

No. 70298-0-I

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King County Superior Court No. 12-2-15842-8 SEA

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Plaintiff/Appellant,

v.

PHILIPS ELECTRONICS N.V., PHILIPS ELECTRONICS INDUSTRIES
(TAIWAN), LTD., PANASONIC CORPORATION, HITACHI DISPLAYS,
LTD. (N/K/A Japan Display, Inc.), HITACHI ASIA, LTD., HITACHI
ELECTRONIC DEVICES (USA), INC., LG ELECTRONICS, INC., SAMSUNG
SDI AMERICA, INC., SAMSUNG SDI CO., LTD., SAMSUNG SDI
(MALAYSIA) SDN. BHD., SAMSUNG SDI MEXICO S.A. DE C.V.,
SAMSUNG SDI BRASIL LTDA., SHENZEN SAMSUNG SDI CO., LTD.,
TIANJIN SAMSUNG SDI CO., LTD.

Defendants/Respondents.

**SUPPLEMENTAL BRIEF OF RESPONDENT LG ELECTRONICS, INC.,
ADDRESSING *STATE V. AU OPTRONICS CORP.*, NO. 69318-2-1**

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Electronics, Inc.***

Pursuant to the Court’s notation ruling of June 12, 2014, Respondent LG Electronics, Inc. (“LGEI”) files this supplemental brief addressing the impact of *State v. AU Optronics Corp.*, No. 69318-2-1. As set forth below, the *AU Optronics* ruling is wholly distinguishable on the facts from the case at hand. While the generalized allegations of the two cases may overlap, the facts do not. The present case includes no evidence whatsoever of a relationship between LGEI and Washington sufficient to support the assertion of jurisdiction. For this reason, *AU Optronics* favors affirming the trial court’s dismissal of LGEI for lack of personal jurisdiction.

A. *AU Optronics* Rejects the “Simple Stream of Commerce Analysis” Advocated by the Attorney General and Instead Requires Specific Consideration of LGEI’s Relationship With Washington

In *AU Optronics*, this Court rejected the Attorney General’s assertion—advanced in this case as well—that “merely placing goods into a broad stream of commerce can constitute purposeful minimum contacts to establish personal jurisdiction.” Slip Op. at 21; *see also id.* at 22. Instead, the Court required evidence demonstrating that the sales of LG Display’s panels in Washington was not “an isolated or fortuitous occurrence.” Slip Op. at 23.

In finding that Washington could exercise personal jurisdiction over LG Display,¹ the Court relied on detailed evidence in the record to conclude that “LG Display’s alleged conduct *plus* a large volume of expected and actual sales established sufficient minimum contacts for a Washington court to exercise specific jurisdiction over it.” *Id.* (emphasis added). In particular, the Court emphasized the following specific facts about LG Display’s conduct:

- Washington purchased “in excess of 100 Million dollars of product ... includ[ing] LCD Products” from a single significant original equipment manufacturer customer of LG Display. *Id.* at 24.
- “The original equipment manufacturer also entered into a master purchase agreement with LG Display Co. Ltd. in which the company agreed to obtain and maintain all necessary U.S. regulatory approval.” *Id.*
- “LG Display representatives also traveled to Washington numerous times for business meetings and to perform market research.” *Id.* at 26. Specifically, between 2001 and 2010, LG Display representatives traveled to Washington 13 times, while LG Display America Inc. representatives made 26 separate business trips to Washington. *Id.* at 7.

In addition to these facts, the Court further noted that LG Display America Inc. sold an LCD panel to a wholesaler in Washington in November 2006 and sold 84 units in 15 separate transactions to General Dynamics Itronix Corporation, a Washington company, between July 2001 and March 2003. *Id.* at 6-7.

¹ LG Display is a wholly separate entity from LGEL.

In light of all of these facts, *AU Optronics* found a “pattern of sales of products containing LG Display’s LCD panels [that] establishes a relationship between LG Display, Washington, and this litigation, such that it is fair, in light of LG Display’s contacts with Washington, to subject LG Display to suit here.” *Id.* at 24-25.

B. In This Case, The Attorney General Fails to Identify Any Facts to Support His Theory of Jurisdiction as to LGEI

In direct contrast with the detailed facts in *AU Optronics*, the record in this appeal contains no facts regarding any contacts between LGEI and Washington.

In their opposition brief, Respondents explained in detail the lack of any evidence of any substantive contacts with Washington. Respondents’ Opposition Brief (“ROB”) at 7-14. The Attorney General does not contest that when a defendant makes this type of positive showing rebutting a plaintiff’s jurisdictional assertions, a plaintiff cannot rest on the allegations in the complaint. *See, e.g., Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967). Yet, the Attorney General responds to Respondents’ specific factual showings merely by regurgitating his bland allegation in the Complaint that “Defendants knew and expected that products containing their price-fixed goods would be sold into Washington State.” Appellant’s Reply Brief at 5; *see also*

Appellant's Opening Brief at 6 (same). The Attorney General's generalized allegations are insufficient to warrant jurisdiction under *AU Optronics*. Unlike *AU Optronics*, here:

- There is no evidence that any LGEI sold its products to particular manufacturers or retailers doing business in Washington.
- There is no evidence that sales of LGEI's products in Washington comprised any percentage – much less a significant percentage as in *AU Optronics* – of LGEI's annual revenues. See ROB at 7-14.
- There is no evidence that any of LGEI's representatives ever traveled to Washington for any reason.

Thus, the record in this case materially differs from that in *AU Optronics*. *AU Optronics* required both a substantial volume of commerce related to Washington *and* purposeful conduct targeting Washington, including nearly 40 business trips to Washington, to establish jurisdiction over LG Display. The facts here fail to show either of these elements – sales volume or conduct – that together could establish sufficient minimum contacts between LGEI and Washington.

For these same reasons, the Attorney General's suit against LGEI violates the traditional notions of fair play and substantial justice required by due process. There is no evidence that LGEI took any "efforts to target Washington" like those taken by LG Display in *AU Optronics*. Slip Op. at 27. There is no evidence that LGEI "solicited Washington business" or "derived substantial profits indirectly from Washington consumers." *Id.* at 28. Nor did LGEI take any of the steps that persuaded the Court that LG


Display faced an acceptable burden when litigating in Washington. *See id.* (finding that LG Display did not face an unfair burden because it agreed to comply with U.S. regulatory requirements in a purchasing agreement and its representatives traveled to Washington to market LCDs). For all of these reasons, even if traditional notions of fair play and substantial justice permitted the exercise of jurisdiction over LG Display in *AU Optronics*, they do not permit the exercise of jurisdiction over LGEI here.

Nor is the Attorney General entitled to jurisdictional discovery. Such a fishing expedition is not appropriate where the Attorney General does not and cannot dispute any of the facts on which LGEI's underlying jurisdictional motion relied.

C. Conclusion

Applying *AU Optronics*' holding to the facts of this case requires dismissal for lack of personal jurisdiction. LGEI respectfully requests that the Court affirm the dismissal for lack of personal jurisdiction.

DATED this 29th day of July, 2014.

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CERTIFICATE OF SERVICE

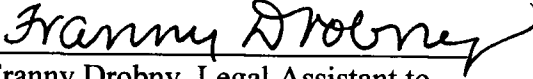
I do hereby certify that on this 29th day of July, 2014, I caused to be served a true and correct copy of the foregoing Reply Brief of Appellants by method indicated below and addressed to the following:

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