosby

Ronnie L. Crosby
SC Bar No. 66481
Austin H. Crosby
SC Bar No. 80161
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
rcrosby@pmped.com
acrosby@pmped.com
ATTORNEYS FOR PLAINTIFF

March 4, 2019
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)
)
 DWAYNE THOMPSON,)
)
 Plaintiff,)
)
 v.)
)
 ROLLING FOG VAPOR COMPANY,)
 LLC, LG CHEM, LTD., and LG CHEM)
 AMERICA, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO.: 2018-CP-44-

COMPLAINT
(Jury Trial Requested)

The Plaintiff alleges:

1. That he is a resident of Union County, South Carolina.
2. That Defendant, Rolling Fog Vapor Company, LLC (“Rolling Fog”), is a domestic limited liability company with its principal place of business in Spartanburg County, South Carolina, and is engaged in the business of selling vapor accessories, e-liquids, lithium-ion rechargeable batteries including, but not limited to, the LG Brown Hg2 INR 18650 3000mAh (“subject battery”) and other e-cigarette/vaporizer products.
3. That Defendant, LG Chem, Ltd. (“LG”), is a foreign corporation organized under the laws of Korea with its principal place of business in Seoul, South Korea, and is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion rechargeable batteries including, but not limited to, the subject battery that forms the basis of this action.
4. The Defendant, LG Chem America, Inc., (“LGA”), is a foreign corporation organized under the laws of Delaware and is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion

rechargeable batteries including, but not limited to, the subject battery that forms the basis of this action.

5. The subject battery was manufactured, designed, supplied, sold, imported and distributed by LG and LGA.

6. At all times mentioned herein, Defendants were engaged in the business of manufacturing, fabricating, designing, assembling, distributing, selling, inspecting, warranting, retailing, wholesaling, and advertising the e-cigarette products that the Plaintiff purchased and used.

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

8. Each cause of action alleged against the Defendants arises out of a battery explosion in Spartanburg County, South Carolina, on July 27, 2018, that seriously and permanently injured the Plaintiff.

9. Plaintiff purchased the subject battery, which was manufactured, designed and imported by LG and LGA, from Defendant Rolling Fog's store located at 958 East Main Street in Spartanburg, South Carolina.

10. A case was not provided with the purchase of the subject batteries.

11. While at his place of employment located at 2155 S 2006, Spartanburg, South Carolina, the subject battery exploded and burst into flames in Plaintiff's right front pant pocket.

12. As a result of the explosion and the chemicals from the subject battery, Plaintiff sustained third degree burns on numerous portions of his body requiring skin grafts. He also suffered and continues to suffer permanent injury and/or disfigurement to his body, pain and

suffering, mental anguish, emotional distress, loss of wages and related medical, hospital and caretaking expenses.

13. Plaintiff's injuries and damages were due to and proximately caused by the negligent, reckless and careless conduct of the Defendants in the following particulars, for which the Defendants are liable:

FIRST CAUSE OF ACTION
(Negligence as to Defendant Rolling Fog Vapor Company, LLC)

14. The above allegations are incorporated as if repeated verbatim.

15. Plaintiff is informed and believes the Defendant was negligent, willful, wanton, careless, reckless and grossly negligent in the following particulars:

- a. In selling a lithium-ion battery such as the subject battery that was designed and manufactured without a positive temperature coefficient thermistor or similar device to prevent rapid discharge when short circuited, leading to overheating and catastrophic failure;
- b. In selling a battery that was designed and manufactured without internal temperature controls and/or protective circuitry;
- c. In selling a battery with manufacturing defects present;
- d. In selling a battery that was unreasonably dangerous for its foreseeable and intended use;
- e. In selling a battery that failed to comply with generally accepted engineering safety standards applicable to lithium-ion batteries;
- f. In failing to sell and market the subject battery with a package or container that would prevent short circuiting that could lead to rapid discharge, overheating, and catastrophic failure;
- g. In failing to warn customers that the subject battery should not be stored in a pocket and that short circuiting of the battery could lead to catastrophic failure;
- h. In failing to train personnel with regard to industry standards, proper use, and proper storage of the 18650 lithium-ion Hg2 batteries;

- i. In failing to provide adequate warnings and instructions to warn the users of the dangers associated with the use and failure of the lithium-ion Hg2 INR 18650 3000mAh batteries;
- j. In failing to warn of the defective condition of the subject battery; and
- k. In such other particulars as the evidence may establish.

SECOND CAUSE OF ACTION
(Negligence as to Defendants LG and LGA)

16. The above allegations are incorporated as if repeated verbatim.

17. Plaintiff is informed and believes the Defendants were negligent, willful, wanton, careless, reckless and grossly negligent in the following particulars:

- a. In failing to include a positive temperature coefficient thermistor or similar device to prevent rapid discharge which short circuited, leading to overheating and catastrophic failure;
- b. In failing to incorporate any other protection circuitry, current interrupt devices, or other protections against rapid discharge, overheating, and explosion;
- c. In failing to sell and market the subject battery with a package or container that would prevent short circuiting that could lead to rapid discharge, overheating, and catastrophic failure;
- d. In failing to warn consumers that the subject battery should not be stored in a pocket and that short circuiting of the subject battery could lead to catastrophic failure;
- e. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a condition so that it would operate safely as a reasonable consumer would expect;
- f. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a manner that it would not spontaneously explode;
- g. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a manner that it would not spontaneously heat and catch fire;

- h. In failing to provide reasonable and adequate warnings to the suppliers, purchasers and users of the subject battery to alert users about the dangerous conditions described herein; and
- i. In such other particulars as the evidence may establish.

THIRD CAUSE OF ACTION
(Strict Liability as to All Defendants)

18. The above allegations are incorporated as if repeated verbatim.

19. Defendants are engaged in the business of selling vaporizing products to the public, including selling the subject battery to the Plaintiff.

20. Defendants placed into the stream of commerce the subject battery, which was defective, unfit, and unreasonably dangerous to the intended users or consumers, including Plaintiff.

21. Plaintiff's injuries and damages occurred because the subject battery was designed, manufactured, imported, and sold by the Defendants in a defective condition that was unreasonably dangerous to the Plaintiff.

22. The subject battery was in the same or substantially the same condition as when sold by the Defendants and was being used in a reasonably foreseeable manner.

23. The Defendants sold the subject battery in an unreasonably dangerous and defective condition, and as a result, the Defendants are strictly liable, pursuant to S.C. Code Ann §15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

FOURTH CAUSE OF ACTION
(Breach of Warranty as to All Defendants)

24. The above allegations are incorporated as if repeated verbatim.

25. That by act, word, and/or deed at the time of sale, the Defendants made certain Express Warranties, certain Implied Warranties of Merchantability, and certain Implied

Warranties of Fitness for a Particular Purpose, regarding the subject battery, which was part of the basis of the bargain and/or which arose by operation of law.

26. Plaintiff rightfully and reasonably relied upon the warranties of the Defendants to his great detriment, injury, and damage.

27. The Defendants expressly and impliedly warranted at the time of sale that the subject battery was fit, safe, in good condition, of merchantable quality, and was fit for a particular purpose, namely a safe vaporizer battery, when in fact, the subject battery was unfit, unsafe, not of merchantable quality, and was not fit or suited for its particular purpose.

28. By reason of and in consequence of Defendants' breach of express and implied warranties, Plaintiff suffered the injuries and damages as set forth herein, for which the Defendants are liable.

29. In order to investigate this claim, Plaintiff will need access to certain information concerning the design and manufacture of the subject battery including, but not limited to, design specifications with change histories, design evaluations, chemistry, materials, and manufacture process. Some or all of this information may fall subject to a claim of trade secret. Without access to this information, Plaintiff will be substantially prejudiced in her investigation and proof of defect herein. Plaintiff believes that access to this information will likely lead to admissible evidence at the trial of this case.

WHEREFORE, Plaintiff prays for judgement against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-signature page to follow-

Alexander P. Lewis
SC Bar No. 78991
W. Blake Cummings
SC Bar No. 80067
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Phone: (864) 573-9688
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blake.cummings@cummingslewis.com

-and-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: s/Austin H. Crosby

Ronnie L. Crosby
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rcrosby@pmped.com
acrosby@pmped.com
ATTORNEYS FOR PLAINTIFF

March 4, 2019
Hampton, South Carolina

EXHIBIT B

(Sung Han Ryu Affidavit – LG Chem, Ltd)



서울 영등포구 여의나루로 67
(여의도동, 신송빌딩) 1101호
[별지 제11호서식]

서울중앙 공증인 합동사무소

(전화) 02-3178-8200
(팩스) 02-3178-5511

ELECTRONICALLY FILED - 2019 Apr 24 2:55 PM - UNION - COMMON PLEAS - CASE#2019CP4400054

Registered No. 2019 - 847

NOTARIAL CERTIFICATE



NOTARY PUBLIC OFFICE
SEOUL-JOONGANG

floor 14 Sinsong Bldg

67, yeouinaru-ro, yeongdeungpo-gu, Seoul, Korea

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF SUNG HAN RYU</u>
)	
ROLLING FOG VAPOR COMPANY,)	
LLC, LG CHEM, LTD., and LG CHEM)	
AMERICA, INC.,)	
)	
Defendants.)	
)	



Personally appeared before me, Sung Han Ryu, who first being duly sworn, deposes and says:

1. I am over the age of eighteen and am competent to testify to the matters contained in this affidavit.
2. I am a Team Leader and authorized representative for Defendant LG Chem, Ltd. ("LG Chem"). I have personal knowledge of the facts described in this affidavit. If called upon as a witness, I could and would testify competently under oath as to all such facts based upon my personal knowledge and my review of the business records of LG Chem.
3. This affidavit is submitted in support of Defendant LG Chem's Motion to Dismiss and Quash Service of Process, and I have been authorized by LG Chem to execute this affidavit for this purpose.
4. LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea.
5. LG Chem has never had an office in South Carolina.
6. LG Chem has never been registered to do business in the State of South Carolina, and has never sought qualifications to do business in South Carolina, or registered as a corporation with the South Carolina Secretary of State.
7. LG Chem has never owned or leased any real property in South Carolina.

I, Sung Han Ryu, hereby declare under penalty of perjury that the foregoing statements made by me are true and correct. I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 24th day of April, 2019.

Ryu. Sung Han
Sung Han Ryu

SWORN to and subscribed before me

this 24th day of April, 2019.

(L.S.)

Notary Public for SEOUL JOONGANG
NOTARY PUBLIC OFFICE S.K. CHUNG

My Commission Expires: 2024, 2



서울 영등포구 여의나루로 67
(여의도동, 신송빌딩) 1401호
|발자 제12호서서|

서울중앙 공증인 합동사무소

(전화) 02-3178-8200
(팩스) 02-3178-5511

ELECTRONICALLY FILED - 2019 Apr 24 2:55 PM - UNION - COMMON PLEAS - CASE#2019CP4400054

등부 2019 년 제 847호

Registered No. 2019-847

인 증

NOTARIAL CERTIFICATE

SUNG HAN RYU-----

위 선시진술시 -----

에 기재된 유 성 한-----

은 본 공증인의 면전에서 위 사서증서에
자기가 서명 - 한 것임을 사인하였다.

personally appeared before me and
admitted his(her) subscription to the
attached AFFIDAVIT OF SUNG HAN RYU.

2019년 04월 24일

이 사무소에서 위 인증한다.

This is hereby attested on this
24th day of Apr. 2019 at this office.



서울중앙 공증인 합동사무소

NOTARY PUBLIC OFFICE
SEOUL-JOONGANG

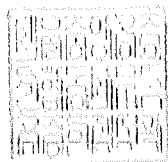
서울남부지방검찰청 소 속

Seoul Southern
District Prosecutor's Office

서울 영등포구 여의나루로 67
(여의도동, 신송빌딩) 1401호

floor 14 Sinsong Bldg
67, yeouinaru-ro, yeongdeungpo-gu, Seoul, Korea

공증인
정성광



S. K. Chung

Signature of the Notary Public

Sung Kwang Chung

본 사무소는 인가번호 제158호에 의거하여
2014년 01월 20일 법무부 장관으로부터
공증인 업무를 행할 것을 인가 받았다.

This office has been authorized by the
Minister of Justice, the Republic of
Korea, to act as Notary Public Since
20, Jan. 2014 Under Law No.158.

EXHIBIT C

(Certificate of Service on LG Chem Ltd.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)
DWAYNE THOMPSON,)
)
Plaintiff,)
)
v.)
)
LG CHEM, LTD., LG CHEM AMERICA,)
INC., and ROLLING FOG VAPOR)
COMPANY, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-44-00054

CERTIFICATE OF SERVICE

Service of the Summons and Complaint in the above captioned action was effected on Defendant LG Chem, Ltd. through the South Carolina Secretary of State's Office on March 22, 2019, by certified mail as evidenced by the attached U.S. Postal Domestic Return Receipt and service acceptance letter from the South Carolina Secretary of State's Office

Alexander P. Lewis, SC Bar No. 78991
W. Blake Cummings, SC Bar No. 80067
CUMMINGS & LEWIS, LLC
Post Office Box 5766
Spartanburg, South Carolina 29304
alex.lewis@cummingslewis.com
blake.cummings@cummingslewis.com
P: (864) 573-9688

-and-

s/Austin H. Crosby
Ronnie L. Crosby, SC Bar No. 66481
Austin H. Crosby, SC Bar No. 80161
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.
Post Office Box 457
Hampton, South Carolina 29924
rcrosby@pmped.com
acrosby@pmped.com
P: (803) 943-2111 / F: (803) 943-3943

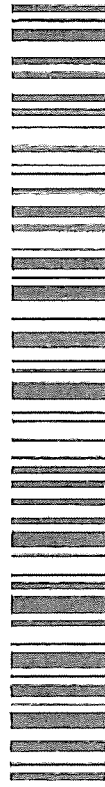
April 11, 2019
Hampton, South Carolina

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SC Secretary of State's Office
 Attn: Service of Process Division
 1205 Pendleton Street, Suite 525
 Columbia, SC 29201



9590 9402 3980 8079 5529 07

2. Article Number (Transfer from service label)

7018 0680 0000 7440 4702

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]

- Agent
- Addressee

B. Received by (Printed Name)

[Handwritten Name]

C. Date of Delivery

[Handwritten Date]

D. Is delivery address different from item 1?
If YES, enter delivery address below:

- YES
- NO

NO MAIL FILED

3. Service Type

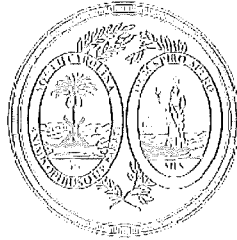
- Adult Signature Restricted Delivery
- Adult Signature Restricted Delivery Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

State of South Carolina
Office of the Secretary of State
The Honorable Mark Hammond

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201



803-734-2170
www.sos.sc.gov

March 25, 2019

ELECTRONIC CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LG Chem, Ltd.
LG Twin Towers 128 Yeoui-daero
Yeongdeungpo-gu, Seoul 07336
Korea
RE: I.G Chem, Ltd., 2019-CP-44-00054

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on March, 22 2019 and a copy has been duly filed in our office as of this date. The fee of \$10.00 has been paid

Yours very truly,

A handwritten signature in cursive script that reads "Allyson Green".

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Austin H. Crosby
P.O. Box 457
Hampton, SC 29924

ELECTRONICALLY FILED - 2019 Apr 11 1:06 PM - UNION - COMMON PLEAS - CASE#2019CP4400054

EXHIBIT D

(HyunSoo Kim Affidavit (LG Chem America Inc.))

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF HYUNSOO KIM</u>
)	
ROLLING FOG VAPOR COMPANY,)	
LLC, LG CHEM, LTD., and LG CHEM)	
AMERICA, INC.,)	
)	
Defendants.)	

Personally appeared before me, HyunSoo Kim, who first being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and am competent to testify to the matters contained in this Affidavit.
2. I am the Compliance Manager and authorized representative for LG Chem America, Inc. ("LGCAI"). I have personal knowledge of the facts described in this Affidavit, and I have been authorized by LGCAI to make this Affidavit. If called upon as a witness, I could and would testify competently under oath as to all such facts based upon my personal knowledge and the business records of LGCAI.
3. This affidavit is submitted in support of LGCAI's Motion to Dismiss for Lack of Personal Jurisdiction.
4. LGCAI sells and distributes various petrochemical materials and products including ABS resin, Engineered Plastic (EP), Rubbers, Acrylate, Super Absorbent Polymer (SAP), and Specialty Polymers. LGCAI does not have any manufacturing plants, and it focuses on sales and/or distribution only.
5. LGCAI is a Delaware incorporated entity with its principal place of business in the State of Georgia. It was incorporated in the State of Delaware on March 1, 2009.

6. LGCAI does not presently, nor has it ever owned, leased, rented, purchased, or controlled any property in the State of South Carolina.

7. LGCAI does not presently, nor has it ever maintained a bank account in the State of South Carolina.

8. LGCAI does not presently, nor has it ever maintained a mailing address, telephone, or telefax number in the State of South Carolina.

9. LGCAI has no employees that reside or work in South Carolina.


10. LGCAI does not and has never designed, manufactured, distributed, advertised, or sold any lithium-ion power cell for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices.

11. Plaintiff Dwayne Thompson alleges he was injured while carrying a battery in his pants pocket. Compl., ¶ 11. Plaintiff identifies the subject battery as an "LG Brown Hg2 INR 18650 3000mAh." *Id.*, ¶ 2. If the subject battery identified in Plaintiff's Complaint was, in fact, an LG brand 18650 lithium-ion cell, the cell could not have been manufactured by LGCAI, as LGCAI does not have any manufacturing plants.

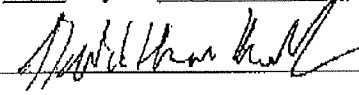
12. The Complaint alleges that Plaintiff Dwayne Thompson "purchased the subject battery . . . from Defendant [Rolling Fog Vapor Company, LLC]'s store located at 958 East Main Street in Spartanburg, South Carolina." Compl., ¶ 9. LGCAI has never conducted any business with Rolling Fog Vapor Company, LLC ("Rolling Fog"), and does not direct or control the actions of Rolling Fog. LGCAI has never authorized Rolling Fog to distribute or sell LG brand lithium ion battery cells for any purpose, and did not authorize Rolling Fog to distribute or sell LG branded lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

13. LGCAI has never authorized any distributor, retailer, or re-seller to distribute or sell any lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

I, HyunSoo Kim, hereby declare under penalty of perjury that the foregoing statements made by me are true and correct. I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 24th day of April, 2019. 

HyunSoo Kim

SWORN to and subscribed before me
this 24th day of April, 2019.
 (L.S.)
Notary Public for _____
My Commission Expires: _____

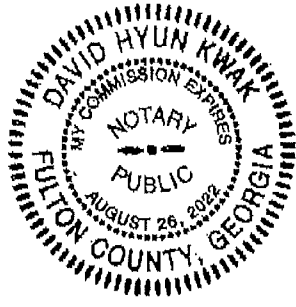


EXHIBIT E

(Hearing Transcript 9-23-19 excerpts)

1 STATE OF SOUTH CAROLINA

2 -----x

3 DWAYNE THOMPSON,

4 Plaintiff,

5 Case No.

6 -against-

2019-CP-44-00054

7 LG CHEM AMERICA, INC., et al

8 Defendants.

9 -----x

10 September 23, 2019

11 Union, S.C.

12

13 B E F O R E:

14 HONORABLE CORDELL MADDOX

15

16 A P P E A R A N C E S:

17 RONNY CROSBY,

18 Attorney for the Plaintiff

19

20 KATE CAMMELMANN,

21 Attorney for the Defendants

22

23

24 Aileen Butler

25 Official Court Reporter

1 that none of these companies are intending for
2 consumers to use these individual lithium-ion
3 batteries and certainly not for vaping equipment.

4 THE COURT: So somehow one of these two-pack
5 batteries got divided up and sold in a vape to a guy
6 and it allegedly caught on fire. That's where we are
7 factually.

8 MS. CAPPELMANN: Correct.

9 THE COURT: And you're not even sure it's a LG
10 Chem battery?

11 MS. CAPPELMANN: I haven't seen it so I don't
12 know. Usually it will say LG Chem on the wrap, you
13 know, but there has been -- and I don't have any
14 evidence with me today, but there have been instances
15 where wraps are possibly being changed. You know, I
16 don't know. I'm not sure. I'm not necessarily saying
17 that's necessary happened in this situation.

18 THE COURT: Sure. You just don't know yet.

19 MS. CAPPELMANN: Correct.

20 THE COURT: Okay. Well, here's what I am going to
21 do. I think -- you know, I read your Judge Nettles's
22 order and I sort of agree with him. In these early
23 stages these motions to dismiss are pretty often
24 denied because of exactly factually we don't know
25 where we are. So what I am going to do is dismiss

1 these with no prejudice to refile once discovery is --
2 there's been more discovery so you can find out
3 factually. I mean, you know, at this point nobody
4 knows whether it's one of their batteries. If it is
5 one of their batteries then you get to the bill of
6 lading issue and whether or not they've subjected
7 themselves to jurisdiction.

8 I don't think I really need to go as far as judge
9 Nettles order because I think factually there's just
10 not enough information to grant or deny at this point.
11 So I am going deny but without prejudice and you can
12 file at a later date after you had some more
13 discovery.

14 MS. CAPPELMANN: Thank you.

15 (END OF TRANSCRIPT)

16

17

18

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23

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25

EXHIBIT F

(Judge Maddox Order 12-06-19 (LG Chem, Ltd.))

(Emphasis added.)

Service is effective upon such a foreign corporation by delivering suit papers to the Secretary of State. §15-9-245(a). The Secretary is directed to immediately forward a copy to the corporation by certified mail. § 15-9-245(b). Substituted service is thus effective by delivery upon the Secretary of State as an agent, who then utilizes mail services to directly notify the foreign defendant. S.C. R. Civ. P. 4(d)(7) (providing that service may be made upon a corporation “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...”); *see also Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638 (D.S.C. 1989)

The statute’s definition of “doing business” includes “**business activity for which authority need not be obtained as provided by § 33-15-101.**” S.C. Code §15-9-245(a) (emphasis added.) South Carolina has an expansive long-arm statute whereby a foreign corporation unauthorized to do business in the United States is considered to be “doing business” if it sells through an independent contractor or owns and controls a **subsidiary corporation that does business in South Carolina**; this is the case even if that foreign corporation does not do so directly. The affidavit from LG Chem does not dispute that it sells its products through an independent contractor, nor does it dispute that it owns and controls a subsidiary corporation that does business in South Carolina. The import records submitted by the plaintiff show 984 shipments from LG Chem through the Port of Charleston from November 1, 2006 thru present date. (Exh. 7 to Plaintiff’s Memorandum in Opposition). Of these shipments 818 were cosigned by LG Chem America, Inc. (*Id.*) This Court finds that LG Chem is “doing business” in South Carolina as defined in §15-9-245 and § 33-15-101 and therefore LG Chem was properly served

through the Secretary of State. Defendant's motion to quash service of process is denied.

AND IT IS SO ORDERED.

Dated: _____

_____, South Carolina

J. Cordell Maddox, Jr.
Circuit Court Judge



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT G

(Judge Maddox Order 12-19-19 (LG Chem America, Inc.))

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)
DWAYNE THOMPSON,)
)
Plaintiff,)
)
v.)
)
LG CHEM, LTD., LG CHEM AMERICA,)
INC., and ROLLING FOG VAPOR)
COMPANY, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2019-CP-44-00054

**ORDER DENYING LG CHEM
AMERICA, INC.'S MOTION TO DISMISS**

This matter came before the court for a hearing on September 23, 2019, on Defendant LG Chem America, Inc.'s ("LGCAI") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGCAI's motion, but without prejudice to refile.

AND IT IS SO ORDERED.

Dated: _____
_____, South Carolina

J. Cordell Maddox, Jr.
Circuit Court Judge



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT H

(Judge Maddox Order on Clarification 7-20-20

(LG Chem, Ltd. and LG Chem America, Inc.))

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
)	
Plaintiff,)	
)	
vs.	)	<u>ORDER GRANTING DEFENDANT</u>
	)	<u>LG CHEM, LTD. AND LG CHEM</u>
ROLLING FOG VAPOR COMPANY, LLC,	)	<u>AMERICA, INC.'S JOINT MOTION</u>
LG CHEM, LTD., and LG CHEM	)	<u>FOR CLARIFICATION AND</u>
AMERICA, INC.,	)	<u>DENYING RECONSIDERATION</u>
)	
Defendants.)	

This matter is before the Court on Defendants LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc.’s (“LGCAI”) Joint Motion for Clarification or, Alternatively, Reconsideration. After considering all submissions and arguments of counsel, and for the reasons stated below, the Court (1) grants LG Chem and LGCAI’s Joint Motion for Clarification to clarify that only limited discovery is permitted at this time, limited to the threshold issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina, and (2) denies the Motion for Reconsideration of the Court’s December 12, 2019 and December 23, 2019 Orders.

FACTS

In this products liability action, Plaintiff seeks recovery for injuries allegedly sustained when a lithium-ion battery cell exploded in his pocket. (Compl. ¶¶ 11–12.) Plaintiff alleges he purchased the battery cell, an “LG Brown Hg2 INR 18650 3000mAh” model cell allegedly manufactured by LG Chem, from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), a South Carolina retailer of e-cigarettes and accessories. (*Id.* ¶¶ 2, 9.) Plaintiff filed this action on

March 4, 2019, asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

On April 24, 2019, LG Chem filed a Motion to Dismiss and Quash Service of Process, and LGCAI filed a separate Motion to Dismiss. Defendants and Plaintiff filed memoranda in support of and opposing the motions on September 18, 2019. The parties appeared for a hearing on September 23, 2019, and the Court gave its oral ruling and thereafter entered written orders denying LG Chem's and LGCAI's motions on December 6 and December 21, 2019 respectively (hereinafter referred to as the "written orders").

Following entry of the written orders, LG Chem and LGCAI filed this Motion for Clarification or, Alternatively, Reconsideration on December 16, 2019. The Motion has been fully briefed by both parties, and all submissions have been considered by the Court.

LEGAL STANDARD

Under Rule 54(b) of the South Carolina Rules of Civil Procedure, this Court has the authority to clarify, or reconsider, its written orders denying LG Chem's Motion to Quash and denying both LG Chem's and LGCAI's motions to dismiss for lack of personal jurisdiction. Under Rule 54(b), "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." *See Broom, Jr. v. Andrews*, 2017 WL 10701535, at *2 (S.C. Ct. Com. Pls. Nov. 2, 2007) ("Rule 54(b) . . . instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued."). Courts may also clarify their prior orders under Rule 54(b). *See, e.g., Carpenter v. Measter*, 2010 WL 4219701 (S.C. Ct. Com. Pls. Feb. 23,

2010) (issuing a revised order under Rule 54(b) clarifying its previous order granting partial summary judgment).

ANALYSIS

A. Motion for Reconsideration

Having carefully considered the arguments and submissions by LG Chem, LGCAI, and Plaintiff supporting and opposing LG Chem and LGCAI's Joint Motion for Reconsideration, the Court denies the motion to the extent it seeks reconsideration. As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. Therefore, Defendants' Motion for Reconsideration of the motions to dismiss for lack of personal jurisdiction is denied.

B. Motion for Clarification

Defendants requested clarification of the written orders, which did not directly address whether the issue of jurisdiction should be decided before proceeding with the merits of the case, including the parties engaging in any merits-related discovery. As stated above, the Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case. *See Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963) ("The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause"), *overruled in part on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016) (explaining the trial court's decision

to “permit[] the parties to conduct discovery on the jurisdictional issues raised in [the defendant’s] motion to dismiss” and to hold “its ruling on the motion to dismiss in abeyance pending completion of the jurisdictional discovery”). Discovery must first determine whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. Therefore, the written orders are clarified to hold that the parties may conduct discovery for a period of 90 days following entry of this Order limited to these issues.

CONCLUSION

For the foregoing reasons, the Court allows the parties 90 days from the date of entry of this Order to conduct discovery limited to the specific issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. After the close of jurisdictional discovery, LG Chem and LGCAI may refile motions to dismiss. LG Chem and LGCAI shall have no obligation to file a responsive pleading until 15 days after the jurisdictional discovery period ends.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Judge, Sixteenth Judicial Circuit

Union, South Carolina
_____, 2020



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT I

(Judge McKinnon Order denying MTD 3-19-21 (LG Chem, Ltd.))

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
)	
DWAYNE THOMPSON,)	
)	
Plaintiff,)	
)	
v.	)	ORDER DENYING LG CHEM, LTD.'S
	)	MOTION TO DISMISS
)	
LG CHEM, LTD., LG CHEM AMERICA,)	
INC., and ROLLING FOG VAPOR)	
COMPANY, LLC,)	
)	
Defendants.)	
)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem LTD.'s ("LG Chem") renewed motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LG Chem's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium-ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. Plaintiff alleges LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LG Chem filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of Sung Han Ryu, an LG Chem representative. Mr. Ryu states, *inter alia*, that LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea. (Aff. ¶4). It does not own or lease property in South Carolina. *Id.* at ¶ 7. Mr. Ryu attests that LG Chem does not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 13.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with hundreds of import records for the Port of Charleston. The import records show that from December 2016 to February 2019 alone, LG Chem had approximately 296 shipments to the Port of Charleston in South Carolina. (Ex. 1 – Import Data). The import data indicates shipments to Carolina Covertech in North Augusta, Continental Tire in Sumter, Covidien in Greenwood, Fitesa in Simpsonville, Flex in West Columbia, Milliken Company in Spartanburg, and Volvo Car US Operations, Inc. in Ridgeville. (Ex. 1 – Import Data).

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LG Chem and South Carolina to support exercising specific personal jurisdiction¹ over LG Chem.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

¹ Plaintiff did not dispute LG Chem’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).² “It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

² See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LG Chem possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State.

S.C. Code Ann. § 36-2-803(A). LG Chem has a presence in South Carolina in the form of continuously and regularly using a South Carolina port to conduct its business activities, and deriving revenue from South Carolina. Along with the evidence of LG Chem's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 296 product shipments from LG Chem through the Port of Charleston, South Carolina, from December 2016 to February 2019. Plaintiff also demonstrated that these products are delivered to seven (7) different locations in South Carolina. This is ample evidence that LG Chem transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using

the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LG Chem participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LG Chem does not dispute that they distribute and sell various products that come through the Port of Charleston. However, they argue that because, according to them, they do not ship lithium-ion batteries through a South Carolina port that this Court does not have jurisdiction over them. Defendant concedes, however, that vehicle batteries were shipped through Charleston. Defendants are correct that both *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017) provide that the conduct in question in the forum state must be “related” or “connected” to the injuries. The Court finds the sale of batteries is a sufficient connection. Defendant seeks to have the Court impose a rule that unless the evidence indicates Defendant sold the particular product in question to buyers in the forum state, specific jurisdiction is not proper. The Court does not find either *J. McIntyre* or *Bristol-Myers* mandate such a narrow view of specific jurisdiction.

The exercise of personal jurisdiction is also reasonable and fair. First, LG Chem has conducted activities in South Carolina for a sufficient duration. The import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LG Chem’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LG Chem. LG Chem is actively litigating cases around the country involving the same type of battery at issue in this case. Fourth, South Carolina has an interest in exercising jurisdiction over LG Chem. “South Carolina has an interest in

providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, three other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LG Chem. (Ex. 2, Order from the Honorable Michael G. Nettles, Ex. 3, Order from the Honorable Courtney Clyburn Pope, and Ex. 4, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LG Chem.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LG Chem’s motion.³

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

³ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-03-19 12:30:08 page 8 of 8

EXHIBIT J

**(Judge McKinnon Order denying MTD 3-19-21 (LG Chem
America, Inc.))**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
)	
DWAYNE THOMPSON,)	
)	
Plaintiff,)	
)	
v.	)	ORDER DENYING LG CHEM
	)	AMERICA, INC.'S
	)	MOTION TO DISMISS
LG CHEM, LTD., LG CHEM AMERICA,)	
INC., and ROLLING FOG VAPOR)	
COMPANY, LLC,)	
)	
Defendants.)	
)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem America, Inc.'s ("LGA") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGA's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LGA filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶5). It does not own or rent property in South Carolina. *Id.* at ¶ 6. Mr. Kim attests that LGA did not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 10.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Ex. 1). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Ex. 2). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

“continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina’s long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA’s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA’s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax

liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied and it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten years ago and the import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LGA's acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and

registered agent in South Carolina. Fourth, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, four other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LGA. (Ex. 3, Order from the Honorable Michael G. Nettles, Ex. 4, Order from the Honorable Courtney Clyburn Pope, Ex. 5, Order from the Honorable Perry M. Buckner, III, and Ex. 6, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LGA.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LGA’s motion.⁴

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

⁴ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

EXHIBIT K

(Judge McKinnon Order on reconsideration)

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-04-21 11:38:00 page 3 of 3

ELECTRONICALLY FILED - 2021 Apr 21 11:41 AM - UNION - COMMON PLEAS - CASE#2019CP4400054

EXHIBIT L
(Kadow Writ)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL – SECOND DIST.

FILED

Oct 06, 2020

DANIEL P. POTTER, Clerk

jzelaya Deputy Clerk

LG CHEM, LTD.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

CODY KADOW,

Real Party in Interest.

B307192

(Super. Ct. L.A. County
No. BC680355)

(H. JAY FORD III, Judge)

NOTICE OF INTENTION TO GRANT
PEREMPTORY WRIT IN THE FIRST
INSTANCE and ORDER

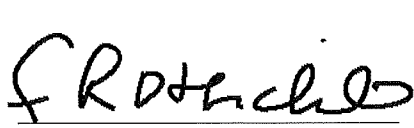
THE COURT*:

Having considered the petition for writ of mandate filed on August 24, 2020, we agree with petitioner that real party in interest Cody Kadow did not meet his burden to establish the court's specific jurisdiction of petitioner in this case. It does not matter for purposes of specific jurisdiction that petitioner extensively sells its 18650 batteries into the California market, because this suit does not arise out of or relate to those sales or petitioner's contacts with this forum. (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 137 S.Ct. 1781, 1773 ["[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."].)

Accordingly, the parties are notified of our intention to issue a peremptory writ in the first instance (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35), requiring respondent court to vacate that part of its August 13, 2020 order denying

petitioner's motion to quash service of summons for lack of personal jurisdiction, and instead issue an order granting the motion.

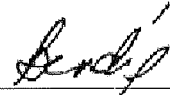
Respondent court may avoid the issuance of a peremptory writ by proceeding as we have suggested above. If respondent court elects to do so, it is requested to transmit to this Court notice reflecting its action on or before November 2, 2020.



* ROTHSCHILD, P. J.



CHANEY, J.



BENDIX, J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

BC680355

October 26, 2020

**CODY KADOW VS SHENZHEN EIGATE TECHNOLOGY
CO LTD ET AL**

8:30 AM

Judge: Honorable H. Jay Ford III
Judicial Assistant: K. Neal
Courtroom Assistant: L. Wong

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Angela J. Nehmens (Video); William Levin (Telephonic)

For Defendant(s): James I Brooks (Telephonic); Rachel Hedley (Video); Frank Knowlton
(Video)

NATURE OF PROCEEDINGS: Order to Show Cause Re: Why the Court Should Not Vacate
Its August 13, 2020 Order and Enter a New Order Granting L.G. Chem Ltd.'s Motion to Quash

The Court has received and reviewed the Notice of Intention to Grant Peremptory Writ in the
First Instance and Order dated October 6, 2020 issued by Division One of the Court of Appeal,
Second Appellate District.

The parties are heard regarding the Court considering changing its August 13, 2020 Order.

Having considered the written and oral arguments of counsel, the Court vacates its order of
August 13, 2020 and enters a new order granting L.G. Chem Ltd.'s Motion to Quash.

Counsel for L.G. Chem Ltd. Is ordered to give notice and to submit the proposed order of
dismissal under Code Of Civil Procedure §418.10 subd. (a)(1).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION ONE

FILED

Nov 12, 2020

DANIEL P. POTTER, Clerk

jzelaya Deputy Clerk

LG CHEM, LTD.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,

Respondent;

CODY KADOW,

Real Party in Interest.

B307192

(Super. Ct. L.A. County
No. BC680355)

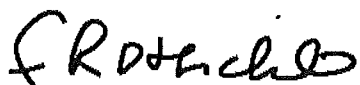
(H. JAY FORD III, Judge)

ORDER DISMISSING
PETITION AS MOOT

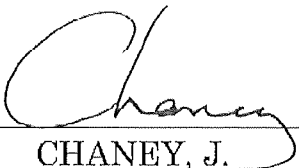
THE COURT*:

Respondent court having complied with our notice of intention to grant peremptory writ in the first instance, issued on October 6, 2020, by granting petitioner's motion quash service of summons for lack of personal jurisdiction,

IT IS HEREBY ORDERED that the petition be dismissed as moot.



*ROTHSCHILD, P. J.



CHANEY, J.



BENDIX, J.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2019-CP-4400054

RECEIVED

May 21 2021

SC Court of Appeals

Dwayne Thompson, Respondent,

v.

Rolling Fog Vapor Company, LLC,

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

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow, by manner identified below, pursuant to Supreme Court Order, as Amended May 29, 2020, § (g)(3), on May 21, 2021, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **PETITION FOR WRIT OF CERTIORARI**

Served:

Via E-Mail

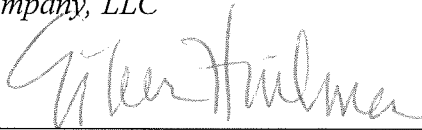
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Attorneys for Plaintiff Dwayne Thompson

Via U.S. Mail:

Gina Marie Surace
317 Greenway Drive
Chesnee, SC 29323
*Registered Agent for Defendant Rolling Fog Vapor
Company, LLC*



Eileen Hindman

May 21, 2021

Eileen Hindman

From: Eileen Hindman
Sent: Friday, May 21, 2021 2:55 PM
To: Alex.lewis@cummingslewis.com; Blake.cummings@cummingslewis.com; rcrosby@pmped.com; wbarnes@pmped.com; acrosby@pmped.com
Cc: Mitch Brown; Matt Bogan; Rachel Hedley; Scott Moise; Ann Boney; Meredith Keane
Subject: Dwayne Thompson v. LG Chem, Ltd. and LG Chem America, Inc
Attachments: Motion to Transfer or Certify with exhibits [Thompson v. LG Chem].pdf; 2021.05.21 Proof of Service to Motion to Transfer or Certify [Thompson].pdf; Thompson - Petition for Writ of Certiorari with exhibits.pdf; 2021.05.21 Proof of Service to Petition for Writ of Certiorari.pdf

Tracking:

Recipient

Read

Alex.lewis@cummingslewis.com

Blake.cummings@cummingslewis.com

rcrosby@pmped.com

wbarnes@pmped.com

acrosby@pmped.com

Mitch Brown

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Matt Bogan

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Rachel Hedley

Scott Moise

Read: 5/21/2021 2:55 PM

Ann Boney

Meredith Keane

Counsel,

Attached for service upon you in the above matter please find the Motion to Transfer or Certify Case From the Court of Appeals with proof of service and Petition for Writ of Certiorari with proof of service. Service is made via email pursuant to subsection (g)(3) of the Supreme Court Administrative Order (as Amended May 29, 2020).

Thank you,



EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT

eileen.hindman@nelsonmullins.com

MERIDIAN | 17TH FLOOR

1320 MAIN STREET | COLUMBIA, SC 29201

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