

**IN THE CIRCUIT COURT
FOR BALTIMORE CITY**

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

vs.

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

Defendants.

Case No. 24-C-18-004219

**REPLY OF CONSOL ENERGY INC. AND CONSOL MARINE
TERMINALS LLC IN SUPPORT OF SUPPLEMENTAL
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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Plaintiff's opposition underscores that it has not made a *prima facie* showing of specific jurisdiction over CONSOL Energy Inc. ("CONSOL Energy") and CONSOL Marine Terminals LLC ("CONSOL Marine").¹ Plaintiff's conclusory and collective allegations fail to establish personal jurisdiction for CONSOL Energy and CONSOL Marine individually. Plaintiff attempts to bootstrap jurisdiction over CONSOL Energy by pointing to CONSOL Marine's coal export operations in Maryland but fails to address the fundamental disconnect between its theory of liability and its theory of personal jurisdiction, which means its claims do not relate to the alleged Maryland contacts as required for due process. Even if plaintiff were able to meet the due process requirements, it must—but does not—satisfy the Maryland long-arm statute. Plaintiff's conspiracy and agency theories of jurisdiction do not save its claims against CONSOL Energy or CONSOL Marine from dismissal.

ARGUMENT

I. PLAINTIFF'S COLLECTIVE ALLEGATIONS DO NOT ESTABLISH PERSONAL JURISDICTION OVER CONSOL ENERGY AND CONSOL MARINE.

Plaintiff incorrectly argues that its collective allegations establish personal jurisdiction over CONSOL Energy and CONSOL Marine. Opp. at 4-6. Group pleading is generally improper,² and even more so for personal jurisdiction, which must be established "for each defendant individually," as plaintiff admits. Opp. at 5; *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). Plaintiff's authorities do not say otherwise. Far from a "novel" proposition (Opp. at 1), it is well established that plaintiff cannot simply rely on collective allegations and must plead facts establishing personal

¹ Plaintiff concedes no general jurisdiction. Mem. of Law in Opp. to Defs. CONSOL Energy Inc.'s & CONSOL Marine Terminals LLC's Supplemental Motion to Dismiss for Lack of Personal Jurisdiction ("Opp.") at 2 n.1.

² CONSOL Energy Inc.'s & CONSOL Marine Terminals LLC's Mem. of Law in Supp. of Their Supplemental Motion to Dismiss for Failure to State a Claim ("CONSOL Merits Br.") at § I.B; Reply of CONSOL Energy & CONSOL Marine in Supp. of Supplemental Motion to Dismiss for Failure to State a Claim ("CONSOL Merits Reply") at § I.

jurisdiction as to each defendant. *See, e.g., In re Royal Ahold N.V. Sec. & ERISA Litig.*, 351 F. Supp. 2d 334, 354 (D. Md. 2004) (requiring “specific factual allegations” to establish personal jurisdiction); *Aegean Marine Petroleum Network, Inc. Sec. Litig.*, 529 F. Supp. 3d 111, 135 (S.D.N.Y. 2021) (“To allege personal jurisdiction over a defendant, group pleading is not permitted.”); *Peebles v. Caroline Container, LLC*, 2019 WL 12338070, at *6 n.3 (N.D. Ga. Apr. 3, 2019) (“‘[G]roup pleading’ methods are not an acceptable way to establish personal jurisdiction over multiple defendants at once.”). Plaintiff has failed to do so here.

II. PLAINTIFF CANNOT MEET THE DUE PROCESS REQUIREMENTS.

First, plaintiff’s opposition fails to identify any purposeful availment by CONSOL Energy. Plaintiff points to no facts supporting the conclusory allegation that CONSOL Energy “derive[s] substantial revenue from [its] fossil fuel products in Maryland.” Opp. at 3.³ The only specific fact plaintiff identifies is CONSOL Marine’s coal export terminal in Baltimore, which does not establish purposeful availment by CONSOL Energy.⁴ Plaintiff illogically argues that CONSOL Energy “controls” CONSOL Marine’s “fossil fuel production and sales” in Maryland (Opp. at 10), even though CONSOL Marine is not a producer or seller of coal. *See* Compl. ¶ 29(e), (f). Even if coal produced by CONSOL Energy moves through the terminal, plaintiff alleges that coal is sold or distributed into markets outside the U.S.—not Maryland. Compl. ¶ 29(f) (“From the terminal, CONSOL sells and/or distributes that coal into markets in Brazil, Germany, India, and South Korea, among others.”).

³ Even if CONSOL Energy advertised to the public generally, that would not establish purposeful availment. *See CSR, Ltd. v. Taylor*, 411 Md. 457, 492-93 (2009) (no purposeful availment by general advertising not targeted to Maryland).

⁴ CONSOL Energy Inc.’s & CONSOL Marine Terminals LLC’s Mem. of Law in Supp. of Their Supplemental Motion to Dismiss for Lack of Personal Jurisdiction (“CONSOL PJ Br.”) at § II.A.

Plaintiff does not even attempt to explain how CONSOL Energy purportedly “coordinated with other Defendants and groups like the Global Climate Coalition” or how that could be deemed purposeful availment *in Maryland*. Opp. at 3; *see, e.g.*, Compl. ¶ 31(g) (CONSOL Energy and CONSOL Marine not included in list of alleged GCC members). In any event, plaintiff’s conclusory group allegations cannot establish purposeful availment by CONSOL Energy. *See* § I above.

Second, plaintiff concedes that it cannot meet the “arises from” standard, arguing instead that CONSOL Energy’s and CONSOL Marine’s contacts with Maryland “relate to” its claims. *Compare* Opp. at 3-4, *with* CONSOL PJ Br. § II.B. Contrary to plaintiff’s assertion, *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), does not state that causation is *never* required, and makes clear that “the phrase ‘relate to’ incorporates real limits” on the exercise of specific jurisdiction. *Id.* at 1026; Joint Reply Brief in Support of Certain Defs.’ Motion to Dismiss for Lack of Personal Jurisdiction (“Joint PJ Reply”) at § I.A.1. Only a strong relationship between the defendant, forum, and litigation will suffice. *Ford*, 141 S. Ct. at 1028; Joint PJ Reply at 7. Here, plaintiff has not shown the strong relationship between the defendant, forum, and litigation that is required and that existed in *Ford*. *See* Joint PJ Reply at § I.A.2. Plaintiff cannot make this showing for any defendant,⁵ but especially not for CONSOL Energy and CONSOL Marine. Because plaintiff argues its claims arise from the sale and marketing of fossil fuel products in Maryland (Opp. at 4), the movement of coal through the Port of Baltimore to other jurisdictions does not relate to those claims.⁶

⁵ *See* Joint PJ Reply at § I.A.2.

⁶ *See* Joint Opening Br. in Supp. of Certain Defs.’ Motion to Dismiss for Lack of Personal Jurisdiction (“Joint PJ Br.”) at § III.A; Joint PJ Reply at § I.A.2.

Third, the exercise of personal jurisdiction over CONSOL Energy and CONSOL Marine would be not be constitutionally reasonable. *See* Joint PJ Br. at § III.B; Joint PJ Reply at § I.B.

III. PLAINTIFF DOES NOT ALLEGE FACTS SUPPORTING JURISDICTION UNDER THE MARYLAND LONG-ARM STATUTE.

Plaintiff gets the law backwards when it argues that the Court need not conduct a long-arm statute analysis because exercising personal jurisdiction would comport with due process. Opp. at 7. While the Maryland long-arm statute is intended to be co-extensive with the limits of due process, Maryland courts forgo the long-arm analysis *only* if they have determined that the exercise of personal jurisdiction would violate due process. *Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 141 n.6 (2006); *CSR*, 411 Md. at 476 n.10. Because exercising personal jurisdiction over CONSOL Energy and CONSOL Marine would violate due process, the Court need not reach the long-arm statute. *See* § II above; Joint PJ Br. § III.B.

However, if this Court finds exercising jurisdiction comports with due process, plaintiff must show it satisfies the long-arm statute.⁷ Section 6-103(a) requires that a “cause of action aris[e] from” an enumerated act. Md. Code Ann., Cts. & Jud. Proc. § 6-103(a). Within this framework, “transacting business” under § 6-103(b)(1) is interpreted “narrowly” to require ““some purposeful act in Maryland *in relation to* one or more of the elements of [the] cause of action.”” *Aphena Pharma Sols.-Md. LLC v. BioZone Lab ’ys, Inc.*, 912 F. Supp. 2d 309, 315 (D. Md. 2012) (alteration in original) (emphasis added) (citation omitted). Plaintiff’s cases (Opp. at 7) are not to the contrary; each involved claims arising from alleged Maryland contacts.

Plaintiff’s conclusory, collective allegations fail to establish any “purposeful act” by CONSOL Energy in Maryland. Also, plaintiff’s claims based on marketing and sale of fossil fuel

⁷ The complaint does not identify any specific long-arm statute provisions, and plaintiff’s opposition relies only on Section 6-103(b)(1). Opp. at 7. Plaintiff does not dispute that Sections 6-103(b)(3) and 6-103(b)(5) are inapplicable. *Compare* CONSOL PJ Br. § I.B, *with* Opp. at 7.

products (Opp. at 4) do not relate to the export of coal to other jurisdictions, making CONSOL Marine's alleged contacts irrelevant to the specific jurisdiction analysis. *See Marriott Corp. v. Village Realty & Inv. Corp.*, 58 Md. App. 145, 156 (Md. Ct. Spec. App. 1984) (no jurisdiction under Section 6-103(b)(1) where alleged contact did not create "'a substantial enough connection' with this State as to make the exercise of jurisdiction here reasonable"); *see also* § II above.

IV. **THERE IS NO BASIS FOR PERSONAL JURISDICTION UNDER AGENCY OR CONSPIRACY THEORIES.**

As a fallback, plaintiff argues that this Court can exercise personal jurisdiction over CONSOL Energy and CONSOL Marine under agency or conspiracy theories of jurisdiction. However, plaintiff fails to make a *prima facie* showing of any agency relationship or conspiracy involving CONSOL Energy or CONSOL Marine.

A. No Agency Relationships.

None of the three supposed agency relationships that plaintiff purports to rely on sustains jurisdiction here. Opp. at 10. First, plaintiff's argument that CONSOL Marine was the agent of CONSOL Energy (Opp. at 10) relies on boilerplate, conclusory allegations. *See* Compl. ¶ 29(c), (e). Even if supported by factual allegations, this purported agency relationship cannot establish personal jurisdiction over CONSOL Energy because plaintiff has not established personal jurisdiction over CONSOL Marine. *See* §§ II, III above.

Second, plaintiff offers no facts supporting its argument that CONSOL Energy and CONSOL Marine were the "'agent[s], servant[s], partner[s], aider[s] and abettor[s], co-conspirator[s], and/or joint venturer[s]' of all other Defendants,'" and the argument makes little sense, particularly for claims based on each defendant's individual sales and marketing of fossil fuels. Opp. at 10. No allegations suggest other defendants had the ability to "alter the legal

relations” or “act primarily for the benefit of” CONSOL Energy and CONSOL Marine, or that CONSOL Energy or CONSOL Marine had the “right to control” other defendants. Opp. at 10.

Third, plaintiff does not allege facts suggesting that GCC, which disbanded in 2001 (Compl. ¶ 31(g)), was an agent of the later-formed CONSOL Energy or its subsidiary CONSOL Marine. *See* Opp. at 10. Plaintiff alleges no connection at all between CONSOL Energy or CONSOL Marine and GCC. *See* Compl. ¶ 31(g).

The scant allegations on CONSOL Energy and CONSOL Marine fall far short of what is needed to plead an agency relationship between them, other defendants, or any other entity.

B. No Conspiracy Jurisdiction.

Even if the Court considers the conspiracy theory of personal jurisdiction,⁸ plaintiff fails to plead facts establishing that CONSOL Energy and CONSOL Marine were co-conspirators of GCC or any other defendant. The conspiracy theory of jurisdiction is “based on the premise that one co-conspirator is acting as the agent of the others.” *Mackey*, 391 Md. at 129. Plaintiff’s allegations fail to show any kind of agency relationship that could support jurisdiction here. *See* § IV.A above. The vague, collective allegations plaintiff points to (Opp. at 8-9) do not make a *prima facie* showing of a conspiratorial relationship between or among CONSOL Energy, CONSOL Marine, or any other defendant or organization because plaintiff pleads no facts connecting these entities.

Unable to point to any factual allegations, plaintiff asserts for the first time in its opposition a conspiracy based on participation in GCC. Opp. at 9. But even if membership in GCC (which is not alleged for CONSOL Energy or CONSOL Marine) constituted participation in a conspiracy

⁸ While the Maryland Court of Appeals has recognized the conspiracy theory of personal jurisdiction (Opp. at 8), its constitutionality is widely questioned. *See, e.g., Smith v. Jefferson Cnty. Bd. of Educ.*, 378 F. App’x 582, 585-86 (7th Cir. 2010).

(which it does not),⁹ due process requires “jurisdictionally sufficient acts in furtherance of the conspiracy” creating a “substantial connection between the forum and [the] conspiracy.” *Mackey*, 391 Md. at 129-31. The conclusory argument that “GCC ‘funded advertising campaigns and distributed material to generate public uncertainty around the climate debate,’ on [defendants’] behalf” (Opp. at 9) does not show a substantial connection to Maryland. Plaintiff’s other “conclusory and speculative” allegations of conspiracy cannot establish personal jurisdiction. *See Unspam Techs., Inc. v. Chernuk*, 716 F.3d 322, 330 (4th Cir. 2013).

Plaintiff also does not point to any specific acts in furtherance of the alleged conspiracy by GCC that would subject CONSOL Energy and CONSOL Marine to jurisdiction in Maryland, let alone specific facts to establish a “substantial connection” to Maryland. Separate companies’ unilateral acts in marketing campaigns related to their own products cannot reasonably be attributed to CONSOL Energy or CONSOL Marine. *See Mackey*, 391 Md. at 137. Plaintiff’s lack of facts alleging a plausible conspiracy means others companies’ or organizations’ contacts with Maryland cannot be imputed to CONSOL Energy and CONSOL Marine.

V. THIS COURT SHOULD NOT ALLOW JURISDICTIONAL DISCOVERY.

Plaintiff’s suggestion that it needs more information to allege personal jurisdiction falls flat because its claims are based on public information—purported sales and marketing to the public. Opp. at 6. Jurisdictional discovery would be inappropriate because plaintiff’s jurisdictional allegations are threadbare, factually unsupported, and improperly group pled. *See, e.g., Baumgarten v. Belsky*, 2020 WL 3447753, at *3 (D. Md. June 24, 2020) (denying jurisdictional

⁹ Mere “membership in [a trade association] does not raise an inference of conspiracy on its own . . .” *Rojas v. Delta Airlines, Inc.*, 425 F. Supp. 3d 524, 543 (D. Md. 2019); *Maple Flooring Mfrs. Ass’n v. United States*, 268 U.S. 563, 584 (1925) (“We do not conceive the members of trade associations become conspirators merely because they gather and disseminate information . . .”); *see also* Compl. ¶ 31(g); CONSOL Merits Br. at 2 (“Plaintiff does not allege that CONSOL Energy or CONSOL Marine were members of any industry associations referenced in the complaint.”).

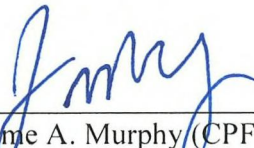
discovery where plaintiff offered “nothing beyond mere speculation that . . . Defendant engages in a regular, persistent, or substantial course of conduct in Maryland”).

Plaintiff’s authorities are not to the contrary. *See* Opp. at 10. Unlike here, the records in those cases “tend[ed] to establish *prima facie*” defendants’ contacts with the forum. *Swarey v. Stephenson*, 222 Md. App. 65, 105 (Md. Ct. Spec. App. 2015); *see also Androustos v. Fairfax Hosp.*, 323 Md. 634, 639 (Md. 1991) (record “provided some indicia that defendant was subject to the personal jurisdiction of a Maryland court”). Because plaintiff failed to plausibly allege a basis for personal jurisdiction over CONSOL Energy and CONSOL Marine, this Court should not permit jurisdictional discovery.

CONCLUSION

For these reasons, and those in the individual and joint briefing, CONSOL Energy and CONSOL Marine respectfully ask the Court to dismiss the claims against them.

Dated: January 26, 2024



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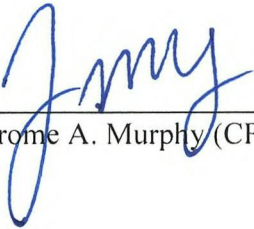
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January, 2024, a copy of CONSOL Energy Inc.'s and CONSOL Marine Terminals LLC's Reply in Support of their Supplemental Motion to Dismiss for Lack of Personal Jurisdiction was served on all counsel of record via electronic mail (by agreement of the parties).



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