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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

Petitioner,

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

PETITION FOR WRIT OF PROHIBITION

TAKEUCHI MANUFACTURING
COMPANY, LIMITED

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Petitioner Takeuchi Manufacturing Company, Limited (“Petitioner” or “Takeuchi Japan”) respectfully submits this Petition for Writ of Prohibition.

QUESTIONS PRESENTED

1. Is it clear legal error for the Circuit Court to forego the necessary constitutional due process analysis when ruling on a foreign corporation’s motion to dismiss for lack of personal jurisdiction?

2. Is it clear legal error for a Circuit Court to use the contacts of a subsidiary corporation to find that the parent corporation has sufficient minimum contacts with the state of West Virginia to permit the assertion of personal jurisdiction over the parent corporation?

STATEMENT OF THE CASE

This Action arises from an injury Respondent Donald A. Braden (“Braden”) suffered while operating a 2020 Takeuchi TL8 Track Loader (the “Track Loader”). App’x at 16-17. Braden has alleged claims against Takeuchi Japan and Takeuchi Manufacturing U.S., Limited (“Takeuchi U.S.”) for products liability and breach of warranty. *Id.* at 19-24. Braden’s sole allegation with respect to establishing personal jurisdiction over Takeuchi Japan and Takeuchi U.S., which he referred to collectively in his Complaint as the “Manufacturing Defendants,” was that “[a]t all relevant times, Manufacturing Defendants . . . conducted business in and availed themselves of the laws of the State of West Virginia, gaining substantial revenue therefrom.” *Id.* at 16.

Takeuchi Japan moved to dismiss the claims against it based on a lack of personal jurisdiction, or alternatively, for summary judgment on the same grounds. *Id.* at 44-80. In support of its Motion, Takeuchi Japan noted that the Track Loader was designed and manufactured in Nagano, Japan. *Id.* at 50. Further, Takeuchi Japan submitted an affidavit which affirmatively stated it had no involvement in the distribution of the Track Loader after it was shipped to New York and

received by Takeuchi U.S. *Id.* at 50. Rather, it was undisputed that, upon the direction of Takeuchi U.S., the Track Loader was shipped from New York to Pennsylvania where it was ultimately sold. *Id.* at 50. Takeuchi Japan further averred that it (1) does not market in or solicit business from West Virginia; (2) does not employ any residents of West Virginia; (3) owns no real or personal property in West Virginia; and (4) does not manufacture, supply or sell equipment or replacement parts directly to consumers in West Virginia. *Id.* at 50-51.

In response to the Motion, Braden relied heavily on a “dealer locator” webpage. *Id.* at 88. Notably, the website pertains to the operations of Takeuchi U.S. – not Takeuchi Japan. *Id.* at 96. Braden, however, maintained that this website was evidence of Takeuchi Japan transacting business in West Virginia, *id.* at 88, a conclusion the Circuit Court adopted. *Id.* at 113. Relying on this single piece of evidence, and without ordering any additional jurisdictional discovery, on July 22, 2025, Circuit Court held that it was within its authority under the West Virginia long-arm statute to exercise personal jurisdiction over Takeuchi Japan. *Id.* at 114. Notably, the Circuit Court did not make any findings, or perform any analysis, as to whether Takeuchi Japan possesses sufficient minimum contacts with the state of West Virginia so as to satisfy federal due process. *See id.* at 109-14.

This Petition followed.

SUMMARY OF ARGUMENT

This Court should grant Takeuchi Japan’s Petition for a Writ of Prohibition because the Circuit Court clearly erred as a matter of law and exceeded its legitimate authority.

First, it was clearly erroneous for the Circuit Court to determine it has personal jurisdiction over Takeuchi Japan without giving any consideration to the constitutional right of Takeuchi Japan, protected by the Due Process Clause of the Fourteenth Amendment, to be free from an

exercise of personal jurisdiction by a state with which it does not have the required minimum contacts and in which it could not reasonably be expected to defend itself in court. U.S. Const. amend. XIV, § 1.

Second, it was clearly erroneous for the Circuit Court, in conducting the required analysis under West Virginia's long-arm statute, to take Takeuchi U.S.'s alleged contacts with West Virginia into consideration when ruling on Takeuchi Japan's Motion to Dismiss.

Finally, it was clear error for the Circuit Court to deny the Motion because, applying the proper analysis under West Virginia and federal law, Takeuchi Japan is not subject to personal jurisdiction in West Virginia.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Takeuchi Japan respectfully requests oral argument pursuant to the West Virginia Rules of Appellate Procedure. Oral argument is warranted in this case due to the significant constitutional and jurisdictional issues presented, including the Circuit Court's erroneous assertion of personal jurisdiction over a foreign defendant without sufficient minimum contacts, which represents an issue of fundamental public importance. W. Va. R. App. P. 20(a)(2). Further, the questions presented in this Petition involve the constitutional validity of the Circuit Court's ruling. W. Va. R. App. P. 20(a)(3). Accordingly, oral argument would aid the Court in its decisional process.

ARGUMENT

I. Standard for Writ of Prohibition.

Under West Virginia Code § 53-1-1, "[t]he writ of prohibition shall lie as a matter of right in all cases . . . when the inferior court . . . exceeds its legitimate powers." W. Va. Code § 53-1-1.

In determining whether to entertain and issue the writ of prohibition for cases . . . where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as

direct appeal, to obtain the desired relief; (2) whether the petitioner 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-American Water Co. v. Webster, 248 W. Va. 268, 276, 888 S.E.2d 448, 456 (2023) (quoting Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)).

II. Takeuchi Japan has no other Adequate Means, such as a Direct Appeal, to Obtain the Appropriate Relief, and without the Requested Relief, it will be Damaged or Prejudiced in a Way that is not Correctable on Appeal.

Takeuchi Japan cannot directly appeal the Circuit Court's Order denying its Motion to Dismiss. *See* W. Va. Code § 58-5-1(a) ("A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2022, shall be to the Intermediate Court of Appeals, as required by § 51-11-1 *et seq.* of this code."). As such, Takeuchi Japan's only means of seeking review of the Circuit Court's interlocutory Order is a Petition for Writ of Prohibition.

Further, requiring Takeuchi Japan to defend against the claims presented in this Action until such time as a final judgment may be entered will damage and prejudice Takeuchi Japan in a way that cannot be remedied by an appeal of such final judgment. Courts have long recognized

that “[t]o require [a] corporation . . . to defend [a] suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). “The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). But it also “protects the defendant against the burdens of litigating in a distant or inconvenient forum.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *see also Hanson v. Denckla*, 357 U.S. 235, 251 (1958) (recognizing that the constitutional limits on personal jurisdiction are, *inter alia*, “a guarantee of immunity from inconvenient or distant litigation” and that “[h]owever minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the ‘minimal contacts’ with that State”).

Here, Takeuchi Japan’s liberty interest in not being hauled into an inconvenient and distant court for litigation, protected and preserved by the Due Process Clause of the United States Constitution, is being violated. *See* U.S. Const. amend. XIV, § 1. And this is a violation which cannot be remedied upon appeal from a final judgment: In the event Takeuchi Japan prevails on the merits of this case, either by virtue of a final judgment by the Circuit Court or on appeal, it will still have been subjected to litigating and defending claims before a court which does not have personal jurisdiction over it. It will be forced to expend time, money, and resources defending the claims in this Action—resources which, by virtue of its constitutional rights it should not have to expend and which it would never be able to recover. *See also* Syl. Pt. 10, *Jennings v. McDougale*, 83 W. Va. 186, 187, 98 S.E. 162, 162 (1919) (“When a court is attempting to proceed in a cause

without jurisdiction, prohibition will issue as a matter of right regardless of the existence of other remedies.”).

Accordingly, the first two factors weigh in favor of this Court granting this Petition.

III. The Circuit Court’s Order is Clearly Erroneous as a Matter of Law.

The third factor for this Court’s consideration, which is entitled to particular weight, also weighs in favor of Takeuchi Japan’s requested relief. The Circuit Court’s Order denying Takeuchi Japan’s Motion to Dismiss is clearly erroneous as a matter of law.

A. The Circuit Court Clearly Erred by not Conducting the Required Due Process Analysis.

First, despite this Court’s mandate that “a court must use a two-step approach when analyzing whether personal jurisdiction exists over a foreign corporation or other nonresident,” *State ex rel. Ford Motor Co. v. McGraw*, 237 W. Va. 573, 581, 788 S.E.2d 319, 327 (2016) (quoting Syl. Pt. 5, *Abbott v. Owens-Corning Fiberglas Corp.*, 191 W. Va. 198, 444 S.E.2d 285 (1994)), the Circuit Court did not engage in the second prong of the analysis: “[W]hether the defendant’s contacts with the forum state satisfy federal due process.” *Id.* (quoting Syl. Pt. 5, *Abbott*, 191 W. Va. 198, 444 S.E.2d 285. *See App’x at 109-14.*

The proper analysis for determining whether a court in this state has personal jurisdiction over a foreign corporation or other nonresident is clearly articulated:

A court must use a two-step approach when analyzing whether personal jurisdiction exists over a foreign corporation or other nonresident. The first step involves determining whether the defendant’s actions satisfy our personal jurisdiction statutes set forth in *W. Va. Code*, 31-1-15 [1984] and *W. Va. Code*, 56-3-33 [1984]. The second step involves determining whether the defendant’s contacts with the forum state satisfy federal due process.

Syl. Pt. 5, *Abbott*, 191 W. Va. 198, 444 S.E.2d 285, *superseded by statute on other grounds as stated in State ex rel. Ford Motor Co. v. Nibert*, 235 W. Va. 235, 773 S.E.2d 1 (2015); *see also State ex rel. Ford Motor Co. v. McGraw*, 237 W. Va. 573, 581, 788 S.E.2d 319, 327 (2016).

The Circuit Court’s Order did not consider whether Takeuchi Japan’s alleged contacts with this State satisfy federal due process. *See generally* App’x at 109-14. Rather, the Order focuses entirely on the interpretation and application of West Virginia’s long-arm statute, omitting the federal due process analysis altogether. *See* App’x at 109-14 (considering only whether Takeuchi Japan “regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state,” and not whether maintenance of the claims against Takeuchi Japan in West Virginia offends “traditional notions of fair play and substantial justice”).

Inasmuch as the Circuit Court failed to engage in step two of the analysis—despite the well settled laws of West Virginia and the United States—the denial of Takeuchi Japan’s Motion to Dismiss was clearly erroneous as a matter of law.

B. The Circuit Court Clearly Erred by Imputing the Activities of Takeuchi U.S. onto Takeuchi Japan.

The Circuit Court’s Order is clearly erroneous for an additional, independent reason—it improperly found that Takeuchi Japan had sufficient minimum contacts with West Virginia to satisfy West Virginia’s long-arm statute, W. Va. Code § 56-3-33(a), based on evidence of Takeuchi U.S.’s alleged contacts with the forum. App’x at 113-14.

West Virginia’s long-arm statute permits a court to exercise personal jurisdiction over a foreign corporation that causes “tortious injury in this State by an act or omission outside this State *if* [the corporation] regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this

State[.]” W. Va. Code § 56-3-33(a)(4) (emphasis added)¹; *see also Hill by Hill v. Showa Denko, K.K.*, 188 W. Va. 654, 660, 425 S.E.2d 609, 615 (1992).

Here, the Circuit Court erred in holding that it had personal jurisdiction over Takeuchi Japan based on its finding that Takeuchi U.S. “engages in a persistent course of conduct and solicits business within the State of West Virginia.” App’x at 114.

In making this ruling, the court below relied upon this Court’s decision in *Hill*, 188 W. Va. 654, 425 S.E.2d 609. App’x at 112-13. *Hill*, however, is clearly distinguishable from this case. In *Hill*, the record reflected that the defendant who challenged personal jurisdiction was the parent corporation of the entity that distributed the product to West Virginia. *Hill*, 188 W. Va. at 660, 425 S.E.2d at 615. Critically, however, there was also evidence in the record that the parent corporation maintained a high level of control over the subsidiary. *Id.*, 425 S.E.2d at 615 (“[The foreign corporation] admitted that once they realized the problem . . . , they ordered [the subsidiary] to halt distribution. We fail to see how much more control [the parent] could have over [the subsidiary].”).

In contrast, here, the record indicates that after the track loader arrived in the United States, Takeuchi Japan’s involvement with the product ceased. App’x at 50. And as this Court has recognized, “[a] parent-subsidiary relationship between corporations, one of which is ‘doing business’ in West Virginia, does not without the showing of additional factors subject the nonresident corporation to this state’s jurisdiction.” Syl. Pt. 2, *Norfolk S. Ry. v. Maynard*, 190 W. Va. 113, 114, 437 S.E.2d 277, 278 (1993). Rather,

If the parent and its subsidiary operate as one entity, their formal separate corporate structures will not prevent the assertion of jurisdiction over the non-resident corporation. The extent of control exercised by the non-resident corporation over

¹ West Virginia has a second long-arm statute, codified at W. Va. Code § 31D-15-1501. Crucially, however, the Circuit Court did not analyze this statute in its memorandum opinion and order. Takeuchi Japan posits that under either long-arm statute, personal jurisdiction is lacking due to the limits of the federal due process clause discussed *infra*.

the corporation doing business in this state determines whether the non-resident corporation is subject to this state's jurisdiction.

Id.

The Circuit Court, however, made no findings as to whether Takeuchi Japan exercised substantial control over Takeuchi U.S. or if Takeuchi U.S. was merely the “alter ego” of Takeuchi Japan. Likewise, the Circuit Court did not order the parties to engage in limited discovery on the issue of the relationship between the entities and the compliance with corporate formalities and separations. *See* Syl. Pt. 4, *State ex rel. Bell Atl.-West Va. v. Ranson*, 201 W. Va. 402, 405, 497 S.E.2d 755, 758 (1997) (“When a defendant files a motion to dismiss for lack of personal jurisdiction under *W. Va. R. Civ. P.* 12(b)(2), the circuit court may rule on the motion upon the pleadings, affidavits and other documentary evidence or the court may permit discovery to aid in its decision.”).

Rather, the Circuit Court found that Takeuchi U.S. engages in a persistent course of conduct and solicits business within the State of West Virginia and then, based on that finding alone, the Circuit Court summarily decided it had personal jurisdiction over Takeuchi Japan, a distinct and separate legal entity. App’x at 15.

Finally, in one sentence, at the conclusion of the Order, the Circuit Court noted that discovery “may establish that Takeuchi Japan derives substantial revenue from the sale of the track loader in the State of West Virginia.” App’x at 114. Such a conclusion cannot be sufficient to warrant exercising jurisdiction over a foreign corporation for two reasons. First and foremost, it is Braden’s burden to establish personal jurisdiction over Takeuchi Japan. *McGraw*, 237 W. Va. at 581, 788 S.E.2d at 327; *Lane v. Boston Scientific Corp.*, 198 W. Va. 447, 451, 481 S.E.2d 753, 757 (1996) (“[W]hen a nonresident defendant makes a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the plaintiff bears the burden of establishing sufficient facts upon

which the court may exercise jurisdiction over the defendant under the applicable personal jurisdiction statute.”); *see also Bowers v. Wurzburg*, 202 W. Va. 43, 51, 501 S.E.2d 479, 487 (1998) (“[A] plaintiff asserting personal jurisdiction over a nonresident defendant . . . must allege the requisite jurisdictional contact in his or her complaint and must assert more than bare allegations of jurisdictional facts.”).

Second, any speculation from the Circuit Court regarding what “further discovery may establish”—speculation which is notably not supported by the allegations in the complaint nor the evidence presented by the parties in connection with the Motion—is not a proper basis for the denial of the Motion. If the Circuit Court intended to rely on a finding that Takeuchi Japan “derives substantial revenue” from West Virginia, and felt additional discovery on that point would have aided its decision on the Motion, then it should have ordered that such limited discovery take place. *See* Syl. Pt. 4, *State ex rel. Bell Atl.-West Va.*, 201 W. Va. at 405, 497 S.E.2d at 758 (“When a defendant files a motion to dismiss for lack of personal jurisdiction under *W. Va. R. Civ. P.* 12(b)(2), . . . ***the court may permit discovery to aid in its decision.***”) (emphasis added). What was outside its authority to do, however, was speculate as to what such hypothetical jurisdictional discovery would uncover and rely upon that speculation in its Order. *See id.* (“At this stage, the party asserting jurisdiction [bears the burden of making] a *prima facie* showing of personal jurisdiction in order to survive the motion to dismiss.”).

Accordingly, the Order’s treatment of West Virginia’s long-arm statute and the denial of Takeuchi Japan’s Motion to Dismiss on those grounds is clearly erroneous as a matter of law. This is because the Circuit Court utilized the contacts of Takeuchi U.S. and imputed them to Takeuchi Japan despite having no basis upon which to do so.

C. The Circuit Court Clearly Erred by Exercising Personal Jurisdiction Over Takeuchi Japan.

Last, but certainly not least, the Circuit Court’s decision to exercise personal jurisdiction over Takeuchi Japan was clearly erroneous as a matter of law because Takeuchi Japan does not have the necessary minimum contacts with West Virginia and the maintenance of this Action against it violates traditional notions of fairness and justice.

As noted above,

A court must use a two-step approach when analyzing whether personal jurisdiction exists over a foreign corporation or other nonresident. The first step involves determining whether the defendant’s actions satisfy our personal jurisdiction statutes set forth in *W. Va. Code*, 31-1-15 [1984] and *W. Va. Code*, 56-3-33 [1984]. The second step involves determining whether the defendant’s contacts with the forum state satisfy federal due process.

Syl. Pt. 5, *Abbott*, 191 W. Va. 198, 444 S.E.2d 285.

Regardless of which long-arm statute is utilized, personal jurisdiction over Takeuchi Japan is improper because it violates federal due process. *Easterling v. American Optical Corp.*, 207 W.Va. 123, 130, 529 S.E.2d 588, 595 (2000) (“In applying our long-arm statutes, which is required by the first step in the foregoing test, we have acknowledged that they ‘must be read in conjunction with the constitutional due process concept that a foreign corporation must have certain “minimum contacts” before it is amenable to personal jurisdiction in our courts.’” (quoting *Kidwell v. Certain Defendants Elec. Co.*, 178 W.Va. 161, 162, 358 S.E.2d 420, 421 (1986))). This Court has

provided guidance for determining the requisite “minimum contacts” by stating that “the standard of jurisdictional due process is that a foreign corporation must have such minimum contacts with the state of the forum that the maintenance of an action in the forum does not offend traditional notions of fair play and substantial justice.” Syl. pt. 1, *Hodge v. Sands Mfg. Co.*, 151 W. Va. 133, 150 S.E.2d 793 (1966). *Accord* Syl. pt. 1, *Hill by Hill v. Showa Denko, K.K.*, 188 W. Va. 654, 425 S.E.2d 609 (1992); *Hinerman v. Levin*, 172 W. Va. 777, 781, 310 S.E.2d 843, 847 (1983); Syllabus, *S.R. v. City of Fairmont*, 167 W. Va. 880, 280 S.E.2d 712 (1981).

Id. “It is well-established that a state may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has ‘certain minimum contacts with [the state] such that

the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *McGraw*, 237 W. Va. at 582, 788 S.E.2d at 328 (quoting *Int’l Shoe v. Washington*, 326 U.S. 310, 316 (1945)). “To what extent a nonresident defendant has minimum contacts with the forum state depends upon the facts of the individual case. One essential inquiry is whether the defendant has purposefully acted to obtain benefits or privileges in the forum state.” Syl. Pt. 3, *Pries v. Watt*, 186 W. Va. 49, 50, 410 S.E.2d 285, 286 (1991).

“[F]oreseeability is a necessary element in determining whether a defendant’s contacts satisfy due process.” *Easterling*, 207 W. Va. at 130, 529 S.E.2d at 595. This Court has noted that “[i]n order to satisfy due process, . . . ‘the defendant’s conduct in connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.’” *Hill*, 188 W. Va. at 657, 425 S.E.2d at 61 (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297). “The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant ‘focuses on “the relationship among the defendant, the forum, and the litigation.”’” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014) (internal citations omitted). Notably, “the relationship must arise out of contacts that the ‘defendant *himself*’ creates with the forum State.” *Id.* (quoting *Burger King Corp.*, 471 U.S. at 475) (emphasis in original); *see also Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 417 (1984) (“[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction[.]”); *see also World-Wide Volkswagen Corp.*, 444 U.S. at 298 (“[M]ere ‘unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.’”) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

While this Court has adopted the stream of commerce test “for analyzing the purposeful availment prong of specific jurisdiction,” *McGraw*, 237 W. Va. at 590, 788 S.E.2d at 336, “[t]he benchmark for exercising specific personal jurisdiction is not the mere likelihood that a product makes its way into the forum state.” *Id.* at 591, 788 S.E.2d at 337. “Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *State ex rel. Ford Motor Co. v. McGraw*, 237 W. Va. 573, 591, 788 S.E.2d 319, 337 (2016) (quoting *World-Wide Volkswagen*, 444 U.S. at 296-97); *see also Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (O’Connor, J.) (requiring “something more” than simply placing “a product into the stream of commerce,” even if defendant is “awar[e]” that the stream “may or will sweep the product into the forum State”). Even the stream of commerce test, adopted by this Court in *Hill*, 188 W. Va. 654, 425 S.E. 2d 609, and re-affirmed in *McGraw*, 237 W. Va. at 594, 788 S.E.2d 3 at 340, recognizes that “[t]he benchmark for exercising specific personal jurisdiction is not the mere likelihood that a product makes its way into the forum state.” *Id.* at 591, 788 S.E.2d at 337.

In *J. McIntyre Mach., Ltd.*, the U.S. Supreme Court reversed a decision of the Supreme Court of New Jersey which “held that New Jersey’s courts can exercise jurisdiction over a foreign manufacturer of a product so long as the manufacturer ‘knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states.’” *Id.* at 877 (Kennedy, J. announcing the judgment of the Court and delivering a plurality opinion). The State Court “concluded that a [foreign] manufacturer of scrap metal machines was subject to jurisdiction in New Jersey, even though at no time had it advertised in, sent goods to, or in any relevant sense targeted the State.” *Id.*

Justice Breyer, in his concurrence, reiterated that the constitutional touchstone for specific personal jurisdiction is whether, “focusing upon the relationship between ‘the defendant, the *forum*, and the litigation,’ it is fair, in light of the defendant’s contacts *with that forum*, to subject the defendant to suit there.” 564 U.S. 873, 891 (2011) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)) (emphasis in original). And Justice Breyer’s opinion, which this Court has held is the binding law and found particularly instructive, *McGraw*, 237 W. Va. at 594, 788 S.E.2d at 340 (“Justice Breyer’s concurrence is the binding law because there was no majority opinion.”), notes that without a showing of “regular . . . flow” or “regular course” of sales into the forum state or “‘something more,’ such as special state-related design, advertising, advice, marketing, or anything else,” specific jurisdiction over a foreign manufacturer violates the due process clause. *J. McIntyre Mach., Ltd.*, 564 U.S. at 889 (Breyer, J., concurring).

Here, application of the precedents of this Court and the Supreme Court of the United States demonstrates that the Circuit Court did not have personal jurisdiction over Takeuchi Japan. Like the defendant in *J. McIntyre Mach., Ltd.*, Takeuchi Japan is merely the manufacturer of the product. It is not directly selling the product in West Virginia. App’x at 50. It does not market to or solicit business from West Virginia. *Id.* It does not have any distributors or subsidiaries that operate out of West Virginia. *Id.* It owns no real or personal property in West Virginia, and it does not employ any residents of West Virginia. *Id.* It does not manufacture, supply, or sell equipment or replacement parts directly to any consumers in West Virginia. *Id.* Nor is there evidence that Takeuchi Japan—a related but separate entity to Takeuchi U.S.—was itself reaching out into West Virginia to advertise, market, or otherwise promote its products. *Id.*

The Supreme Court has expressly rejected an “automatic rule” where a manufacturer who, by virtue of contacts with a distributor, may manufacture products which are sold in any of the

fifty states is subject to personal jurisdiction in any state where the products are sold. *J. McIntyre Mach., Ltd.*, 564 U.S. at 891 (Breyer, J., concurring) (“I cannot reconcile so automatic a rule with the constitutional demand for “minimum contacts” and “purposeful avail[ment],” each of which rests upon a particular notion of defendant-focused fairness.”). Accordingly, Takeuchi Japan manufacturing the Track Loader and selling it to a domestic distributor, even one who has contacts with West Virginia, is insufficient to establish personal jurisdiction in this State over the foreign corporation.

Further, as discussed above, if the Circuit Court felt that additional, limited discovery on the extent to which Takeuchi Japan’s products arrive in West Virginia through the stream of commerce and the foreseeability of Takeuchi Japan being subjected to litigation in West Virginia would aid its decision, it should have ordered such discovery. Instead, the Circuit Court failed to engage with these necessary questions, and, in doing so, violated Takeuchi’s constitutionally protected rights.

Inasmuch as Takeuchi Japan’s contacts with West Virginia are insufficient to warrant it being haled into court here to defend against this litigation, the Circuit Court’s Order was clearly erroneous as a matter of law.

CONCLUSION

For the foregoing reasons, this Court should grant Takeuchi Japan’s Petition for a Writ of Prohibition. The Circuit Court committed clear legal error and exceeded its jurisdictional authority by asserting personal jurisdiction over Takeuchi Japan without the proper constitutional analysis, by improperly attributing the contacts of a separate corporate entity to Takeuchi Japan, and by denying the Motion to Dismiss despite the absence of requisite minimum contacts under both West

Virginia law and the Due Process Clause of the Fourteenth Amendment. Prohibition is warranted to prevent further exercise of jurisdiction that is both unlawful and fundamentally unfair.

**TAKEUCHI MANUFACTURING
COMPANY, LIMITED**

By Counsel

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VERIFICATION

I, Arie M. Spitz, hereby certify that the facts and allegations contained in the **Petition for Writ of Prohibition** and **Appendix** are true and correct to the best of my belief and knowledge.

Dated: August 15, 2025

/s/ Arie M. Spitz

Arie M. Spitz (WVSB #10867)

CERTIFICATE OF SERVICE

I, Arie M. Spitz, hereby certify that the foregoing **Petition for Writ of Prohibition and Appendix** was electronically filed with the Court on August 15, 2025, via File & ServeXpress, and served, via U.S. Mail and/or E-Mail, upon the following:

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