

MAYOR AND CITY COUNCIL  
OF BALTIMORE

Plaintiff,

v.

BP P.L.C., *et al.*

Defendants.

\* IN THE  
\* CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No. 24-C-18-004219

\* \* \* \* \*

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
CNX/CONSOL (DEFENDANTS 24, 25, 26)  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
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### **PRELIMINARY STATEMENT**

For the reasons in the Joint Memorandum of Law in Support of Defendants' Motions to Dismiss for Lack of Personal Jurisdiction, plaintiff cannot establish personal jurisdiction over CNX Resources Corporation (24) ("CNX"), CONSOL Energy Inc. (25) ("CONSOL Energy"), and CONSOL Marine Terminals LLC (26) ("CMT") (collectively, CNX/CONSOL). CNX/CONSOL submit this supplemental memorandum to address the additional reasons the Court lacks personal jurisdiction over them.

First, there is no general jurisdiction over CNX/CONSOL under the Maryland long-arm statute.

Second, CNX and CONSOL Energy do not have sufficient contacts with Maryland for specific jurisdiction under the Maryland long-arm statute.

Third, there is no specific jurisdiction under the Maryland long-arm statute because the plaintiff's claims do not arise from any contacts of CNX/CONSOL with Maryland.

Fourth, plaintiff cannot show CNX and CONSOL Energy have the minimum contacts with Maryland to meet the requirements of due process.

### **PROCEDURAL BACKGROUND**

On July 20, 2018, plaintiff sued 26 companies including CNX/CONSOL, alleging their activities caused an "increase in global greenhouse pollution and a concordant increase in the concentration of greenhouse gases" causing Baltimore "consequences." Compl. ¶ 1. Plaintiff alleges eight causes of action: public nuisance (Count I), private nuisance (Count II), strict liability failure to warn (Count III), strict liability for design defect (Count IV), negligent design defect (Count V), negligent failure to warn (Count VI), trespass (Count VII), and violations of Maryland's Consumer Protection Act (Count VIII). Plaintiff seeks compensatory and punitive

damages, civil penalties, equitable relief, and disgorgement of profit. *Id.* at Prayer for Relief, p. 130.

Using improper group pleading,<sup>1</sup> plaintiff alleges this Court has personal jurisdiction over *all* defendants “because they either are domiciled in Maryland; were served with process in Maryland; are organized under the laws of Maryland; maintain their principal place of business in Maryland; transact business in Maryland; perform work in Maryland; contract to supply goods, manufactured products, or services in Maryland; caused tortious injury in Maryland; engage in persistent courses of conduct in Maryland; derive substantial revenue from manufactured goods, products, or services used or consumed in Maryland; and/or have interests in, use, or possess real property in Maryland.” *Id.* ¶ 34.

#### **FACTUAL BACKGROUND**

The CNX/CONSOL companies are not incorporated in Maryland, and do not have their principal places of business in Maryland. Compl. ¶ 29(a)-(b), (c). Plaintiff makes the same conclusory generic jurisdictional allegations for all defendants including CNX/CONSOL.<sup>2</sup> The sole Maryland-specific contact plaintiff alleges is CMT’s ownership and operation of a coal

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<sup>1</sup> See *Am. Ass’n of Blood Banks v. Boston Paternity, LLC*, No. CIV.A. DKC-2008-2046, 2009 WL 2366175, at \*4 (D. Md. July 28, 2009) (“It is axiomatic that the plaintiff bears the burden of establishing personal jurisdiction for each defendant individually” and “[e]ach defendant’s contacts with the forum State must be assessed individually.”) (quoting *Calder v. Jones*, 465 U.S. 783, 790 (1984)).

<sup>2</sup> Plaintiff makes identical—or nearly identical—allegations for all 26 defendants: defendants “transacted substantial fossil-fuel related business in Maryland,” and that a “substantial portion of [defendants’] fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Maryland, from which [defendants] derive[ ]and ha[ve] derived substantial revenue.” See Compl. ¶¶ 20(g), 21(c), 22(g), 23(g), 24(g), 25(e), 26(i), 27(h), 28(e), 29(f).

export terminal in Baltimore. Compl. ¶ 29(e) & (f).<sup>3</sup> Plaintiff does not allege that any of the coal passing through the terminal was extracted, refined, processed, manufactured or produced in Maryland. Compl. ¶ 29(f) (alleging only that 53% came from CONSOL coal mines in “Appalachia”). Plaintiff also does not allege that the coal passing through the terminal was sold or distributed into the Maryland market. *Id.* (alleging coal from the terminal is sold or distributed into markets in Brazil, Germany, India, and South Korea).

### **LEGAL STANDARD**

Plaintiff has the burden “to establish the propriety of [the exercise] of personal jurisdiction.” *CSR, Ltd. v. Taylor*, 411 Md. 457, 467 n.2 (2009). Plaintiff must state its allegations with “sufficient specificity” and not make “bald assertions and conclusory statements.” *See RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010).

Under Maryland law, courts determining personal jurisdiction follow a two-step process. *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 14–15 (2005). First, the court analyzes whether a defendant’s actions satisfy the Maryland long-arm statute. Md. Code, Cts. & Jud. Proc. § 6-103. Second, the court analyzes whether the defendant’s contacts with Maryland satisfy federal due process. *Id.*

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<sup>3</sup> Plaintiff sweeps together CNX, CONSOL Energy and CMT, referring to them collectively as “CONSOL.” *See* Compl. ¶29(e) & (f). In 2017, CONSOL Energy Inc. was formed as a new and separate corporate entity. Compl. ¶ 29(a). CMT is a subsidiary of the new CONSOL Energy Inc. Compl. ¶ 29(e).

## ARGUMENT

### **I. PLAINTIFF CANNOT ESTABLISH PERSONAL JURISDICTION FOR CNX/CONSOL UNDER THE MARYLAND LONG-ARM STATUTE.**

#### **A. There Is No General Jurisdiction.**

The Maryland long-arm statute permits the exercise of general jurisdiction over a person who is “domiciled in, served with process in, organized under the laws of, or who maintains his principal place of business in the State.” Md. Code, Cts. & Jud. Proc. § 6-102(a). Plaintiff has not alleged that CNX/CONSOL have any of these connections to Maryland. *See* Compl. ¶ 29(a), (b), (e) (alleging CNX, CONSOL Energy and CMT are incorporated in Delaware with principal place of business in Pennsylvania).

Where § 6-103(b)(4) authorizes general jurisdiction over a corporation that is not incorporated or headquartered in Maryland (*see Congressional Bank v. Potomac Educ. Found. Inc.*, No. PWG-13-889, 2014 WL 347632, at \*8 (D. Md. Jan. 30, 2014)), it is inconsistent with due process. *See Barnett v. Surefire Med., Inc.*, No. CV JFM-17-1332, 2017 WL 4279497, at \*2 (D. Md. Sept. 25, 2017) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014)) (“[It] would be ‘unacceptably grasping’ to approve the exercise of general jurisdiction wherever a corporation[] ‘engages in a substantial, continuous, and systematic course of business.’”).

#### **B. Plaintiff Alleges No Contacts For CNX Or CONSOL Energy With Maryland For Specific Jurisdiction.**

Plaintiff does not identify which section of the long-arm statute authorizes jurisdiction over CNX/CONSOL. Compl. ¶ 34. It appears plaintiff is relying on Md. Code, Cts. & Jud. Proc. § 6-103(b)(1), which provides jurisdiction over a nonresident defendant who transacts business in Maryland. Plaintiff may also be relying upon § 6-103(b)(3), which provides jurisdiction over a nonresident defendant who “[c]auses tortious injury in [Maryland] by an act or omission in [Maryland].”



**1. No CNX Or CONSOL Energy Transaction Of Business In Maryland.**

Maryland courts construe “‘transacting business’ narrowly requiring, for example, significant negotiations or intentional advertising and selling in the forum state.” *Aphena Pharma Sols.-Maryland LLC v. BioZone Laboratories, Inc.*, 912 F. Supp. 2d 309, 315 (D. Md. 2012). Plaintiff’s conclusory allegation that CNX and CONSOL Energy “transact[ ] substantial fossil fuel-related business” (Compl. ¶ 29(f)) does not provide the necessary facts for transaction of business, and therefore there is no personal jurisdiction under § 6-103(b)(1). *See Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 603 (2017) (no personal jurisdiction where “quality and quantity of its contacts in Maryland [ ] relat[ing] to the [dispute] did not rise to the level of ‘transacting any business’ in Maryland”); *MyKey Tech., Inc. v. TEFKAT LLC*, No. 12-CV-01468-AW, 2012 WL 3257655, at \*3 (D. Md. Aug. 7, 2012) (no personal jurisdiction under § 6-103(b)(1) where plaintiff made “formulaic recitation of Maryland’s long-arm statute”).

**2. No CNX Or CONSOL Energy Tortious Conduct In Maryland.**

Plaintiff does not connect its alleged injuries to any tortious conduct by CNX or CONSOL Energy *in Maryland*, and therefore there is no personal jurisdiction under § 6-103(b)(3). *See Zinz v. Evans & Mitchell Indus.*, 22 Md. App. 126, 130 (1974) (no personal jurisdiction under § 6-103(b)(3) where “the ‘act or omission,’ causing the tortious injury did not occur in Maryland”); *Stover v. O’Connell Associates, Inc.*, 84 F.3d 132, 135 (4th Cir. 1996) (same); *MyKey Tech., Inc.*, 2012 WL 3257655, at \*4 (no personal jurisdiction under § 6-103(b)(3) where no “factual allegations . . . to support the claim that [the] injury-causing acts occurred in Maryland”); *McLaughlin v. Copeland*, 435 F. Supp. 513, 525 (D. Md. 1977) (no personal jurisdiction under § 6-103(b)(3) even where a meeting in Maryland led to the cause of

action because the meeting was not the proximate cause for the injury and the acts allegedly giving rise to liability occurred in Delaware).

**C. No Maryland Contacts For CNX Or CONSOL Energy Based On CMT.**

Plaintiff cannot use CMT's ownership and operation of a coal export terminal in Baltimore as Maryland contacts for CNX or CONSOL Energy.<sup>4</sup> See *Stisser*, 234 Md. App. at 637-42 (parent's ownership interest in subsidiary corporation in Maryland insufficient to subject parent to specific jurisdiction); see also *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 276 (4th Cir. 2005) (generally "a corporate subsidiary cannot impute jurisdiction to its parent entity").

An inquiry "comparable to the corporate law question of piercing the corporate veil" is necessary before a court can attribute a subsidiary's contacts to a parent corporation for jurisdictional purposes. *Osiris Therapeutics, Inc. v. MiMedx Group, Inc.*, No. CV CCB-18-950, 2018 WL 6573099, at \*3 (D. Md. Dec. 13, 2018) (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 930 (2011)). Maryland law establishes a strict test to pierce the corporate veil. *State v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 447 (D. Md. 2019) ("Maryland generally is more restrictive than other jurisdictions in allowing a plaintiff to pierce the corporate veil."); *Haley Paint Co. v. E.I. Dupont De Nemours & Co.*, No. CIV.A. RDB-10-0318, 2012 WL 1145027, at \*3 (D. Md. Apr. 3, 2012) ("[T]he fiction of the wholly separate corporate form is jealously guarded by courts in Maryland, where, as a matter of public policy, the power to pierce the corporate veil is to be exercised 'reluctantly' and 'cautiously.'" (citation omitted)).

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<sup>4</sup> Plaintiff conclusorily asserts that CNX and CONSOL Energy "control and have controlled their companywide decisions about the quantity and extent of fossil fuel production and sales, including those of their subsidiaries." Compl. ¶ 29(c).

Piercing the corporate veil requires that “the subsidiary has no independent reason for existence, ‘other than being under the complete domination and control’ of the parent entity.” *Osiris*, 2018 WL 6573099, at \*3 (quoting *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61–62 (4th Cir. 1993)); *Vitro Elecs., Div. of Vitro Corp. of Am. v. Milgray Elecs., Inc.*, 255 Md. 498, 500-06 (1969) (no piercing of corporate veil for jurisdictional purposes even though parent company owned all of subsidiary’s stock and officers of both corporations were the same).

Plaintiff’s conclusory allegations here do not meet Maryland’s “high bar” for piercing the corporate veil, and therefore CMT’s contacts with Maryland cannot be imputed to CNX or CONSOL Energy. *See Exxon Mobil Corp.*, 406 F. Supp. 3d at 447 (finding “State ha[d] not sustained its burden of showing that [defendant] exerted a degree of control over [subsidiary] greater than that of a typical parent company and, thus, that [subsidiary’s] contacts with Maryland may be imputed to [parent-defendant] for jurisdictional purposes”); *Kennedy v. Hankey Group*, No. CIV. WDQ-09-2890, 2010 WL 1664087, at \*3 (D. Md. Apr. 22, 2010) (dismissing parent corporation for lack of personal jurisdiction where plaintiff asserted jurisdiction “by virtue of [subsidiary corporation’s] activities in Maryland”); *Haley Paint Co. v. E.I. Dupont De Nemours and Co.*, 775 F. Supp. 2d 790, 799 (D. Md. 2011) (plaintiffs offered “no facts supporting their conclusory allegations” of control over subsidiary).

**D. There Is No Basis For Specific Jurisdiction Because Plaintiff’s Claims Do Not Arise From Maryland Contacts Of CNX/CONSOL.**

Plaintiff does not allege any specific facts showing its claims arose from Maryland contacts of any of the CNX/CONSOL entities as required by the Maryland long-arm statute.<sup>5</sup> *See Md. Code, Cts. & Jud. Proc. § 6-103(a)* (A nonresident defendant “may be sued only on a

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<sup>5</sup> Plaintiff’s claims do not arise from any Maryland contacts for the reasons explained in the Joint Memorandum. *See* Joint Memorandum Section IV.B.1.

cause of action *arising from* any act enumerated in this section.” (emphasis added)); *Stisser*, 234 Md. App. at 627. Plaintiff therefore cannot establish specific personal jurisdiction over the CNX/CONSOL entities.

## **II. THE EXERCISE OF PERSONAL JURISDICTION OVER CNX/CONSOL WOULD VIOLATE DUE PROCESS.**

Under the Fourteenth Amendment, a court may only exercise personal jurisdiction when a defendant has minimum contacts with the forum state and the exercise of personal jurisdiction does not offend “traditional notions of fair play and substantial justice.” *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 277 (4th Cir. 2009) (quoting *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). To determine whether specific jurisdiction comports with due process, courts consider: “(1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs’ claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4th Cir. 2003).

Plaintiff has not established minimum contacts for CNX/CONSOL because it does not allege: (1) CNX and CONSOL Energy purposefully availed themselves of conducting activities in Maryland, or (2) its claims arise out of the Maryland contacts of the CNX/CONSOL entities (*see* Joint Memorandum Section IV.B.1). Under these circumstances, exercising personal jurisdiction over CNX/CONSOL entities would not be constitutionally reasonable and no further inquiry is needed.<sup>6</sup>

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<sup>6</sup> *See* Joint Memorandum Section IV.A and IV.B.2 for additional reasons why exercising personal jurisdiction would violate due process.

**A. CNX and CONSOL Energy Have Not Purposefully Availed Themselves of the Privilege of Conducting Activities in Maryland.**

To satisfy the purposeful availment requirement, a plaintiff must show a “substantial” connection between the defendant and the forum. *Stisser*, 234 Md. App. at 630; *CSR, Ltd.*, 411 Md. at 485; *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (defendant’s “suit-related conduct must create a substantial connection with the forum State.”). This requires either “significant activities” in Maryland or “continuing obligations” with Maryland residents. *Stisser*, 234 Md. App. at 630. A defendant’s conduct that merely affects a plaintiff with a connection to the forum state does not authorize jurisdiction. *Walden*, 571 U.S. at 291 (“[I]t is the defendant, not the plaintiff or third parties, who must create contacts with the forum State.”).

The sole specific Maryland contact plaintiff identifies is the ownership and operation of a coal export terminal in Baltimore by CMT. Compl. ¶ 29(e) & (f). This cannot establish jurisdiction over CNX and CONSOL Energy, *see* Section I.C above, and does not allege any purposeful availment by CNX or CONSOL Energy.

If plaintiff’s allegations are interpreted to mean CNX or CONSOL Energy shipped products through the CMT terminal in Maryland (*see* Compl. ¶ 29(f)), that also does not establish purposeful availment. It alleges no relevant conduct by CNX or CONSOL Energy focused on Maryland (*e.g.*, no alleged sales or distribution of products in Maryland). *See, e.g.*, *CSR, Ltd.*, 411 Md. at 488 (no purposeful availment where defendant merely “used the Maryland Port as a conduit in shipping asbestos to consumers located outside of the State”); *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617, 625–626 (4th Cir. 1997) (no purposeful availment where defendant “focused its activities more generally on customers located throughout the United States and Canada without focusing on and targeting” the forum state).

**B. No Further Inquiry On Constitutional Reasonableness Is Needed.**

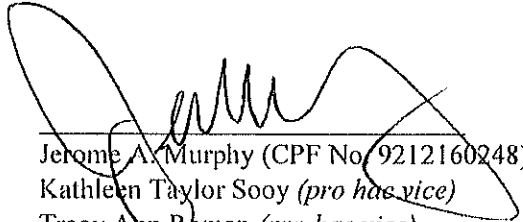
Plaintiff has not established minimum contacts or alleged claims that arise from any Maryland contacts of CNX/CONSOL, and therefore the Court does not need to inquire into other factors to decide whether exercising personal jurisdiction would be constitutionally reasonable. *See Consulting Engineers*, 561 F.3d at 278; *Exxon Mobil*, 406 F. Supp. 3d at 440.

**CONCLUSION**

CNX/CONSOL respectfully request that the Court dismiss plaintiff's claims with prejudice for lack of personal jurisdiction.

February 7, 2020

Respectfully submitted,



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