

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

RECEIVED

2023 OCT 16 PM 2:38

CIVIL DIVISION

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

Case No. 24-C-18-004219

vs.

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

Defendants.

**CONSOL ENERGY INC.'S AND CONSOL MARINE TERMINALS LLC'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR SUPPLEMENTAL
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
PROCEDURAL BACKGROUND.....	1
STATEMENT OF FACTS	2
LEGAL STANDARD.....	3
ARGUMENT	4
I. There Is No Personal Jurisdiction Under Maryland Law.	4
A. The Court lacks general jurisdiction over CONSOL Energy or CONSOL Marine.	4
B. Maryland’s long-arm statute does not permit the Court to exercise specific personal jurisdiction over CONSOL Energy or CONSOL Marine.	4
1. Plaintiff’s claims do not arise from the transaction of business in Maryland.	5
2. Neither CONSOL Energy nor CONSOL Marine has engaged in tortious conduct in Maryland.	6
3. Plaintiff’s claims do not arise from any alleged activity by CONSOL Energy and CONSOL Marine at the Port of Baltimore.	6
II. The Exercise Of Personal Jurisdiction Over CONSOL Energy And CONSOL Marine Would Violate Due Process.	8
A. CONSOL Energy has not purposefully availed itself of the privilege of conducting activities in Maryland.....	9
B. Plaintiff’s claims do not arise out of activities of CONSOL Energy or CONSOL Marine in Maryland.	10
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Ass'n of Blood Banks v. Boston Paternity, LLC</i> , No. DKC-2008-2046, 2009 WL 2366175 (D. Md. July 28, 2009).....	2
<i>Aphena Pharma Sols.-Md. LLC v. BioZone Lab'ys, Inc.</i> , 912 F. Supp. 2d 309 (D. Md. 2012).....	5
<i>Beyond Sys., Inc. v. Realtime Gaming Holding Co.</i> , 388 Md. 1 (2005)	3
<i>Bristol-Myers Squibb</i> , 582 U.S. 255 (2017)	10
<i>Cappel v. Riaso, LLC</i> , 197 Md. App. 347 (2011)	6
<i>Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.</i> , 334 F.3d 390 (4th Cir. 2003)	9
<i>Consulting Eng'rs Corp. v. Geometric Ltd.</i> , 561 F.3d 273 (4th Cir. 2009)	8
<i>CSR, Ltd. v. Taylor</i> , 411 Md. 457 (2009)	3, 4, 7, 9
<i>ESAB Grp., Inc. v. Centricut, Inc.</i> , 126 F.3d 617 (4th Cir. 1997)	10
<i>Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.</i> , 141 S. Ct. 1017 (2021).....	10
<i>Goodyear Dunlop Tires Ops., S.A. v. Brown</i> , 564 U.S. 915 (2011).....	7
<i>Haley Paint Co. v. E.I. Dupont De Nemours & Co.</i> , 775 F. Supp. 2d 790 (D. Md. 2011).....	8
<i>Haley Paint Co. v. E.I. Dupont De Nemours & Co.</i> , No. RDB-10-0318, 2012 WL 1145027 (D. Md. Apr. 3, 2012)	7
<i>Int'l Shoe Co. v. Wash.</i> , 326 U.S. 310 (1945).....	8

<i>Kennedy v. Hankey Grp.</i> , No. WDQ-09-2890, 2010 WL 1664087 (D. Md. Apr. 22, 2010).....	8
<i>Mallory v. Norfolk Southern Railway Co.</i> , 143 S. Ct. 2028 (2023).....	4
<i>MyKey Tech., Inc. v. TEFKAT LLC</i> , No. 12-cv-01468, 2012 WL 3257655 (D. Md. Aug. 7, 2012).....	5, 6
<i>Native Vill. of Kivalina v. ExxonMobil Corp.</i> , 663 F. Supp. 2d 863 (N.D. Cal. 2009), <i>aff'd</i> , 696 F.3d 849 (9th Cir. 2012)	10
<i>Osiris Therapeutics, Inc. v. MiMedx Group, Inc.</i> , No. CV CCB-18-950, 2018 WL 6573099 (D. Md. Dec. 13, 2018).....	7, 8
<i>RRC Ne., LLC v. BAA Md., Inc.</i> , 413 Md. 638 (2010)	3
<i>Saudi v. Northrop Grumman Corp.</i> , 427 F.3d 271 (4th Cir. 2005)	7
<i>State v. Exxon Mobil Corp.</i> , 406 F. Supp. 3d 420 (D. Md. 2019).....	7, 8
<i>Stisser v. SP Bancorp, Inc.</i> , 234 Md. App. 593 (2017)	5, 7, 9
<i>Stover v. O'Connell Assocs., Inc.</i> , 84 F.3d 132 (4th Cir. 1996)	6
<i>Vitro Elecs., Div. of Vitro Corp. of Am. v. Milgray Elecs., Inc.</i> , 255 Md. 498 (1969)	8
<i>Walden v. Fiore</i> , 571 U.S. 277 (2014).....	9
<i>Zinz v. Evans & Mitchell Indus.</i> , 22 Md. App. 126 (1974)	6
Statutes	
Md. Code Ann., Cts. & Jud. Proc. § 6-102(a).....	4
Md. Code Ann., Cts. & Jud. Proc. § 6-103	3, 4
Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1).....	4, 5
Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(3).....	6

Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(5).....	5, 6, 7
---	---------

INTRODUCTION

For the reasons in the Joint Opening Brief in Support of Certain Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (the "Joint Brief"), plaintiff cannot establish personal jurisdiction over CONSOL Energy Inc. ("CONSOL Energy") and CONSOL Marine Terminals LLC ("CONSOL Marine"). CONSOL Energy and CONSOL Marine submit this supplemental memorandum to address the additional reasons the Court lacks personal jurisdiction over them.

First, there is no general jurisdiction over CONSOL Energy and CONSOL Marine because they are not incorporated in Maryland and have their principal places of business in Pennsylvania.

Second, CONSOL Energy and CONSOL Marine do not have sufficient contacts with Maryland for specific jurisdiction under the Maryland long-arm statute because plaintiff's claims do not arise from any contacts of CONSOL Energy and CONSOL Marine with Maryland. CONSOL Marine's ownership and operation of a coal export terminal at the Port of Baltimore, standing alone, does not suffice to confer specific jurisdiction over either CONSOL Marine or CONSOL Energy.

Third, plaintiff cannot show that exercising personal jurisdiction over CONSOL Energy and CONSOL Marine meets the requirements of constitutional due process.

PROCEDURAL BACKGROUND¹

On July 20, 2018, plaintiff sued 26 companies, alleging their activities caused an "increase in global greenhouse gas pollution and a concordant increase in the concentration of greenhouse gases." Compl. ¶ 1. Plaintiff alleges a litany of injuries caused by these global emissions, such as "inundation" and "flooding," "increased costs of maintaining public infrastructure," and

¹ CONSOL Energy and CONSOL Marine incorporate by reference the "Nature and Stage of the Proceedings" in the Joint Brief.

“population dislocation and infrastructure loss.” *Id.* ¶¶ 15, 16. Plaintiff asserts 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).

STATEMENT OF FACTS²

Using improper group pleading,³ and parroting basic jurisdictional principles, plaintiff alleges this Court has personal jurisdiction over *all* defendants based on the following boilerplate language bereft of actual facts:

[B]ecause 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. At the same time, the complaint acknowledges that CONSOL Energy and CONSOL Marine are not incorporated in Maryland and do not have their principal places of business in Maryland. *Id.* ¶ 29(b), (e). Using the generic name “CONSOL” (defined as CONSOL Energy, CONSOL Marine, and CNX Resources Corporation—the latter of which plaintiff acknowledges

² CONSOL Energy and CONSOL Marine incorporate by reference the “Statement of Facts” in the Joint Brief.

³ See *Am. Ass’n of Blood Banks v. Boston Paternity, LLC*, No. 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.”) (quotation omitted).

has been a completely separate company since 2017),⁴ plaintiff makes the same conclusory allegations about Maryland contacts that it makes about all other defendants. *See id.* ¶ 29(f).

The sole specific Maryland contact plaintiff alleges is that CONSOL Marine owns and operates a coal export terminal in the Port of Baltimore. *Id.* ¶ 29(f). But plaintiff does not allege that any of the coal passing through the terminal was extracted, refined, processed, manufactured or produced by CONSOL Energy in Maryland. *See id.* (alleging only that 53% came from CONSOL coal mines in “Appalachia”). Plaintiff also alleges that coal from the terminal was distributed into “in Brazil, Germany, India, and South Korea, among others,”—not Maryland. *Id.*

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 Ann., Cts. & Jud. Proc. § 6-103. Second, the court analyzes whether the defendant’s contacts with Maryland satisfy constitutional due process. *Beyond Sys., Inc.*, 388 Md. at 15.

⁴ In 2017, CONSOL Energy was formed as a new and separate corporate entity. *Id.* ¶ 29(a). CONSOL Marine is a subsidiary of CONSOL Energy. *Id.* ¶ 29(e).

ARGUMENT

I. There Is No Personal Jurisdiction Under Maryland Law.

A. The Court lacks general jurisdiction over CONSOL Energy or CONSOL Marine.

Consistent with well-accepted principles of general jurisdiction, *see* Joint Brief Section II, Maryland law 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 Ann., Cts. & Jud. Proc. § 6-102(a). Plaintiff acknowledges that both companies are incorporated in Delaware and have their principal places of business in Pennsylvania. *See* Compl. ¶¶ 29(b), (e).⁵ For these reasons, there is no general jurisdiction over CONSOL Energy or CONSOL Marine.

B. Maryland’s long-arm statute does not permit the Court to exercise specific personal jurisdiction over CONSOL Energy or CONSOL Marine.

Maryland courts may exercise specific personal jurisdiction only “where the cause of action arises from, or is directly related to, the defendant’s contacts with” Maryland. *CSR, Ltd.*, 411 Md. at 477. Maryland’s long-arm statute permits the exercise of specific personal jurisdiction over nonresident defendants only where the “cause of action aris[es] from” limited enumerated acts. Md. Code Ann., Cts. & Jud. Proc. § 6-103. While plaintiff does not identify which section of the long-arm statute it asserts authorizes jurisdiction over CONSOL Energy and CONSOL Marine, it appears plaintiff is relying on Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1), which provides jurisdiction over a nonresident defendant who transacts business in Maryland; § 6-103(b)(3), which provides jurisdiction over a nonresident defendant who “[c]auses tortious injury in

⁵ As the Joint Brief explains, the U.S. Supreme Court’s recent decision in *Mallory v. Norfolk Southern Railway Co.*, 143 S. Ct. 2028 (2023), does not change the analysis. Joint Brief, n.2.

[Maryland] by an act or omission in [Maryland];” or § 6-103(b)(5), which provides jurisdiction over a nonresident defendant who “[h]as an interest in, uses, or possesses real property in [Maryland].”⁶

Plaintiff has not alleged any facts that would confer jurisdiction under these provisions because its claims do not arise from any Maryland contacts of CONSOL Energy or CONSOL Marine.⁷ *See Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 627 (2017). Plaintiff therefore cannot establish specific personal jurisdiction over CONSOL Energy or CONSOL Marine.

1. Plaintiff’s claims do not arise from the 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.-Md. LLC v. BioZone Lab’ys, Inc.*, 912 F. Supp. 2d 309, 315 (D. Md. 2012) (internal quotation marks and citation omitted). Plaintiff’s conclusory allegation that “CONSOL” “transacts and has transacted substantial fossil fuel-related business in Maryland,” through of a laundry list of activities encompassing its entire business, Compl. ¶ 29(f), does not provide the necessary facts to establish transaction of business by CONSOL Energy in Maryland; thus, there is no personal jurisdiction under § 6-103(b)(1). *See Stisser*, 234 Md. App. at 603 (no personal jurisdiction where “quality and quantity of [defendant’s] 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, 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”).

⁶ To the extent plaintiff argues another provision of the long-arm statute applies, CONSOL Energy and CONSOL Marine reserve their right to address that provision.

⁷ Plaintiff’s claims do not arise from any Maryland contacts for the reasons explained in the Joint Brief. *See* Joint Brief Section III.A.

2. Neither CONSOL Energy nor CONSOL Marine has engaged in tortious conduct in Maryland.

Section 6-103(b)(3) “consists of two distinct elements. There must be 1) ‘a tortious injury in [Maryland]’ which is caused by 2) ‘an act or omission in this State.’” *Zinz v. Evans & Mitchell Indus.*, 22 Md. App. 126, 130 (1974).

Plaintiff does not allege any facts connecting its alleged injuries with actions taken in Maryland by CONSOL Energy or CONSOL Marine. As further explained in Section III.A of the Joint Brief, plaintiff’s alleged injuries—which plaintiff admits are based, in part, on the cumulative emissions from fossil fuels across the world over the past century, *see, e.g.*, Compl. ¶¶ 2-3, 8—do not depend on CONSOL Energy’s products ever being sold, marketed, or used in Maryland or transported by CONSOL Marine in Maryland. Plaintiff’s allegations are therefore insufficient to establish specific personal jurisdiction under § 6-103(b)(3). *See Zinz*, 22 Md. App. at 130 (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 Assocs., 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 there were no “factual allegations to . . . support the claim that [the] injury-causing acts occurred in Maryland”).

3. Plaintiff’s claims do not arise from any alleged activity by CONSOL Energy and CONSOL Marine at the Port of Baltimore.

“[J]urisdiction under [§ 6-103(b)(5)] has been limited to causes of action connected with the property interest.” *Cappel v. Riaso, LLC*, 197 Md. App. 347, 356 (2011) (citing *McLaughlin*, 453 F. Supp. at 529 (no specific personal jurisdiction where “suit arises out of the defendants’ alleged acts which, even if proven, are not connected with any property interests that the defendants may have in Maryland”)). Plaintiff does not allege any connection between its claims and the alleged ownership and operation by the collective “CONSOL” and/or CONSOL Marine

of a coal export terminal at the Port of Baltimore, and therefore cannot establish specific personal jurisdiction under § 6-103(b)(5).⁸

Plaintiff also cannot use CONSOL Marine's ownership and operation of the Baltimore coal export terminal to establish personal jurisdiction over CONSOL Energy. *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").⁹

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 uses 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.") (internal quotation marks and citation omitted); *Haley Paint Co. v. E.I. Dupont De Nemours & Co.*, No. RDB-10-0318, 2012 WL 1145027, at *3 (D. Md. Apr. 3, 2012) ("[T]he fiction of the wholly

⁸ The ownership and operation of a Baltimore coal export terminal, by itself, is insufficient to confer specific personal jurisdiction over CONSOL Energy or CONSOL Marine under any provision of Maryland's long-arm statute. Moreover, exercising personal jurisdiction based merely on the ownership and operation of the coal export terminal would not comport with constitutional due process, *see* Section II below. *See CSR, Ltd.*, 411 Md. at 476 (declining to consider whether defendant's actions in Maryland "meet the requirements for jurisdiction [under the Maryland long-arm statute] because we conclude, *infra*, that the . . . exercise of jurisdiction would have offended the Due Process Clause").

⁹ While plaintiff asserts that CONSOL Marine "acts on CONSOL Energy's[] behalf and subject to CONSOL Energy's[] control," Compl. ¶ 29(e), there are no factual allegations demonstrating this purported control beyond the bare allegation that CONSOL Marine is a subsidiary of CONSOL Energy.

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).

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 Therapeutics, Inc.*, 2018 WL 6573099, at *3 (quotation omitted); *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).

Because plaintiff’s conclusory allegations here do not meet Maryland’s “high bar” for piercing the corporate veil, CONSOL Marine’s contacts with Maryland cannot be imputed to CONSOL Energy. *See Exxon Mobil Corp.*, 406 F. Supp. 3d at 447; *Kennedy v. Hankey Grp.*, No. 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 & Co.*, 775 F. Supp. 2d 790, 799 (D. Md. 2011) (plaintiffs offered “no facts supporting their conclusory allegations” of control over subsidiary).

II. The Exercise Of Personal Jurisdiction Over CONSOL Energy And CONSOL Marine 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 Eng’rs 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)).

Plaintiff has not established minimum contacts for CONSOL Energy and CONSOL Marine because it does not allege: (1) CONSOL Energy purposefully availed itself of conducting activities in Maryland, or (2) its claims arise out of the Maryland contacts of either CONSOL Energy or CONSOL Marine (*see* Joint Brief Section III.A; Section I.B above). *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003) (citation omitted)

A. CONSOL Energy has not purposefully availed itself 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 state. *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.”).

Putting aside its conclusory jurisdictional allegations, the sole specific Maryland contact plaintiff identifies as to either CONSOL Energy or CONSOL Marine is the latter’s ownership and operation of the Baltimore coal export terminal. Compl. ¶ 29(f). This fact cannot establish jurisdiction over CONSOL Energy and CONSOL Marine for the reasons explained above in Section I.B.3, and does not show any purposeful availment by CONSOL Energy.

Even if plaintiff’s conclusory allegations could be interpreted to mean CONSOL Energy shipped coal products through CONSOL Marine’s Baltimore terminal (*see* Compl. ¶ 29(f)), that also does not establish purposeful availment. *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, 625-26 (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).

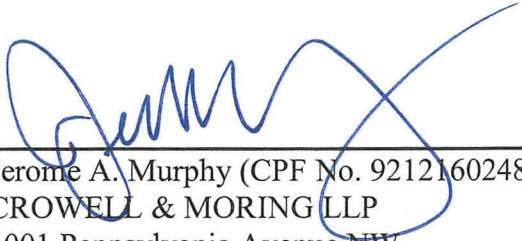
B. Plaintiff’s claims do not arise out of activities of CONSOL Energy or CONSOL Marine in Maryland.

Plaintiff has not alleged its injuries arose out of CONSOL Energy’s or CONSOL Marine’s activities in Maryland. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1022 (2021); Joint Brief, Section III.A; Section I.B above. Rather, Plaintiff alleges that its injuries are the result of *global* greenhouse gas emissions that have accumulated over the course of a century. Compl. ¶¶ 2-3, 8. Notably, plaintiff does *not* assert that the events giving rise to its claims or its alleged injuries stem from the use of CONSOL Energy’s products or CONSOL Marine’s transport of those products within Maryland. Nor could plaintiff, as “it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and at what place in the world—‘caused’ Plaintiff[’s] alleged global warming related injuries.” *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 881 (N.D. Cal. 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012). Plaintiff’s assertions regarding its alleged injuries and CONSOL Energy’s and CONSOL Marine’s purported contacts with Maryland therefore fail to satisfy the “arises out of” requirement. *See Bristol-Myers Squibb*, 582 U.S. 255, 264 (2017) (“When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.”).

CONCLUSION

CONSOL Energy and CONSOL Marine respectfully request that the Court dismiss plaintiff’s claims for lack of personal jurisdiction with prejudice.

Dated October 16, 2023



Jerome A. Murphy (CPF No. 9212160248)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
Email: jmurphy@crowell.com
Tel: (202) 624-2500
Fax: (202) 628-5116

Tracy A. Roman (admitted *pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
Email: troman@crowell.com
Tel: (202) 624-2500
Fax: (202) 628-5116

Honor R. Costello (admitted *pro hac vice*)
Mara R. Lieber (*pro hac vice* forthcoming)
CROWELL & MORING LLP
590 Madison Avenue, 20th Fl.
New York, NY 10022
Tel: (212) 233-4000
Fax: (212) 233-4134

*Counsel for Defendants CONSOL Energy Inc.
and CONSOL Marine Terminals LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of October, 2023, a copy of CONSOL Energy Inc.'s and CONSOL Marine Terminals LLC's Supplemental Motion to Dismiss for Lack of Personal Jurisdiction was served via electronic mail on the following:

Victor Sher
Matthew Edling
Katie Jones
Martin Quiñones
Quentin Karpilow
SHER EDLING LLP
100 Montgomery St., Ste. 1410
San Francisco, CA 94104
vic@sheredling.com
matt@sheredling.com
katie@sheredling.com
marty@sheredling.com
quentin@sheredling.com

Sara Gross
BALTIMORE COUNTY LAW DEPARTMENT
100 N. Holliday Street, Suite 109
Baltimore, MD 21202
Sara.Gross@baltimorecity.gov

Attorneys for Plaintiff the Mayor and City Council of Baltimore



Jerome A. Murphy (CPF No. 9212160248)