
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.* TAKEUCHI MANUFACTURING COMPANY,
LIMITED,

v.

THE HONORABLE DAVID J. SIMS; DONALD A. BRADEN; FRANCES BRADEN;
TAKEUCHI MANUFACTURING U.S. LIMITED; and
CONTRACTOR'S CONNECTION, LLC,

Respondents.

From the Circuit Court of Ohio County, West Virginia
Civil Action No. CC-35-2023-C-153

RESPONSE TO PETITION FOR WRIT OF PROHIBITION

DONALD BRADEN

By Counsel

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Respondent Donald A. Braden (“Mr. Braden”) respectfully submits this Response to Petitioner, Takeuchi Japan Takeuchi Manufacturing Company’s (“Takeuchi Japan”) Petition for Writ of Prohibition.

QUESTIONS PRESENTED

1. Did the court make its decision in accordance with the laws of this State of West Virginia and the Due Process Clause of the Fourteenth Amendment?

Suggested Answer: Yes

2. Should this Honorable Court deny Takeuchi Japan’s Petition for Writ of Prohibition due to its lack of compelling quality?

Suggested Answer: Yes

STATEMENT OF THE CASE

The action at issue arises from an incident involving a defective 2020 Takeuchi TL8 Track Loader (the “Track Loader”) which tragically and catastrophically injured Mr. Braden. App’x at 16-17. Mr. Braden accordingly filed his Complaint on the date of September 8, 2023, against numerous defendants, including Takeuchi Japan and Takeuchi Manufacturing U.S., Limited and has alleged claims of products liability and breach of warranty against them. *Id.* at 19-24. To establish jurisdiction over these defendants, respectively, Mr. Braden has alleged that both Takeuchi Japan and Takeuchi Manufacturing, U.S. conducted business in and availed themselves of the laws of the State of West Virginia, gaining substantial revenue therefrom. *Id.* at 16. In addition, Mr. Braden further alleged that Takeuchi Japan designed, manufactured, marketed, advertised, distributed, sold, leased, promoted, labeled, fabricated, assembled, inspected, tested, serviced and warranted the Track Loader as safe and reliable for excavation, earth-moving, grading, bulldozing, and digging. *Id.* In response, Takeuchi Japan moved to dismiss claims against

them, or alternatively, for summary judgment based on their assertion that the State of West Virginia lacks personal jurisdiction over them. *Id.* at 44-80.

Accordingly, Mr. Braden filed a Brief in opposition, stating that the State of West Virginia possesses personal jurisdiction over Takeuchi Japan under theories of specific jurisdiction as clarified by the Supreme Court of these United States and under West Virginia's long-arm statute W.Va.Code § 56-3-33 (a) (1992). *Id.* at 114.

After deliberation, the Circuit Court concluded due to numerous factors, including the fact that Takeuchi Japan had an established subsidiary within the State of West Virginia and that Discovery proceedings would likely further reveal if the connections of Takeuchi Japan were significant, that the State of West Virginia maintained the authority under the West Virginia long-arm statute and the undisputed fact that Takeuchi Japan possesses numerous subsidiaries within the commonwealth, Defendant Takeuchi Japan possess sufficient minimum contacts with the state of West Virginia and satisfies the requirements of federal due process. *Id.* at 109-114. Takeuchi Japan then filed this petition in response to this decision.

SUMMARY OF ARGUMENT

This Court should deny Takeuchi Japan's Petition for a Writ of Prohibition as the Circuit Court correctly concluded that the State of West Virginia meets the requirements established by these United States and this State that it possesses specific jurisdiction over Takeuchi Japan. Defendant/Petitioner Takeuchi Japan knew or should have known that it could reasonably expect to defend itself in court in the State of West Virginia based on the connections that it maintains with the state. The Circuit Court correctly and adequately determined that it possessed personal jurisdiction over Defendant Takeuchi Japan via specific jurisdiction as in accordance with the Due Process Clause of the Fourteenth Amendment and the regulations and laws established by this

Honorable Court of which pertain to matters of personal jurisdiction. Further, Takeuchi Japan's contacts with the State of West Virginia are prevalent when considering their numerous subsidiaries of which operate within this state, and who's behavior is in-line with that described in W.Va.Code § 56-3-33) (a) (1992), West Virginia's long-arm jurisdictional statute. In addition, Defendant Takeuchi Japan is permitted to later raise the issue of jurisdiction in the Circuit Court after discovery proceedings have taken place, which would potentially grant them dismissal from Mr. Braden's claim if it is discovered that the facts they are alleging are true in that they are not sufficiently connected to the state of West Virginia based on the presence of their subsidiary. Because of this, permitting Takeuchi Japan's petition and presenting the matter in front of this Honorable Court would greatly prejudice plaintiff and would be a waste of vital judicial economy.

Most importantly, the jurisdictional issue established in the matter is factual in nature and is not a question of law for this Honorable Court to determine. Takeuchi Japan's connections to the State of West Virginia are dependent on the existence and/or non-existence of numerous facts among them and their subsidiary, of which will be revealed in further discovery, as stated by the Circuit Court. *See App. at pp. 112-114.*

Accordingly, due to the factual nature of the matter and the early stages litigation had undergone at the time, the Circuit Court was correct in denying Takeuchi Japan's motion to dismiss and was in their legitimate power when doing so. The Circuit Court's decision in no way committed any legal error and did not exceed its jurisdictional authority. It was clearly within its right to conclude that it maintained specific jurisdiction over Takeuchi Japan and underwent the proper constitutional analysis to do so. Mr. Braden alleged sufficient facts against Defendant Takeuchi Japan which, at the stage of litigation which they were presented, presented a clear prima facie case over Defendant Takeuchi Japan to meet the jurisdictional requirements of the Due

Process Clause of the Fourteenth Amendment and the laws of this the State of West Virginia. Accordingly, it is therefore, requested that this Honorable Court deny Defendant Takeuchi Japan's Writ of Prohibition as Mr. Braden has unequivocally met his burden in the matter.

ARGUMENT

I. Standard Of Review For Writ Of Prohibition

West Virginia Law provides that Writ of Prohibition is a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers. W. Va. Code Ann. § 53-1-1 (West). In reviewing matters pertaining to whether this Honorable Court should entertain an issue of writ of prohibition for cases not involving an absence of jurisdiction, but only where it is claimed that the lower tribunal exceeded its legitimate powers, the following factors are to be examined;

(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the Defendant Takeuchi Japan will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

State ex rel. W. Virginia-Am. Water Co. v. Webster, 888 S.E.2d 448, 451 (W. Va. 2023). In determining this, it is crucial to note that extraordinary remedies like the writ of prohibition should rarely be granted and are reserved for “extraordinary cases.” *State ex rel. Surnaik Holdings of WV, LLC v. Bedell*, 875 S.E.2d 179, 184 (W. Va. 2022).

Accordingly, writs of prohibition should not be issued to prevent simple abuses of discretion by a trial court but rather they will only be issued where the trial court has no jurisdiction or in having jurisdiction exceeds its legitimate powers. *Id.* Further, it has been well established that when a petition raises a jurisdictional challenge, the court is to determine whether the issue is jurisdictional in the sense of requiring a decision upon facts or a decision upon a pure question of law. *State ex rel. Adkins v. Bailey*, 915 S.E.2d 364, 372 (W. Va. 2025). If the decision rests upon a question of fact, prohibition will not be granted. *Id.*

A. The Circuit Court Was Correct In Determining That Mr. Braden Established A Prima Facie Showing Of Personal Jurisdiction Over Takeuchi Japan

The Circuit Court was within their power to deny Takeuchi Japan's Motion to dismiss pertaining to its jurisdictional contentions. Where a defendant files a motion to dismiss for lack of personal jurisdiction, the circuit court is within their power to rule on the motion based on the pleadings, affidavits, and other documentary evidence which is available to them. *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 323 (W. Va. 2016). Crucially, the party asserting jurisdiction is only required to establish a prima facie case showing personal jurisdiction to overcome the defendant's motion to dismiss and, in determining whether a party has done so, the court is to view the allegations of the asserting party in a light most favorable to that party. *Id.* Personal jurisdiction that is based on facts pertaining to a defendant's placing of a given product into the stream of commerce is consistent with the Due Process Clause of the United States Constitution and can be exercised absent a showing of additional conduct by the defendant aimed at the forum state. *Id.*

In this case of considerable uncertainty pertaining to the factual connections that Takeuchi Japan maintains with this State of West Virginia, the circuit court correctly determined that in these early stages of the proceedings, Mr. Braden has established a prima facie showing of personal

jurisdiction to survive Takeuchi Japan's motion to dismiss. To reiterate and summarize, West Virginia Law provides that where a defendant files a motion to dismiss for lack of personal jurisdiction, the circuit court is permitted to rule on the motion upon the documentary evidence presented. *State ex rel. Monster Tree Serv., Inc. v. Cramer*, 853 S.E.2d 595, 603 (W. Va. 2020). In conjunction, the party asserting jurisdiction need only make a prima facie showing of personal jurisdiction, and the court must view the allegations in a light most favorable to this party and draw all inferences in favor of jurisdiction. *Id.*

The Circuit Court's denial of Takeuchi Japan's motion to dismiss based on Mr. Braden's allegations is the correct conclusion and is clearly not erroneous. In *Monster Tree Serv., Inc. v. Cramer*, the question as to if this Supreme Court of Appeals of West Virginia should grant a Defendant Takeuchi Japan's petition for writ of prohibition for issues of specific jurisdiction was at issue. *Id.* at 602. Takeuchi Japan, a Pennsylvania based corporation, contended that they did not engage with any relevant activities within the State of West Virginia, and that the existence of a corporation of a similar name and trademark within the State was irrelevant to their connections. *Id.* The Circuit Court found in favor of the plaintiff's allegations that the court possessed jurisdiction over the Defendant Takeuchi Japan, and the Defendant Takeuchi Japan's petition, accordingly, followed. *Id.* at 361. In considering the matters of statutory jurisdiction, this Supreme Court of West Virginia considered if the plaintiff in the matter presented sufficient allegations against the defendant to make a prima facie showing of personal jurisdiction to survive the motion to dismiss. *Id.* at 604. This Honorable Court, when looking at the prima facie evidence and the allegations against Takeuchi Japan, stated that although the plaintiff did not conclusively prove that Takeuchi Japan was the same entity as the one present and doing business in the State of West Virginia, the prima facie evidence was enough for [the plaintiff] at the early stages in the

proceedings prior to discovery in the matter. *Id.* at 603. In doing so, this Honorable Court cited the established standard under W.Va.R.Civ.P.12(b)(2), finding that a circuit court is permitted to rule on a motion upon the pleadings, affidavits and other documentary evidence, and that a party asserting jurisdiction need only make a prima facie showing of personal jurisdiction in order to survive a motion to dismiss, and that the allegations be viewed in a light most favorable to such party. *Id.* ; *See also Easterling v. Am. Optical Corp.*, 529 S.E.2d 588, 592 (W. Va. 2000). The plaintiff, accordingly, met this standard based on the allegations regarding the connections between the Defendant Takeuchi Japan and the West Virginia-based corporation of the same name and trademark. *Id.* at 304-306.

Mr. Braden's allegations and Takeuchi Japan's contentions mirror those of the plaintiff and Defendant Takeuchi Japan in the matter of *Monster Tree Serv., Inc. v. Cramer*. Mr. Braden has clearly stated within his Complaint in Civil Action that the state of West Virginia maintains jurisdiction over them, and further alleges that based on what knowledge and belief that was available to him that the presence of Takeuchi North America, Inc. and numerous dealers in the state of West Virginia clearly lead to the probable conclusion that there exists a sufficient connection between the state and Takeuchi Japan. *See App'x.* at 16; *see also Id.* at 85-87.

Further, Takeuchi Japan argues that the only available relief in the matter is to grant its Petition for Writ of Prohibition and to expedite this matter to the Supreme Court of Appeals of the State of West Virginia. This, on its face, is untrue. The decisions of the circuit court, being on the preliminary objections of Defendant Takeuchi Japan Takeuchi Japan to Respondent's complaint, were limited only to that of the facts alleged by Respondent. In doing so, the Circuit Court held that there were numerous facts present that supported the conclusion that Takeuchi Japan maintained adequate connections with the State of West Virginia to warrant Specific Jurisdiction

over them. *Id.* at 112-114. These are matters that are clearly reviewable on direct appeal if Takeuchi Japan would later choose to do so. However, rather than present these facts at issue, Takeuchi Japan instead has chosen to present the matter via this Petition of Writ of Prohibition so as to call into question the decision of the Honorable David J. Sims prior to discovery proceedings. If Takeuchi Japan's Writ of Prohibition were to be granted on the grounds that there is no other remedy available to them, this would clearly be unjustified as this is untrue because these factual matters would be reviewable on direct appeal. Based on these allegations and facts, Mr. Braden has established a definitive *prima facie* showing of personal jurisdiction over Takeuchi Japan at this point in judicial proceedings, meaning that the trial court was correct in denying Takeuchi Japan's motion to dismiss.

B. Takeuchi Japan's Jurisdictional Contention Does Not Warrant A Grant Of Their Petition For Writ Of Prohibition As It Does Not Possess The Necessary Compelling Quality

Takeuchi Japan's jurisdictional contention does not meet the established criteria for this Honorable Court to grant its Petition for Writ of Prohibition. This Supreme Court of Appeals has set forth the standard that writs of prohibition are reserved "to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance. *State ex rel Almond v. Rudolph*, 794 S.E.2d 10, 12 (W. Va. 2016). Moreso, it has been established by this Honorable Court that if there lies a jurisdictional question as to if a Writ of Prohibition is to be granted, if the determination involves a finding of the existence of jurisdictional facts, prohibition is not the proper remedy, and the petition should be denied. *Health Mgt., Inc. v. Lindell*, 528 S.E.2d 762, 766 (W. Va. 1999).

In *Health Mgt., Inc. v Lindell*, this Honorable Court was tasked with determining if a writ of prohibition in a jurisdictional matter was appropriate and reiterated that prohibition is confined to situations where the existence of jurisdiction revolves around questions of law. *Id.* at 766 In doing so, it further established the following;

Should it be found that the question is jurisdictional, if its determination involves merely a finding as to the existence of jurisdictional facts, prohibition still is not the proper remedy, because the existence or nonexistence of facts conferring jurisdiction is for the decision of the court in which the proceeding is pending. The right of the trial court to determine the existence or nonexistence of facts that give rise to its own jurisdiction will not be interfered with by any other court, and the sole remedy is by appeal or writ of error. So that we must determine, first, whether the question raised is jurisdictional, and, second, if it is, whether it is jurisdictional in the sense of requiring a decision upon facts or a decision upon a pure question of law. If it rests upon a determination of fact, prohibition will not lie. If it rests upon the determination of a question of law, prohibition will lie if the trial court has exceeded its jurisdiction or usurped a jurisdiction that in law does not exist.

Id. at 766-767. Crucially, this Honorable Court also elaborated that to warrant a Writ of Prohibition, there cannot be any disputed issues of fact such that the jurisdictional question may be decided purely as a matter of law. *Id.* at 766. In accordance with this reasoning, this Honorable Court found that because the jurisdictional considerations in the matter pertaining to the petitioner's request for a Writ of Prohibition were clearly factual, granting their request for Writ of Prohibition was not appropriate. *Id.* at 768.

Here, the jurisdictional matter presented by Takeuchi Japan parallels that of *Health Mgt., Inc. v. Lindell* and is dependent on a contested matter of fact and not a matter of law. Defendant Takeuchi Japan's jurisdictional issues are clearly disputed based on issues of fact as there are reliant on Defendant Takeuchi Japan's potential connections to their North American subsidiary, Takeuchi North America. More so, provided that the litigation is permitted to continue, the probability the factual contention based on these jurisdictional contentions will be resolved timely

and efficiently after discovery proceedings take place. There is no jurisdictional matter at hand that can be resolved purely as a matter of law alone. The jurisdictional matter regarding Takeuchi Japan's connection to the forum is therefore factual in nature and granting prohibition is not proper.

CONCLUSION

For the reasons stated above, it is requested that this Honorable Court deny Petitioner Takeuchi Japan's Petition for a Writ of Prohibition. The Circuit Court's decision in no way committed any legal error and did not exceed its jurisdictional authority. The Circuit Court was clearly within its right to conclude that it maintained specific jurisdiction over Takeuchi Japan and underwent the proper constitutional analysis to do so. Mr. Braden alleged sufficient facts against Takeuchi Japan which, at the stage of litigation which they were presented, presented a clear prima facie case over Defendant Takeuchi Japan to meet the jurisdictional requirements of the Due Process Clause of the Fourteenth Amendment and the laws of this the State of West Virginia. Accordingly, it is therefore, requested that this Honorable Court deny Defendant Takeuchi Japan's Writ of Prohibition as Mr. Braden has unequivocally met his burden.

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VERIFICATION

I, Peter D. Friday, hereby certify that the facts and allegations contained in the above **Response to Writ of Prohibition** are true and correct to the best of my belief and Knowledge.

Dated: September 10, 2025

/s/ Peter D. Friday

Peter D. Friday, Esquire
WVSB # 5005

CERTIFICATE OF SERVICE

I, Peter D. Friday, hereby certify that the foregoing **Response to Writ of Prohibition** was electronically filed with the Court on September 10, 2025 via U.S. Mail and/or E-Mail, upon the following:

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