

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
* Specially Assigned to the
* Hon. Videtta A. Brown
*

* * * * *

**PLAINTIFF MAYOR AND CITY COUNCIL OF BALTIMORE'S
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS
CONSOL ENERGY INC'S AND CONSOL MARINE TERMINALS LLC'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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I. INTRODUCTION

The Mayor and City Council of Baltimore (“the City”) sues to vindicate local injuries caused by Defendants’ decades-long campaign to discredit climate change science; to fail to warn about and conceal the catastrophic dangers posed by their fossil fuel products; and to misrepresent their role in exacerbating the climate crisis. CONSOL Energy Inc. and its closely controlled subsidiary CONSOL Marine Terminals LLC (collectively, “CONSOL Defendants”) have ample contacts with Maryland that justify exercising specific personal jurisdiction over them here: they have distributed, marketed, promoted, sold, and supplied fossil fuel products in Maryland, *see* Compl. ¶ 29(f); owned and operated a coal terminal in Maryland, *id.*; and participated in a coordinated campaign with other Defendants and various front groups to mislead Maryland consumers, *see id.* ¶¶ 30–31, 145–47, 160–62, 166–67, 170.

As the City explains in its opposition to Certain Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (“Joint Motion”), the City’s un rebutted allegations show that each CONSOL Defendant purposefully availed itself of the privilege of conducting activities in Maryland, the City’s claims arise out of or relate to these in-state contacts, and the exercise of specific personal jurisdiction is constitutionally reasonable.

CONSOL Defendants’ supplemental motion (“Mot.”) adds two unmeritorious arguments. *First*, they ask the Court to ignore allegations that refer to them and other Defendants in the collective, alleging they acted in the same way. Mot. at 2 n.3. Collective allegations, or “group pleading,” comport with longstanding Maryland pleading principles. The Court should adhere to the familiar approach of accepting the City’s allegations and drawing reasonable inferences in its favor, and it should not adopt a novel proscription against collective allegations.

Second, CONSOL Defendants argue that exercising personal jurisdiction over them would be inconsistent with Maryland's long-arm statute. As CONSOL Defendants admit, however, "the reach of the long-arm statute is coextensive with the limits of personal jurisdiction delineated under the due process clause." Joint Mot. at 6 (quotation omitted). Because the City establishes the propriety of specific personal jurisdiction under the Due Process Clause, there is no need for a separate statutory analysis. In any event, the City's allegations satisfy Maryland's long-arm statute.

Even if the Court were to accept CONSOL Defendants' position that their own Maryland contacts are insufficient, they nonetheless would be subject to suit in Maryland under the conspiracy and agency theories of specific personal jurisdiction. The Complaint amply alleges that CONSOL Defendants conspired with others and acted through agents to take actions in Maryland that relate to the City's claims, thereby allowing the exercise of personal jurisdiction over them.

CONSOL Defendants' motion to dismiss for lack of personal jurisdiction should be denied.

II. LEGAL STANDARDS¹

When deciding a motion to dismiss for lack of personal jurisdiction under Maryland Rule 2-322(a), a court considers whether Maryland's long-arm statute is satisfied and whether the exercise of personal jurisdiction would comport with the Due Process Clause. *CSR, Ltd. v. Taylor*, 411 Md. 457, 471–73 (2009). Because Maryland's long-arm statute is "coterminous with the limits of the Due Process Clause," the inquiry's statutory and constitutional aspects merge. *Stover v. O'Connell Assocs.*, 84 F.3d 132, 135–36 (4th Cir. 1996)²; *see Mohamed v. Michael*, 279 Md. 653, 657–59 (1977) ("[I]t was the intent of the Legislature in enacting the long-arm statute to expand the personal jurisdiction of the courts to the extent permitted by the Fourteenth Amendment.").

¹ As detailed in the City's Opposition to the Joint Motion ("Opp."), which the City incorporates by reference herein, only specific personal jurisdiction is at issue in this case. *See* Opp. at Part III (discussing specific personal jurisdiction analysis and pleadings standards).

² Maryland courts often cite the Fourth Circuit when discussing personal jurisdiction. *E.g.*, *Bond v. Messerman*, 391 Md. 706, 721 (2006); *CSR, Ltd.*, 411 Md. at 483.

III. The City Has Made a Prima Facie Showing of Specific Personal Jurisdiction.

As detailed in its opposition to the Joint Motion, the City has made a *prima facie* showing that CONSOL Defendants are subject to specific personal jurisdiction in Maryland.

A. CONSOL Defendants Purposefully Availed Themselves of the Privilege of Doing Business in Maryland.

The City shows that each CONSOL Defendant purposefully availed itself of the privilege of doing business in Maryland. Purposeful availment is satisfied by a wide range of acts including, without limitation, “[d]esigning [a] product for the market [], advertising [], establishing channels for providing regular advice to customers [], or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.” *CSR, Ltd.*, 411 Md. 457, 485 (2009) (quoting *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion)).

The Complaint alleges that CONSOL Defendants own and operate a coal terminal in Baltimore, Compl. ¶ 29(f); derive substantial revenue from their fossil fuel products in Maryland, *id.*; and have coordinated with other Defendants and groups like the Global Climate Coalition (“GCC”) to conceal and misrepresent the known dangers of fossil fuels from the City and the general public, *id.* ¶¶ 30–31, 103–58, 161, 166–67, 170. Drawing all reasonable inferences from them in the City’s favor, these uncontested allegations show more than a *prima facie* case that CONSOL Defendants have purposefully availed themselves of Maryland.

B. The City’s Claims Relate to CONSOL Defendants’ Maryland Contacts.

CONSOL Defendants’ Maryland contacts—which included the same tortious conduct at the heart of the City’s suit—obviously relate to the City’s claims. As the U.S. Supreme Court held in *Ford*, relatedness requires only a sufficiently “strong relationship among the defendant, the forum, and the litigation.” *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021) (cleaned up). Such a relationship is present here because the City “allege[s] that [it]

suffered in-state injury because of [harmful] products that [CONSOL Defendants] extensively promoted [and] sold” in Maryland. *Id.* at 1032.

CONSOL Defendants misrepresent *Ford*’s relatedness standard in arguing that the City must show its injuries “arose out of CONSOL [Defendants’] activities in Maryland.” Mot. at 10. That argument improperly revives the causation-only approach to personal jurisdiction rejected by in *Ford*. 141 S. Ct. at 1026 (explaining that “*arise out of or relate to*” is disjunctive: “The first half of that standard asks about causation; but the back half, after the ‘or,’ contemplates that some relationships will support jurisdiction *without a causal showing*” (cleaned up) (emphasis added)).

As in the Joint Motion, CONSOL Defendants also misrepresent that the City’s harms result from the cumulative effect of global greenhouse gas emissions. Mot. at 10. To reiterate, the City alleges only that Defendants are liable for injuries in Maryland attributable to *their* unlawful and deceptive conduct, aimed at consumers and the public concerning climate change, in Maryland as elsewhere. Compl. ¶¶ 29(f), 30–31, 102, 140–47, 182, 190–95. As the Hawai’i Supreme Court held in a very similar case, allegations like the City’s “clearly seek[] to challenge the promotion and sale of fossil-fuel products without warning and abetted by a sophisticated disinformation campaign” and are not about the effects of all global greenhouse gas emissions. *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1181 (Haw. 2023) (citing *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 233 (4th Cir. 2022)).

CONSOL Defendants’ contacts with Maryland, including their advertising, marketing, and failure to warn, Compl. ¶¶ 29(f), 140, *relate to* the City’s claims under *Ford*.

IV. The Court Must Consider the Complaint’s Collective Allegations.

The City’s use of collective allegations is consistent with Maryland pleading principles. Under Maryland law, the Court must accept the Complaint’s allegations as true and draw all

reasonable inferences from them in the City's favor.³ Resisting this approach CONSOL Defendants improperly urge the Court to disregard allegations referring to CONSOL Defendants and other Defendants in the collective and stating that they acted in the same way. Mot. at 2 & n.3.

CONSOL Defendants try to locate a proscription of collective allegations, or "group pleading," in *American Association of Blood Banks v. Boston Paternity, LLC*, 2009 WL 2366175, at *4 (D. Md. July 28, 2009). Mot. at 2. But that federal district court simply described the familiar principle that personal jurisdiction must be "establish[ed] . . . for each defendant individually," and did not prohibit collective allegations or otherwise pass upon group pleading. *Id.* Instead, CONSOL Defendants' proposed proscription clashes with basic Maryland pleading principles and is unsupported by case law. The Maryland Supreme Court has rejected technical pleading requirements by commanding that "a pleading shall be simple, concise, and direct" and "shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense." Md. Rule 2-303(b); *see also LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 410 (2007) (no technical pleading required). A pleading serves four purposes, the first being the most important: "(1) it provides notice to the parties as to the nature of the claim or defense; (2) it states the facts upon which the claim or defense allegedly exists; (3) it defines the boundaries of litigation; and (4) it provides for the speedy resolution of frivolous claims and defenses." *Ledvinka v. Ledvinka*, 154 Md. App. 420, 429 (2003).

The City's collective allegations satisfy each of these four purposes. CONSOL Defendants have ample notice about the claims, underlying facts, and the bounds of the litigation; the Court has assurance that the City's claims are not frivolous; and the City's collective allegations promote

³ *See CSR Ltd.*, 411 Md. at 472 (for a motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a *prima facie* showing); *Bradley v. DentalPlans.com*, 617 F. Supp. 3d 326, 332–33 (D. Md. 2022) ("Under a *prima facie* standard, the court must construe all disputed facts and reasonable inferences in the plaintiff's favor.").

brevity without undermining any of the purposes of pleading. *See Frazier v. U.S. Bank, N.A.*, 2013 WL 1337263, at *3 (N.D. Ill. Mar. 29, 2013) (“Although Plaintiff refers to [defendants] collectively, Plaintiff has provided sufficient factual detail about the nature of his allegations and about each defendant to provide fair notice of his claims.” (cleaned up)). To require more would erect an unduly technical pleading requirement, *see Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997), that clashes with Maryland courts’ commitment to straightforward pleading, *see LaSalle Bank, N.A.*, 173 Md. App. at 410 (no technical pleading required).

Indeed, federal courts throughout the country often have embraced collective allegations.⁴ In fact, Maryland federal courts have been especially open to collective allegations where the plaintiff has only limited available information without discovery given the nature of the wrongful conduct, as is the case here given Defendants’ concealment of their deception activities. *CASA de Md., Inc. v. Arbor Realty Tr., Inc.*, 2022 WL 4080320, at *4 (D. Md. Sept. 6, 2022).⁵ Indeed, federal courts have recognized that group pleading can satisfy even heightened pleading requirements like Federal Rule of Civil Procedure 9(b). *See United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016). Collective allegations are proper as long as a plaintiff meets the otherwise applicable pleading standard. The Court should reject CONSOL Defendants’ invitation to simply ignore the collective allegations in the City’s robustly pleaded Complaint.

⁴ *E.g.*, *Maryland v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 476 (D. Md. 2019) (rejecting defendants’ argument that “group pleading” was “improper”); *Chevron U.S.A. Inc. v. Apex Oil Co.*, 113 F. Supp. 3d 807, 815 n.1 (D. Md. 2015) (collecting cases showing “[n]othing in [Fed. R. Civ. P.] 8,” the federal rule governing pleading, “prohibits collectively referring to multiple defendants where the complaint alerts defendants that identical claims are asserted against each defendant” (quoting *Vantone Grp. Ltd. Liab. Co. v. Yangpu NGT Indus. Co.*, 2015 WL 4040882, at *3 (S.D.N.Y. July 2, 2015))); *see also Lackey v. MWR Investigations, Inc.*, 2015 WL 132613, at *2 (D. Md. Jan. 8, 2015).

⁵ *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 291 (4th Cir. 2012) (requiring “nonconclusory factual detail at the pleading stage is tempered by the recognition that a plaintiff may only have so much information at his disposal at the outset.”); *see also* Compl. ¶¶ 30–31, 146–47, 150–52, 154, 158–67, 190 (allegations about concealment).

V. Maryland's Long-Arm Statute Does Not Establish an Independent Restriction on Personal Jurisdiction.

Alternatively, CONSOL Defendants argue that the Maryland long-arm statute is not satisfied. Mot. at 4–8. CONSOL Defendants' unstated premise is that even if due process is satisfied, Maryland's long-arm statute independently restricts specific personal jurisdiction. However, as CONSOL Defendants admit in the Joint Motion, Maryland courts have held for many decades "that the reach of the long-arm statute is coextensive with the limits of personal jurisdiction delineated under the due process clause." Joint Mot. at 6 (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 22 (2005)). There is no need for a separate statutory analysis because the long-arm statute "merges with [the] constitutional examination." *Id.*

Even if the Court were to entertain CONSOL Defendants' self-contradictory suggestion that the Court must separately examine Maryland's long-arm statute, the statute is satisfied. The City's allegations easily satisfy § 6-103(b)(1), which requires "transact[ing] any business or perform[ing] any character of work or service in the State." See Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1). The Legislature included this broad language to codify the minimum-contacts requirement established by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny. See *Novack v. Nat'l Hot Rod Ass'n*, 247 Md. 350, 353–54 (1967). Put differently, § 6-103(b)(1) requires only "actions that culminate in purposeful activity within the State." *Bahn v. Chi. Motor Club Ins. Co.*, 98 Md. App. 559, 568 (1993) (cleaned up). Here, as explained, CONSOL Defendants undertook numerous, purposeful activities in Maryland. See *supra* Section A.1.⁶ Maryland's long-arm statute supports exercising personal jurisdiction over CONSOL Defendants.

⁶ CONSOL Defendants rely on a single federal district court decision to assert that Maryland courts construe § 6-103(b)(1) "narrowly," see Mot. at 5 (quoting *Aphena Pharma Sols.-Md. LLC v. BioZone Labs., Inc.*, 912 F. Supp. 2d 309, 315 (D. Md. 2012)). But that assertion clashes with controlling state-court precedent construing the "transact any business" language as extending specific personal jurisdiction to the maximum extent allowed by federal constitutional due process. See *Novack*, 247 Md. at 353–55; *Mohamed*, 279 Md. 653, 658–59 (1977).

VI. CONSOL Defendants Are Also Subject to Specific Personal Jurisdiction in Maryland Under Conspiracy and Agency Doctrines.

A. CONSOL Defendants Are Subject to Personal Jurisdiction in Maryland Because of Their Co-Conspirators' Contacts.

Even if CONSOL Defendants' own Maryland contacts do not support personal jurisdiction, the Court also has personal jurisdiction over CONSOL Defendants through the conspiracy theory of jurisdiction. That theory "allows a court to exercise jurisdiction over an out-of-state defendant whose co-conspirators have committed jurisdictionally sufficient acts within the forum state." *Coastal Labs., Inc. v. Jolly*, 502 F. Supp. 3d 1003, 1020 (D. Md. 2020) (citations omitted).

The doctrine requires a plaintiff to plead that: (1) two or more individuals conspired to do something, (2) that "something" could reasonably be expected to lead to consequences in the forum, (3) at least one co-conspirator committed an overt act in furtherance of the conspiracy, and (4) the overt act would subject a non-resident to personal jurisdiction under Maryland's long-arm statute. *Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 130–31 (2006). Where these elements are satisfied, any overt acts are attributable to all other co-conspirators "even if they have no direct contacts with the forum." *Id.* (citation omitted). Plaintiff need only make a "threshold" or *prima facie* showing under the conspiracy theory. *McLaughlin v. Copeland*, 435 F. Supp. 513, 530 (D. Md. 1977) (applying Maryland's conspiracy theory to state-law claims). Such a showing suffices "in view of the difficulties of pleading and proving a conspiracy." *Id.*

Plaintiff easily makes a threshold showing of these elements. *First*, CONSOL Defendants conspired with others to engage in a coordinated campaign intended to conceal and misrepresent the known dangers of fossil fuels, Compl. ¶¶ 30–31, 145–47, to discredit climate change science, *id.* ¶ 161–62, 166, and to promote the continued and heavy use of their fossil fuel products, *id.* ¶ 6, 145, which they knew would result in injuries to Maryland and Baltimore, *id.* ¶ 141, 191–95. *Second*, CONSOL Defendants not only knew that unabated consumption of their products would

exacerbate climate change hazards in Maryland and Baltimore, *id.* ¶¶ 103–41, 170, but they also engaged in a coordinated “tortious, false and misleading conduct” meant to deliberately deceive consumers, *id.* ¶ 170, *see also* ¶¶ 141–69, and “to maximize continued dependence on their [fossil fuel] products,” *id.* ¶ 145. *Third*, CONSOL Defendants, together with their co-conspirators, “took affirmative steps to conceal, from [City] and the general public, the foreseeable impacts of the use of their fossil fuel products,” *id.* ¶ 147, *see also id.* ¶ 190; they “embarked on a decades-long campaign designed to maximize continued dependence on” their fossil fuel products, *id.* ¶ 145; they “funded dozens of think tanks, front groups, and dark money foundations pushing climate change denial,” *id.* ¶ 167; GCC “funded advertising campaigns and distributed material to generate public uncertainty around the climate debate,” on their behalf, *id.* ¶ 161; and they failed to warn Maryland consumers about the disastrous effects of fossil fuel use, *id.* ¶¶ 140–45. *Finally*, because any of the overt acts suffices to subject a Defendant to personal jurisdiction in Maryland, this Court has personal jurisdiction over all Defendants, including CONSOL Defendants.⁷

B. CONSOL Defendants Are Subject to Personal Jurisdiction in Maryland Because of Their Agents’ Contacts.

Maryland’s agency theory of personal jurisdiction is “not fundamentally different from the conspiracy theory.” *McLaughlin*, 435 F. Supp. at 533. It allows personal jurisdiction “over a non-resident corporation based on the acts of its agents in Maryland.” *Jones v. Mut. of Omaha Ins. Co.*,

⁷ CONSOL Defendants argue that the City must pierce the corporate veil to establish personal jurisdiction over CONSOL Energy through the actions of its subsidiary, CONSOL Marine. Mot. at 8. However, a subsidiary’s acts may be attributed to a parent through agency principles “where the facts establish control of the subsidiary by the parent.” *Copiers Typewriters Calculators, Inc. v. Toshiba Corp.*, 576 F. Supp. 312, 324 (D. Md. 1983). “[T]he existence of an agency relationship is generally a question of fact for the trier of fact,” *id.* (citing *P. Flanigan & Sons, Inc. v. Childs*, 251 Md. 646, 652 (1968)), and when the existence of such a relationship “goes to the merits of a particular claim, any question of fact must be resolved by the jury,” *Copiers Typewriters Calculators, Inc.*, 576 F. Supp. at 325. At minimum, the Court should not resolve this question on the pleadings because the determination of “successor liability is a mixed question of law and fact, with a ‘heavier factual component,’” *Playmark, Inc. v. Perret*, 253 Md. App. 593, 608 (2022) (quoting *Martin v. TWP Enters., Inc.*, 227 Md. App. 33, 49 (2016)), involving “an examination of the corporate entities involved, including a factual comparison of the selling corporation to the purchasing corporation,” *Martin*, 227 Md. App. at 49.

639 F. Supp. 3d 537, 550 (D. Md. 2022) (citations omitted). Agency theory, like conspiracy, requires only a “threshold” or *prima facie* showing. *Id.* 544–45; *Hare v. Fam. Publ’ns Serv., Inc.*, 342 F. Supp. 678, 682 (D. Md. 1972). Courts assess three non-essential and non-determinative factors: “(1) the agent’s power to alter the legal relations of the principal; (2) the agent’s duty to act primarily for the benefit of the principal; and (3) the principal’s right to control the agent.” *Green v. H & R Block, Inc.*, 355 Md. 488, 503–04 (1999).

The Complaint describes multiple agency relationships involving CONSOL Defendants that support personal jurisdiction. The City alleges that each CONSOL Defendant was the “agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer” of all other Defendants and was at all times “operating and acting within the purpose and scope of” those relationships. Compl. ¶ 32. CONSOL Energy also controls the extent of fossil fuel production and sales of its subsidiaries, including CONSOL Marine. *Id.* ¶ 29(c), (e). Together, Defendants, including CONSOL Defendants, used each other and trade associations to engage “in a long-term course of conduct to misrepresent, omit, and conceal the dangers of Defendants’ fossil fuel products.” *Id.* ¶ 31. For example, GCC funded “funded advertising campaigns and distributed material to generate public uncertainty around the climate debate” on Defendants’ behalf. *Id.* ¶ 161.

VII. In the Alternative, the Court Should Permit Jurisdictional Discovery.

In the unlikely event the Court concludes more facts are needed for personal jurisdiction, the City requests leave to conduct jurisdictional discovery. *E.g., Androutsos v. Fairfax Hosp.*, 323 Md. 634, 639–40 (1991) (abuse of discretion to refuse discovery); *Swarey v. Stephenson*, 222 Md. App. 65, 104–05 (2015) (similar).

VIII. CONCLUSION

This Court has specific personal jurisdiction over CONSOL Defendants.

Dated: December 12, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2023, a copy of the *Mayor and City Council of Baltimore's Memorandum of Law in Opposition to Defendants' Consol Energy Inc.'s and Consol Marine Terminals LLC's Motion to Dismiss for Lack of Personal Jurisdiction* was served upon all counsel of record via email (by agreement of the parties).

/s/ Matthew K. Edling

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