

**IN THE CIRCUIT COURT FOR
BALTIMORE CITY**

**MAYOR AND CITY COUNCIL
OF BALTIMORE**

Plaintiff

v.

Civil Action No. 24-C-18-004219

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

Defendants.

**CNX RESOURCES CORPORATION'S
INDIVIDUAL MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION AND
REQUEST FOR HEARING**

Defendant CNX Resources Corporation ("CNX"), by its undersigned attorneys and pursuant to Maryland Rules 2-311 and 2-322(a)(1), respectfully moves this Court to dismiss Plaintiff's Complaint with prejudice for lack of personal jurisdiction.

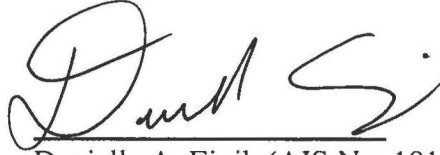
CNX has joined Certain Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, filed on October 16, 2023. This Individual Motion and attached Memorandum of Law addresses additional reasons why all of Plaintiff's claims against CNX should be dismissed on personal jurisdiction grounds. The grounds and authorities in support of this Motion are set forth more fully in the accompanying Memorandum of Law. A Proposed Order is attached.

REQUEST FOR HEARING

Pursuant to Maryland Rule 2-311(f), CNX respectfully requests a hearing on all issues raised in this Motion and the accompanying Memorandum of Law.

October 16, 2023

Respectfully submitted,



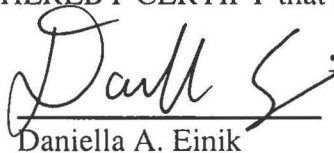
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Attorneys for Defendant CNX Resources Corp.

Pursuant to Maryland Rule 1-313, I HEREBY CERTIFY that I am an attorney duly admitted to practice law in Maryland.



Daniella A. Einik

IN THE CIRCUIT COURT FOR
BALTIMORE CITY

MAYOR AND CITY COUNCIL
OF BALTIMORE,

Plaintiff,

v.

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

Defendants.

Civil Action No. 24-C-18-004219

CNX RESOURCES CORPORATION'S
MEMORANDUM OF LAW IN SUPPORT OF ITS INDIVIDUAL
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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STATUTES

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Defendant CNX Resources Corporation (“CNX”) joins and incorporates by reference the statement of the issues, statement of the facts, arguments, and request for relief set forth in Certain Defendants’ Joint Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction (the “Joint Personal Jurisdiction Brief”).¹ In addition, CNX submits this memorandum in support of its individual motion to dismiss for lack of personal jurisdiction. For the reasons set forth below and in the Joint Personal Jurisdiction Brief, all claims against CNX should be dismissed with prejudice.

INTRODUCTION

As discussed in CNX’s separately filed motion to dismiss for failure to state a claim (“CNX Merits MTD”), Plaintiff’s Complaint fails to state a claim against CNX for numerous reasons—each of which is independently dispositive as to CNX and warrants dismissal of the claims against CNX. But the Court also lacks personal jurisdiction over CNX to begin with. There is no dispute that the Court lacks *general* jurisdiction over CNX. Nor should there be any dispute that the Court lacks *specific* jurisdiction over CNX. As the Joint Personal Jurisdiction Brief explains, one reason is that Plaintiff “seeks to hold Defendants liable for injuries allegedly resulting from the cumulative worldwide use of all oil, natural gas, coal, and other sources of emissions—the vast majority of which have no connection to Defendants, much less to Maryland.” Joint Personal Jurisdiction Br. at 2. As a result, “Plaintiff’s claims do not ‘arise out of or relate to’ Defendants’ alleged contacts with Maryland, as the exercise of specific personal jurisdiction demands.” *Id.*

CNX files this individual motion to dismiss for lack of personal jurisdiction to underscore that specific jurisdiction over CNX is lacking even if the Court construes the Complaint as based

¹ As expressed in CNX’s separately filed memorandum in support of its individual motion to dismiss for failure to state a claim, CNX also joins in Defendants’ Joint Memorandum in Support of Motion to Dismiss for Failure to State a Claim.

on Defendants’ supposed *misstatements and omissions* rather than *emissions*. Joint Personal Jurisdiction Brief at 13; *see also* CNX Merits MTD at 1, 2, 4. As CNX explained, the Complaint does not identify a single alleged misstatement or omission by CNX, *see id.* at 5–9—let alone one that occurred in, or was directed at, Maryland. And that is fatal for specific-jurisdiction purposes because Plaintiff has failed to allege any relevant Maryland contact that gives rise or relates to Plaintiff’s claims. In fact, the Complaint does not establish specific jurisdiction based on *any* theory of liability. Insofar as CNX is concerned, the Complaint includes only vague and conclusory allegations, which fail to show that CNX purposefully availed itself of the privilege of doing business in Maryland or that Plaintiff’s claims (however characterized) “relate to” or “arise out of” any alleged contacts with the State. Accordingly, CNX respectfully requests that the Court dismiss the claims against CNX with prejudice for lack of personal jurisdiction.

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).

ARGUMENT

There are “two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Ford Motor Co. v. Montana Eighth Jud. Dist. Court*, 141 S. Ct. 1017, 1024 (2021). Because CNX is not incorporated or headquartered in Maryland, Plaintiff rightly does not allege that CNX is subject to general jurisdiction in Maryland. *See* Joint Personal Jurisdiction Br. at 7. Instead, the only question here is whether CNX is subject to specific jurisdiction.

To establish specific jurisdiction over a nonresident defendant, Maryland's long-arm statute requires a plaintiff to show that its "cause of action aris[es] from" certain enumerated acts. *See* Md. Code, Cts. & Jud. Proc. § 6-103(a)-(b). The exercise of jurisdiction must also comport with Due Process. "A court's exercise of personal jurisdiction over a nonresident defendant satisfies due process requirements if the defendant has 'minimum contacts' with the forum, so that to require the defendant to defend its interests in the forum state 'does not offend traditional notions of fair play and substantial justice.'" *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 22 (2005). Under this standard, the plaintiff must show, first and foremost, that the defendant took "some act by which [it] purposefully avail[ed] itself of the privilege of conducting activities within the forum State." *Ford Motor Co.*, 141 S. Ct. at 1024. Such "contacts must be the defendant's own choice," and the defendant must have "deliberately 'reached out beyond' its home—by, for example, 'exploit[ing] a market' in the forum State or entering a contractual relationship centered there." *Id.* at 1025. Second, the plaintiff's claims "'must arise out of or relate to the defendant's contacts' with the forum." *Id.* "[P]ut just a bit differently, 'there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Id.* (internal quotation marks omitted).

As scores of misrepresentation cases establish, the relevant and crucial minimum-contact question is whether the defendant's alleged misrepresentation occurred in, or was directed at, the forum state. *See, e.g., Leone v. Cataldo*, 574 F. Supp. 2d 471, 480 (E.D. Pa. 2008) ("Because the misrepresentation was made in Pennsylvania and Cataldo had purposeful contacts with the forum, Cataldo's contacts are sufficient to establish minimum contacts with Pennsylvania over the negligent misrepresentation, intentional misrepresentation, and common law fraud claims."); *MG*

Design Assocs., Corp. v. CoStar Realty Info., Inc., 267 F. Supp. 3d 1000, 1018 (N.D. Ill. 2017) (finding sufficient minimum contacts for fraud claim in Illinois because defendants “directed [the allegedly fraudulent misrepresentation] at Illinois”); *Elbeco Inc. v. Estrella de Plato, Corp.*, 989 F. Supp. 669, 677 (E.D. Pa. 1997) (finding sufficient minimum contacts for misrepresentation claims because the alleged misrepresentations occurred “through telephone and mail communications” directed at Pennsylvania and “two of the individual defendants visited Pennsylvania and allegedly made misrepresentations while present in the forum”); *Fieldwood Energy LLC v. Ocean Marine Contractors, LLC*, 2015 WL 13119408, at *11 (S.D. Tex. July 22, 2015) (finding sufficient minimum contacts regarding fraud and misrepresentation claims in Texas “based on communications that were knowingly made in Texas”). And that makes good sense: if a misrepresentation (or concealment) claim arises out of (or relates to) an alleged misrepresentation (or concealment), then the threshold specific-jurisdiction question necessarily is whether the alleged misrepresentation or concealment occurred in—or was at least directed at—the forum state.

The problem for Plaintiff is that the Complaint does not allege a single CNX misrepresentation, statement, or concealment made in Maryland. In fact, the Complaint does not contain a single non-conclusory allegation that CNX engaged in *any* marketing, promotion, or speech at all, much less in or directed at Maryland. There is no allegation, for instance, that CNX published advertorials, produced films, funded advertising, spoke at conferences, or maintained retail service locations, in Maryland or elsewhere. In the Supreme Court’s words, there is no allegation that CNX “deliberately ‘reached out beyond’ its home” and “‘exploit[ed]’” the Maryland market through misrepresentations to or concealment from Plaintiff. *Ford Motor Co.*, 141 S. Ct. at 1024. And that is fatal, as confirmed by the legion of cases dismissing

misrepresentation claims where plaintiffs failed to establish that the defendants made alleged misrepresentations in or directed at the forum state. *See, e.g., Antonini v. Blue Gate Farm, LLC*, 2012 WL 6632111, at *4 (E.D. La. Dec. 19, 2012) (rejecting plaintiff’s specific-jurisdiction argument as “misplaced because the tortious misrepresentations that are alleged to have caused injury in this state were not directed at this state”); *Gullion v. JLG Serviceplus, Inc.*, 2007 WL 294174, at *11 (S.D. Tex. Jan. 29, 2007) (rejecting plaintiff’s specific-jurisdiction argument because the complaint “does not allege that the Individual Defendants made misrepresentations to Plaintiff in Texas or during communications with Plaintiff ... in Texas”); *Driscoll v. Matt Blatt Auto Sales*, 1996 WL 156366, at *3 (E.D. Pa. Apr. 3, 1996) (rejecting plaintiffs’ specific-jurisdiction argument because they “have not alleged that the misrepresentations were targeted at Pennsylvania”).

In fact, the Complaint does not establish specific jurisdiction based on *any* theory of liability. The Complaint alleges only that “CONSOL”—defined to include CNX and two other entities—“transacts and has transacted substantial fossil fuel-related business in Maryland” and “[a] substantial portion of [its] fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Maryland.” Compl. ¶¶29(f). But such “conclusory allegations” are insufficient to “demonstrate[] a *prima facie* case of specific personal jurisdiction,” *Beyond Sys.*, 388 Md. at 574–75, especially given the group nature of the allegations, *see Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002) (affirming dismissal for failure to state a claim for relief where plaintiff “‘dump[ed] ... all [appellees] into the same pot’”). In particular, these vague and imprecise allegations are too thin to establish that CNX has *any* presence in Maryland, much less that it “purposefully availed itself of the privilege of conducting activities in the state.” *Carefirst of Md.*,

Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 397 (4th Cir. 2003); *see also Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 630 (2017) (purposeful availment requires a “substantial connection” with the forum state). And, even if the wholly vague and conclusory nature of the allegations were excused, such allegations would still not satisfy the “relates to” or “arises out of” requirements for establishing personal jurisdiction, regardless of how Plaintiff characterizes its claims (whether focusing on deception, concealment, or emissions). As noted, the Complaint’s allegations are irrelevant to a theory of *misrepresentations or omissions*, because they do not identify a single purported misrepresentation or omission by CNX, much less one that occurred in or was directed at Maryland. And they are irrelevant to an emissions theory, because Plaintiff alleges that its injuries are the result of *global* greenhouse gas emissions. *See* Joint Personal Jurisdiction Brief at 7–14. Accordingly, Plaintiff has failed to establish that either Maryland’s long-arm statute or the Due Process Clause authorize an assertion of personal jurisdiction over CNX.

* * *

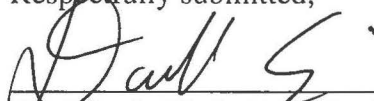
At bottom, Plaintiff’s failure to allege a single alleged misrepresentation or omission, or even marketing or promotional activity, by CNX in or outside of Maryland not only demonstrates that the Complaint fails to state a claim for relief—it also underscores that this Court lacks personal jurisdiction over CNX. The Court should dismiss Plaintiff’s claims on this ground as well.

CONCLUSION

For these reasons, Plaintiff’s claims against CNX should be dismissed with prejudice for lack of personal jurisdiction.

Dated: October 16, 2023

Respectfully submitted,



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Defendants.

**[PROPOSED] ORDER GRANTING DEFENDANT CNX RESOURCES
CORPORATION'S INDIVIDUAL MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

Upon review and consideration of CNX Resources Corporation's ("CNX") Individual Motion to Dismiss for Lack of Personal Jurisdiction, and Request for Hearing, Plaintiff's Opposition thereto, and any further Reply(ies), it is on this __ day of _____, ____, by the Circuit Court for Baltimore, hereby

ORDERED, that CNX's Individual Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED**; and it is further

ORDERED, that the Plaintiff's July 20, 2018 Complaint is **DISMISSED WITH PREJUDICE** as to CNX; and it is further

ORDERED that the Clerk of the Court shall deliver copies of this Order to all parties of record.

Judge Videtta A. Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2023, a copy of the foregoing
was served by email on all parties.

A handwritten signature in black ink, appearing to read 'Daniella S.', written over a horizontal line.

Daniella A. Einik
(AIS No. 1012140232)