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SUPREME COURT OF THE STATE OF WASHINGTON

CANDANCE NOLL, Individually and as Personal Representative of the Estate of Donald Noll, Deceased,

Respondent,

v.

SPECIAL ELECTRIC COMPANY, INC.,

Petitioner,

American Biltrite, Inc., *et al.*,

Defendants.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Defendant-Petitioner Special Electric Company, Inc. ("Special") petitions this Court to review of the decision of the Court of Appeals reversing the trial court's order of dismissal, and holding that the trial court erred by following the plurality opinion in *J. McIntyre Machinery, Ltd. v. Nicastro*, --U.S.--, 131 S. Ct. 2780 (2011) in ruling that exercising personal jurisdiction over Special required a showing that it had "targeted" the State of Washington. *See Noll v. American Biltrite, Inc.*, --P.3d--, 2015 WL 3970580 (Wash. App. 6/29/2015) (referenced herein as "*Noll Dec.*").

This Court grants review only if one or more of the conditions in RAP 13.4(b) are met. Special has failed to identify any other Court of Appeals decisions or decision of this Court with which the Court of Appeals' decision here conflicts. It has likewise failed to show that any *significant question* of constitutional law exists or that this case involves any issue of public interest. Accordingly, Plaintiff-Respondent Candace Noll respectfully submits that Special's *Petition for Review* be denied.

II. STATEMENT OF THE ISSUES

Special phrases the one and only issue as to which it seeks review as follows: "May Washington courts exercise specific personal jurisdiction over the nonresident broker, when the plaintiff has no evidence that the broker was aware that the manufacturer was selling pipe into Washington

which contained the broker's asbestos?" *Pet. for Rev.*, p. 1. As indicated by Special's *Petition* as a whole and its arguments to the Court of Appeals, such issue is more accurately stated thusly: Does exercising personal jurisdiction require *direct* evidence of the defendant's *subjective actual* knowledge that its products are being sold in the forum State, *in addition* to plaintiff's evidence of a substantial, regular flow of such products into that State? *See Noll Dec.*, ¶24, at *6 ("Special claims that even when a steady current of sales carries a product such as asbestos-cement pipe into the forum state, personal jurisdiction over the asbestos supplier depends on the supplier's *actual knowledge* that the asbestos would ultimately arrive in the forum state as a component") (*emphasis added*).

Special also filed a *Motion to Accelerate Consideration of Petition for Review*, in which it asks this Court to take this case under review because it supposedly raises issues that significantly overlap with those already under review in *State v. LG Electronics, Inc.*, 185 Wn. App. 394, 341 P.3d 346 (2015), *petition for review granted*, No. 91391-9 (Wash. June 3, 2015).

III. STATEMENT OF THE CASE

There is no dispute as to the facts here. Indeed, Special has expressly accepted "the characterization of those facts by the Court of Appeals for the purposes of this petition for review." *Pet. for Rev.*, p. 4, fn.

5. According to the Court of Appeals, "the record shows that Special supplied asbestos to a CertainTeed manufacturing plant in Santa Clara, California[, and] CertainTeed used the asbestos to make pipe that it shipped into Washington in substantial quantities." *Noll Dec.*, ¶8, at *2. Plaintiff's Decedent, Donald Noll, was exposed to that asbestos in Washington while working with and around CertainTeed asbestos pipe between 1977 and 1979. *Id.*, ¶2, at *1. Based upon Plaintiff's evidence in the record detailing the quantity of Special's asbestos moving into Washington, the Court of Appeals concluded, that "Special regularly supplied raw asbestos for the manufacture of pipe that moved into Washington through established channels of sale." *Id.*, ¶10, *2. More specifically, the Court of Appeals found:

> According to shipping invoices, the Santa Clara plant sent at least 55,000 linear feet of asbestos-cement pipe to buyers in Washington between 1977 and 1979, through at least 31 discrete shipments....During that time period, Special supplied approximately 95 percent of the asbestos used at CertainTeed's Santa Clara plant....In December 1977, Special contracted to supply CertainTeed's pipe division with approximately 4000 tons of blue asbestos per year from 1978 until 1983....Special arranged for 1,018 tons of blue asbestos obtained from General Mining to be delivered to CertainTeed's Santa Clara plant between 1977 and 1979.

Id., ¶¶8-9, at *2.

In the trial court, Special asserted and the trial court agreed that the matter was controlled by the plurality opinion in *J. McIntyre Machinery*,

which would require evidence that a defendant knowingly "targeted" the forum State. The trial court granted Special's motion to dismiss on that basis *See Noll Dec.*, ¶18, *4. After the Court of Appeals decision in *State v. AU Optronics Corp.*, 180 Wn. App. 903, 328 P.3d 919 (2014), Special was compelled to abandon its "targeting" argument and concede that Justice Breyer's concurrence is controlling. *See Noll Dec.*, ¶19, at *4 ("Justice Breyer's...concurring opinion is controlling because it resolved the issue on narrower grounds than the plurality's") (*citing AU Optronics*, 180 Wn. App. at 919). Special shifted its focus instead to the new argument, which it had not advanced before the trial court, that exercising personal jurisdiction requires direct evidence of the defendant's actual, subjective knowledge. The Court of Appeals rejected that novel argument:

> The governing precedents do not require a plaintiff to prove a component supplier's actual knowledge of the manufacturer's plans to ship finished product into the forum state. *AU Optronics*, *World-Wide Volkswagen Corp.*, and Justice Breyer's concurrence in *J. McIntyre* require objective facts evidencing a regular flow or regular course of sales by which the product enters the forum state....

¶25, at *6.

As noted and as found by the Court of Appeals, Plaintiff provided detailed evidence establishing the required "objective facts evidencing a regular flow or regular course of sales by which" Special's asbestos entered Washington to injure Mr. Noll, a Washington resident, in

Washington. Special does not challenge the sufficiency of Plaintiff's evidence in that respect. It now asserts only that Plaintiff must prove actual knowledge in addition to the regular flow of tons of Special's asbestos into Washington via established channels in the stream of commerce.

IV. REASONS THAT REVIEW SHOULD BE DENIED

Special's *Petition* fails to state any grounds pursuant to RAP 13.4(b) that would justify review by this Court. It cannot specifically identify any decision by this Court or the Washington Court of Appeals with which the Court of Appeals' decision here supposedly conflicts. It cannot articulate a *significant question* of constitutional import beyond complaining that its due process rights are being violated. If such protestations were enough to satisfy RAP 13.4(b), this Court would find itself in the business of reviewing every contested exercise of personal jurisdiction because every such exercise necessarily touches upon due process. Not every application of established due process law warrants such review. There must be a genuine unresolved legal question of sufficient importance to invoke this Court's involvement.

(1)
Special's Unprecedented 'Actual Knowledge' Theory
Is Not a Matter Worthy of Further Review

Special's 'actual knowledge' theory raises no such significant question and was properly rejected. Inventing a creative, but unprecedented theory does not suffice to invoke this Court's review—especially where, as here, such theory was not even presented to the trial court. More important, Special cannot identify a single decision anywhere actually supporting its 'actual knowledge' theory—the one and only point as to which it seeks further review. Rather, its theory rests upon overemphasizing words or phrases from various decisions, while ignoring their actual holdings.

No Washington decision requires proof of actual knowledge. In *AU Optronics Corp.*, the Court of Appeals held that the defendant was subject to jurisdiction where the State had shown the regular flow of the its LCD panels into Washington as components of computer monitors and televisions sold to consumers within the State. *See* 180 Wn. App. at 924-25. It was the large, regular volume of sales within the state, rather than defendant's subjectively awareness of such sales, that established minimum contacts. *Id.* Thus, as the Court of Appeals correctly held here, it is the objective facts concerning how the defendant chooses to sell its components and the actual sales that flow from such choice that are

important for minimum contacts, not the defendant's claims about what it knew or did not know. *See Noll Dec.*, ¶25, at *6. *See also Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 611-12 (8th Cir. 1994) (rejecting the defendant's claims that it was not aware of regular sales into the forum as "willful ignorance"); *Russell v. SNFA*, 987 N.E.2d 778, 793 & 797 (Ill. 2013) (upholding jurisdiction without requiring direct evidence that defendant had "specific knowledge of the final destination" of its tail-rotor bearings" based upon objective facts demonstrating "multiple sales of its products in Illinois"); *Sproul v. Rob & Charles, Inc.*, 304 P.3d 18, 29 (N.M. App. 2012) (simply and expressly rejected any test that required direct proof of a defendant's actual, subjective knowledge).

Likewise, no United States Supreme Court precedent requires direct evidence of actual knowledge. Rather, these decisions look to whether there is objective evidence of a substantial, regular flow of the product in question as opposed to isolated or random sales. For example, in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), a decision relied-upon here, the Court expressly stated "if the sale of a product of a manufacturer ... is not an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject

it to suit in one of those States if its allegedly defective merchandise causes injury there."

In *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 117 (1987), a group of four justices, led by Justice Brennan, held that minimum contacts may be established by demonstrating a regular flow of the defendant's products into the forum state. A second plurality, led by Justice O'Connor, held that minimum contacts may be established by placing products into the stream of commerce provided there is "something more," such as state-specific design or advertising. 480 U.S. at 112. Justice Stevens, joined by two other justices in a separate concurrence, opined that whether a regular course of dealing may establish minimum contacts should be viewed in light of multiple factors including, "the volume, the value, and the hazardous nature of the components." 480 U.S. at 122.

In *J. McIntyre Machinery*, the Court was again unable to reach any clear consensus regarding the standard for establishing minimum contacts in a stream-of-commerce case. Justice Breyer, in a concurring opinion, wrote that case could be decided by resort to the Court's precedents and without announcing any new rule of law. *See* 131 S.Ct. at 2792. The plaintiff did not show any "regular flow" or "regular course" of sales of the defendant's products in New Jersey. *Id.* (referencing Justice Brennan's

and Justice Stevens' opinions in *Asahi*, 480 U.S. at 117, 122). Likewise, the plaintiff failed to show "something more" than placement of a product in the stream of commerce." *Id.* (citing Justice O'Connor's plurality opinion in *Asahi*, 480 U.S at 112). In short, the single sale of an injury-causing product into the forum was insufficient to establish minimum purposeful contacts under *World-Wide Volkswagen. Id.*

The Court of Appeals here followed the approach taken by Justice Breyer and held that Mrs. Noll had demonstrated minimum contacts through at least one of the approaches described in *Asahi* (i.e., by demonstrating a "regular flow" of Special Electric's products into Washington). *See Noll Dec.*, ¶22, at *5. Special, after taking the opposite position in the trial court, was forced to concede that Justice Breyer's opinion in *J. McIntyre Machinery* is the current controlling precedent. It does not now claim that the Court of Appeals erred in applying that precedent. Nor does Special deny that Plaintiff's evidence establishes the requisite "regular flow." Rather, Special attempts to create an issue where none exists by pulling words such as "aware" and "expectation" out of context from these various opinions. Yet, it cannot cite to a single case—federal, Washington or otherwise—in which the regular flow of the defendant's product into the forum was held insufficient to establish

minimum contacts because the plaintiff had not come forward with direct evidence of defendant's subjective, actual knowledge.

(2)
The Court of Appeals Did Not Improperly Rely
Upon the Hazardous Nature of Special's Asbestos

Special argues that the Court of Appeals improperly considered the hazardous nature of Special's asbestos in holding that jurisdiction is proper here. The Court simply noted that this was "one of the factors mentioned by Justice Stevens in *Asahi* as affecting the jurisdictional inquiry." *Noll Dec.*, ¶22, at *5. It did not "rely" on such factor, but expressly and unequivocally rested its decision upon the regular flow of sales into Washington, stating:

> Special's asbestos was supplied for use in making large quantities of pipe to be distributed through existing channels of interstate commerce, including channels regularly flowing into the State of Washington. It is the regular flow or course of sales that distinguishes the facts here from the facts of *J. McIntyre*. A plaintiff is not required to prove both a regular flow *and* "something more."

Id. (*emphasis by court*). *See also Id.* at ¶25, at *6 (volume of Special's shipments of asbestos to Santa Clara and volume of CertainTeed's pipe shipments to Washington suffices to establish purposeful availment).

(3)
This Court's Accepting Review of Review in *LG Electronics* Neither Compels nor Warrants Taking this Case

Finally, Special Electric claims that acceptance of review is necessary to avoid confusion because this Court has accepted review in *LG Electronics*. Said assertion is just a thinly veiled attempt to ride the coattails of review in *LG Electronics* by exaggerating general parallels between two fundamentally dissimilar matters. These matters are similar only in the broadest sense that both involve stream-of-commerce jurisdiction. Special even acknowledges that, in *LG Electronics*, "[t]he Court of Appeals held that the defendants '*understood* that third parties would sell products containing their CRT component parts throughout the United States, including large numbers of those products in Washington.'" *Pet. for Rev.*, p. 19 (*emphasis by Special*). Thus, it fully admits that the only issue it raises for review here is a nonissue in *LG Electronics*.

Special attempts to bootstrap this matter under *LG Electronics* by claiming that its 'actual knowledge' theory is some sort of predicate to the issues raised there, which it is not. One issue raised in *LG Electronics* is whether an *allegation*, that a defendant 'was aware' that its component would come to Washington, suffices *alone* to confer jurisdiction. The issue for which Special seeks review in the case at bar is whether asserting jurisdiction requires direct evidence of a defendant material supplier's

actual knowledge concerning the manufacture's distribution scheme, *in addition to* uncontroverted *evidence* showing a regular flow of the offending material into Washington through established channels in the stream of commerce. Although these issues are related to some degree, resolution of one does not inevitably compel the decision as to the other such that they must be considered in tandem.

LG Electronics also raises an important procedural issue not presented in the case at bar—namely, whether "the court of appeals erred by refusing to consider uncontested affidavits that contradicted the bare jurisdictional allegations in the complaint...." *Pet. for Rev. in LG Electronics*, p. 2 (copy attached *sans* appendices). The case at bar presents no such procedural controversy. Indeed, unlike the plaintiff in *LG Electronics*, who relied solely on general allegations, Mrs. Noll identified the specific existing channel of commerce by which Special's asbestos came to Washington. She presented objective evidence detailing and quantifying the regular flow of Special's asbestos to CertainTeed's pipe plant in Santa Clara, and of the pipe containing such asbestos into Washington, where Mr. Noll—a citizen of Washington—was exposed. Thus, Mrs. Noll thus established *by evidence* that the asbestos that injured her husband was not an isolated or one-time sale, but the result of a regular course of dealing between Special Electric and CertainTeed that

conveyed asbestos into Washington via the "regular and anticipated flow" of commerce not "unpredictable currents or eddies." *Asahi*, 480 U.S. at 116-17 (Brennan, J. *concurring*). *See J. McIntyre Machinery*, 131 S.Ct. at 2792-93 (Breyer, J., *concurring in judgment*) (plaintiff can establish stream-of-commerce jurisdiction by either of two alternative means reflected in pluralities by Justice Brennen or Justice O'Connor in *Asahi Metal*).

Mr. Noll, a citizen of Washington, died of cancer as a result of being directly exposed in Washington to the carcinogen that Special, a U.S. company, placed into established and identified channels of commerce flowing into Washington. By contrast, *LG Electronics* involves the indirect impact of a world-wide conspiracy to fix prices as to certain components on the cost to Washington consumers for finished products incorporating those components. The alleged harm does not result from the actual presence of the components in Washington or from any danger, defect or physical attribute, but from how the price of the components influences the cost of the goods into which they were elsewhere incorporated. Thus, unlike *LG Electronics*,[1] the case at bar presents the kind of classic stream-of-commerce scenario, which has consistently

[1] This is not to say that jurisdiction does not exist in LG Electronics. Mrs. Noll takes no position as to the merits of such matters, but simply notes the fundamental differences between that matter and her case.

supported personal jurisdiction since *Gray v. American Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961) (adopted by the U.S. Supreme Court in *World-Wide Volkswagen*, 444 U.S. 286). *See also Noll Dec.*, ¶26, at *6 ("[our] reasoning is supported by *Gray v. American Radiator*, a leading case on the application of the stream-of-commerce doctrine to a nonresident supplier of components"). The Court of Appeals' proper application of existing law to such a familiar fact pattern does not require further review by this Court.

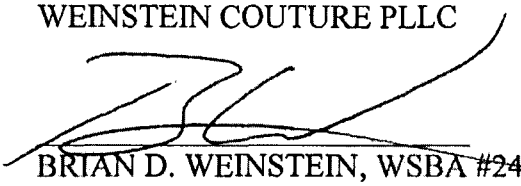
V. CONCLUSION

The most Special can say (other than just reiterating arguments rejected by the Court of Appeals) is that "[t]his Court should accept review to correct the Court of Appeals' unduly expansive interpretation of the stream-of-commerce doctrine of personal jurisdiction." *Pet. for Rev.*, p. 5. However, merely calling the Court of Appeals' decision "unduly expansive" is not only an insufficient expression of the need for further review, but also patently incorrect. Special has failed to identify any conflicting decision or to articulate a truly significant constitutional question, as required by RAP 13.4(b). This Court need not trouble itself to review every novel, unprecedented theory that happens to involve due process in some manner. Accordingly, Plaintiff Candace Noll respectfully requests that the *Petition for Review* be denied.

DATED this 27th day of August, 2015.

Respectfully submitted,

WEINSTEIN COUTURE PLLC



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APPENDIX A

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SUPREME COURT OF THE STATE OF WASHINGTON

Washington Supreme Court No. 91391-9

Court of Appeals No. 70298-0-I

THE STATE OF WASHINGTON,

Respondent,

v.

LG ELECTRONICS, INC.; KONINKLIJKE PHILIPS ELECTRONICS N.V. A/K/A ROYAL PHILIPS ELECTRONICS N.V.; PHILIPS ELECTRONICS INDUSTRIES (TAIWAN), LTD.; SAMSUNG SDI CO., LTD. F/K/A SAMSUNG DISPLAY DEVICE CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZHEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; SAMSUNG SDI (MALAYSIA) SDN. BHD.; PANASONIC CORPORATION F/K/A MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; HITACHI DISPLAYS, LTD. (N/K/A JAPAN DISPLAY INC.); HITACHI ELECTRONIC DEVICES (USA), INC.; HITACHI ASIA, LTD.

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PETITION FOR REVIEW

COURT OF APPEALS
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A. IDENTITY OF PETITIONERS

Koninklijke Philips Electronics N.V. a/k/a Royal Philips Electronics N.V. ("KPNV"), Philips Electronics Industries (Taiwan), Ltd. ("PTL"), Panasonic Corporation f/k/a Matsushita Electric Industrial Co., Ltd.,'Hitachi Displays, Ltd. n/k/a Japan Display Inc., Hitachi Asia, Ltd., Hitachi Electronic Devices (USA), Inc. ("HED(US)"), LG Electronics, Inc. ("LGEI"), Samsung SDI America, Inc. ("SDI America"), Samsung SDI Co., Ltd. f/k/a Samsung Display Device Co., Ltd. ("SDI"), Samsung SDI (Malaysia) Sdn. Bhd. ("SDI Malysia"), Samsung SDI Mexico S.A. de C.V. ("SDI Mexico"), Samsung SDI Brasil Ltda. ("SDI Brazil"), Shenzhen Samsung SDI Co., Ltd. ("SDI Shenzhen"), Tianjin Samsung SDI Co., Ltd. ("SDI Tianjin"), appellees below, petition for review of the court of appeals' decision identified in Part B.

B. COURT OF APPEALS' DECISION

Petitioners seek review of the published opinion issued by the Court of Appeals for Division I in the case of *State of Washington, et al. v. LG Electronics, Inc., et al.*, No. 70298-0-I, 2015 WL 158858, on January 12, 2015 (attached as Appendix A). Petitioners have previously filed a petition for review from another court of appeals' decision in the same underlying case, and that petition is currently pending in this Court in *State of Washington v. LG Electronics, et al.*, No. 91263-7.

C. ISSUES PRESENTED FOR REVIEW

1. Whether Washington courts may properly exercise personal jurisdiction over nonresident component-part manufacturers solely because the manufacturers knew that other companies would incorporate those parts into products that would eventually be sold in meaningful quantities in Washington.

2. Whether, in considering a motion to dismiss under CR 12(b)(2), the court of appeals erred by refusing to consider uncontested affidavits that contradicted the bare jurisdictional allegations in the complaint, an approach in conflict with precedents from Division I and Division II and inconsistent with federal law.

D. STATEMENT OF THE CASE

Plaintiff, the State of Washington, alleges in its complaint that Defendants violated the Consumer Protection Act ("CPA") by "conspiring to suppress and eliminate competition by agreeing to raise prices in the market for cathode ray tubes, commonly referred to as CRTs," in violation of RCW 19.86.030 (attached as Appendix B). CP 2, 27. The State did not allege a conspiracy to affect the price of the finished products that incorporate CRTs, such as televisions and computer monitors.

The State also did not allege that any conspiratorial activity occurred in Washington. CP 17-25. Instead, the State sought to establish personal jurisdiction over Petitioners by alleging that they sold CRTs "into [the]

international stream of commerce" with the "knowledge, intent and expectation" that such CRTs would be incorporated into CRT products to be sold by other third parties to consumers "throughout the United States, including in Washington State." CP 13.

Petitioners moved to dismiss for lack of personal jurisdiction.[1] CP 29-208. Petitioners argued that the State had not alleged sufficient facts to support personal jurisdiction and submitted affidavits detailing their virtually total absence of contacts with Washington. CP 40-42, 56-64, 84-86, 104-06, 203-06. For example, these affidavits establish that Petitioners manufactured and sold CRTs entirely outside of Washington, with two narrow exceptions: (1) KPNV's affidavit reveals that it is merely a holding company and does not manufacture or sell *anything*, CP 105; and (2) the affidavits for SDI, SDI Mexico, and SDI Malaysia establish that they shipped CRT component parts to a single Washington manufacturer, CP 206. The State did not contest any of the affidavits.

The trial court agreed with Petitioners and granted their motions to dismiss. CP 616-34. The trial court recognized that placing a product into the stream of commerce, without more, is not sufficient to confer personal jurisdiction over the Petitioners: "[J]ust put[ting] it into the stream of commerce throughout the country is not enough." Hr'g Tr. 57 (attached as Appendix C).

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[1] A number of other defendants in the case, including many domestic entities in the same corporate families as Petitioners, did not challenge Washington's personal jurisdiction over them.

The trial court correctly observed that the State was "really advocating for an expansion, or a change in the law." Hr'g Tr. 58.

The court of appeals reversed. The court first refused to consider the uncontested affidavits. Op. at 7-13. It then invoked Justice Breyer's concurrence in *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011), to fashion a new and far-reaching rule for personal jurisdiction. Op. at 13-31. The court held that Washington courts could exercise personal jurisdiction over Petitioners because other companies incorporated their component parts into finished products that were later sold in meaningful quantities in Washington: "[W]e hold that because a product manufactured by these foreign corporations was sold—as an integrated component part of retail consumer goods—into Washington in high volume over a period of years, the corporations 'purposefully' established 'minimum contacts' in Washington . . . [and] exercise [of personal jurisdiction] would not offend notions of 'fair play and substantial justice.'" Op. at 2.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The court of appeals misinterpreted recent United States Supreme Court precedent to work a sea change in personal-jurisdiction law

The court of appeals vastly extended Washington's view of personal jurisdiction based on its mistaken belief that the Court's divided opinion in *J. McIntyre* announced a new, more expansive doctrine of personal jurisdiction. The court of appeals read *J. McIntyre* as sanctioning personal jurisdiction over a foreign component-part manufacturer "if the incidence or volume of [completed-

product] sales into a forum points to something systematic—as opposed to anomalous." Op. at 24. But *none* of the Justices endorsed that extreme view. The court of appeals' aggressive approach to personal jurisdiction contravenes any reasonable interpretation of *J. McIntyre*, as numerous courts have recognized.

a. The pre-*J. McIntyre* state of personal-jurisdiction law

1. *J. McIntyre* is the latest in the United States Supreme Court's long line of cases on specific personal jurisdiction. The Court has explained that the Due Process Clause limits the reach of a forum state's jurisdiction over nonresident defendants. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). The "constitutional touchstone" of this analysis is "whether the defendant purposefully established 'minimum contacts' in the forum State." *Id.* at 474. "[T]here [must] be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 475 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And the "litigation [must] result[] from alleged injuries that 'arise out of or relate to' those activities." *Id.* at 472 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). Additionally, the assertion of personal jurisdiction must "comport with 'fair play and substantial justice.'" *Id.* at 476 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)).

The Court has been clear that the contacts must be made *by the defendant*: "Jurisdiction is proper . . . where the contacts proximately result from actions by

the defendant himself that create a "substantial connection" with the forum State." *Id.* at 475. "[U]nilateral activity of another party or a third person is not an appropriate consideration . . . ." *Helicopteros*, 466 U.S. at 417. For example, a "seller of chattels[']" "amenability to suit . . . [does not] travel with the chattel," such that a buyer's unilateral actions bringing the chattel into the forum state creates personal jurisdiction over the seller. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980).

2. In *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987), the Court considered the precise question presented here: whether "the mere awareness on the part of a foreign defendant that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce" satisfies the constitutional "minimum contacts" test for personal jurisdiction. *Id.* at 105. Asahi was a Japanese valve assembly manufacturer who had delivered valve assemblies to a tube manufacturer, Cheng Shin, in Taiwan, who then sold those tubes worldwide, including in California. *Id.* at 106.

The United States Supreme Court unanimously agreed that California could not exercise personal jurisdiction over Asahi, but the Justices split four-to-four over the appropriate test for establishing minimum contacts, with Justice Stevens taking no position on the issue. Writing for four Justices, Justice O'Connor favored the "stream-of-commerce plus" theory of personal jurisdiction. Under this approach, minimum contacts requires "something more" than "a

defendant's awareness that the stream of commerce may or will sweep the product into the forum State." *Id.* at 111-12. The defendant must also purposefully direct his conduct towards the forum state, such as by "designing the product for the market in the forum State[or] advertising in the forum State." *Id.* Because Asahi had not targeted California, it did not have the minimum contacts with California required for personal jurisdiction. *Id.* at 112-13.

Justice Brennan, also writing for four Justices, focused on foreseeability rather than targeted conduct. He rejected the need for an additional showing beyond a defendant placing goods in the stream of commerce with the awareness that "the regular and anticipated flow of products from manufacture to distribution to retail sale" would bring the product to the forum state. *Id.* at 117 (Brennan, J., concurring in judgment). Justice Brennan thus concluded that "Asahi's regular and extensive sales of component parts to a manufacturer it knew was making regular sales of the final product in California" established minimum contacts. *Id.* at 121.[2]

Asahi left much confusion in its wake. Many courts adopted Justice O'Connor's stream-of-commerce plus test, while others preferred Justice Brennan's approach. *See* Todd David Peterson, *The Timing of Minimum Contacts*, 79 Geo. Wash. L. Rev. 101, 119-20 (2010).

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[2] Justice Brennan went on to conclude "that the exercise of personal jurisdiction over Asahi in this case would not comport with 'fair play and substantial justice.'" *Asahi*, 480 U.S. at 116. Thus, the Court was unanimous in holding that personal jurisdiction could not be exercised over Asahi.

This Court has never analyzed the issue in any depth. The closest it came was in *Grange Insurance Association v. State*, 110 Wn.2d 752, 757 P.2d 933 (1988), a case far afield from the foreign component-part manufacturer context here. This Court then merely noted the split opinions in *Asahi* before observing in dicta that the issue in the case could be resolved under its own precedent because the defendant targeted Washington with specific products—it "knew that these particular cows would be immediately shipped into Washington." *Id.* at 762.

This Court did note that its pre-*Asahi* case law tended to find minimum contacts when an "out-of-state manufacturer places its products in the stream of interstate commerce." *Id.* at 761. But a closer look at those cases reveal that their facts satisfy Justice O'Connor's stream-of-commerce plus approach just as they do Justice Brennan's approach. For example, in *Smith v. York Food Machinery Co.*, 81 Wn.2d 719, 504 P.2d 782 (1972), the manufacturer defendants "advertised in trade magazines circulated here; they mailed literature to potential customers here; and, they communicated by telephone and telegraph with food processors here." *Id.* at 723. Thus, *Grange* did not announce a definitive interpretation of *Asahi* for Washington courts.

b. Under *J. McIntyre*, Washington's assertion of personal jurisdiction over Petitioners violates due process

That was the unsettled state of affairs until the United States Supreme Court weighed in on the stream-of-commerce issue again in *J. McIntyre*, a case involving a foreign manufacturer who engaged a distributor to sell its finished

products in the United States. 131 S. Ct. at 2789. New Jersey exercised personal jurisdiction over the manufacturer based on the fact that at least one of its machines ended up in New Jersey and caused injury there. *Id.* The Supreme Court reversed, with a four-Justice plurality and a two-Justice concurrence carrying the day. *Id.* at 2785-94.

The court of appeals interpreted *J. McIntyre* as adopting Justice Brennan's approach in *Asahi*, Op. at 18-24 & n.23, but that gets the Court's holding precisely backwards. The best view of the Court's holding is that it adopted Justice O'Connor's stream-of-commerce plus theory of personal jurisdiction. The most that can be argued in the other direction is that *J. McIntyre* preserved the status quo on the issue. But there is no reasonable argument supporting the court of appeals' conclusion that *J. McIntyre* adopted Justice Brennan's stream-of-commerce approach, which *none* of the Justices endorsed.

1. Justice Kennedy's four-Justice plurality opinion in *J. McIntyre* explicitly rejects Justice Brennan's foreseeability-based approach to personal jurisdiction: "Justice Brennan's concurrence . . . is inconsistent with the premises of lawful judicial power." 131 S. Ct. at 2789. The personal jurisdiction question is instead one of authority and sovereignty: "The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *Id.* Accordingly, merely placing items into the stream of commerce, without some purposeful

direction towards the forum state, is insufficient to establish personal jurisdiction: "The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum . . . ." *Id.* at 2788. Thus, Justice Kennedy adopted a theory of personal jurisdiction that was "consistent with Justice O'Connor's opinion in *Asahi*," although one based more explicitly in notions of authority and sovereignty. Applying that test, Justice Kennedy concluded that New Jersey could not exercise personal jurisdiction because the manufacturer had not "engaged in conduct purposefully directed at New Jersey" when it shipped its finished products to an Ohio distributor who in turn targeted the United States as a whole. *Id.* at 2790.

Justice Breyer's two-Justice concurrence in the judgment echoed the plurality's concern about a foreseeability-based approach. He rejected the view that "a producer is subject to jurisdiction for a products-liability action so long as it '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.* (citation omitted). But he also shied away from adopting the plurality's sovereignty-based theory, expressing concern that the facts did not present any of the "many recent changes in commerce and communication" that complicate jurisdictional questions. *Id.* at 2791; *see also id.* at 2793. Justice Breyer instead concluded that the facts of the case—a foreign manufacturer engaging a distributor to sell its machines in the United States, resulting in one sale to the forum state—would not support jurisdiction under any of the Court's

precedents, including both O'Connor's and Brennan's *Asahi* opinions, and thus he felt no need to take a firm position on the plurality's approach. *Id.* at 2791-92.

2. The court of appeals somehow concluded from these opinions that the *J. McIntyre* Court adopted Justice Brennan's approach to personal jurisdiction, a view no Justice endorsed. Op. at 18-24 & n.23. Because no opinion commands a majority, the Court's holding "may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (citation omitted). That does not mean that a court must choose among the available opinions and apply one to the exclusion of the others: "This inquiry . . . does not require us to determine a single opinion which a majority joined, but rather determine the 'legal standard which, when applied, will necessarily produce results with which a majority of the Court from that case would agree.'" *State v. Hickman*, 157 Wn. App. 767, 774, 238 P.3d 1240 (2010) (citation omitted).

In *J. McIntyre*, both the plurality and the concurrence expressed reservations about a foreseeability-based approach and adopted positions consistent with Justice O'Connor's stream-of-commerce plus test. The plurality went further and announced a new sovereignty-based theory of personal jurisdiction, while the concurrence hesitated to make any broad pronouncements. But the two opinions overlap in their toleration of Justice O'Connor's test: the plurality by adopting an approach "consistent with Justice O'Connor's opinion in *Asahi*," *J. McIntyre*, 131 S. Ct. at 2790, and the concurrence by applying Justice

O'Connor's requirement of "something more" than placing goods in the stream of commerce, *id.* at 2792. Therefore, the stream-of-commerce plus test is the law going forward. *See Smith v. Teledyne Cont'l Motors, Inc.*, 840 F. Supp. 2d 927, 931 (D.S.C. 2012); *N. Ins. Co. of N.Y. v. Constr. Navale Bordeaux*, No. 11-60462-CV, 2011 WL 2682950, at *5 (S.D. Fla. July 11, 2011); *see also Williams v. Romarm, SA*, 756 F.3d 777, 785 (D.C. Cir. 2014) (interpreting *J. McIntyre* to require "facts showing [the foreign manufacturer] targeted the District or its customers in some way").

Petitioners are not subject to personal jurisdiction in Washington under that test. The State has alleged none of the "plus" factors needed to demonstrate targeting of the Washington market. Nor did the court of appeals identify any such plus factors.

Another plausible reading of *J. McIntyre* is that the Court's holding simply maintains of the status quo ante. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 753 F.3d 521, 541 (5th Cir. 2014); *AFTG-TG, LLC v. Nuvoton Tech. Corp.*, 689 F.3d 1358, 1363 (Fed. Cir. 2012). This approach elevates to a holding of the Court Justice Breyer's statements that "resolving this case requires no more than adhering to our precedents" and that "this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules." *J. McIntyre*, 131 S. Ct. at 2792-93.

Under this reading of *J. McIntyre*, the jurisdictional issue in this case would turn on whether Washington follows the O'Connor or Brennan approach

from *Asahi*. Because this Court has not resolved that issue, the court of appeals would have had to choose between those approaches to resolve this case.

Rather than follow either of these plausible interpretations of *J. McIntyre*, the court of appeals instead settled on the erroneous view that the Court adopted Justice Brennan's foreseeability approach. Op. at 18-24 & n.23. The court of appeals supported this holding with snippets of Justice Breyer's concurrence in which he explains that the facts would not support jurisdiction even under the Brennan test.[3] Op. at 22-23.

But even the *dissent* in *J. McIntyre* did not adopt the Brennan test. It instead focused on McIntyre's efforts to market its products in the United States and specifically distinguished the case from pure stream-of-commerce cases like *Asahi*: "Asahi, unlike McIntyre UK, did not itself seek out customers in the United States, it engaged no distributor to promote its wares here, it appeared at no tradeshows in the United States, and, of course, it had no Web site advertising its products to the world." 131 S. Ct. at 2803 (Ginsburg, J., dissenting). And particularly relevant here, the dissent pointed out the different considerations at

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[3] The court of appeals cited one of its recent cases, *State v. AU Optronics Corp.*, 180 Wn. App. 903, 328 P.3d 919 (2014), to support this view. Op. at 24-26. That case settled while the defendants' petition for review was pending in this Court. *See* Consent Decree, *State v. AU Optronics Corp.*, No. 10-2-29164-4SEA (King Cnty. Sup. Ct. Jan. 9, 2015). *AU Optronics* relied extensively on the flawed Oregon Supreme Court case of *Willemsen v. Invacare Corp.*, 352 Or. 191, 282 P.3d 867 (2012), which also understood *J. McIntyre* as adopting Justice Brennan's approach, even as it noted the presence of Justice O'Connor's "plus" factors in the case. *See id.* at 203 ("CTE agreed to manufacture the battery chargers . . . in compliance with federal, state, and local requirements.").

play in *Asahi* because "Asahi was a component-part manufacturer with 'little control over the final destination of its products once they were delivered into the stream of commerce.'" *Id.* (citation omitted).

Thus, the court of appeals adopted as the holding of *J. McIntyre* a view that no Justice endorsed. And that was the only way for it to find jurisdiction here, because, given the similarities between Petitioners and the component-part manufacturer in *Asahi*, it is doubtful that even the dissenting Justices would find jurisdiction on these facts.[4]

This Court should correct the court of appeals' misguided and untenable interpretation of *J. McIntyre*. This Court should be the final word on this important constitutional question that turns on the interpretation of United States Supreme Court case law.

2. The court of appeals compounded its error by refusing to consider uncontested, dispositive evidence on the personal-jurisdiction question

The court of appeals exacerbated its flawed personal-jurisdiction holding by refusing defendants the opportunity to extricate themselves from false claims of personal jurisdiction early in a case. As discussed, the State failed to offer any

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[4] Moreover, even if the court of appeals were correct in its minimum contacts analysis, Petitioners still would not be subject to personal jurisdiction here because it would offend "traditional notions of fair play and substantial justice." *Asahi*, 480 U.S. at 113 (internal quotation marks omitted). As in *Asahi*, the burden on Petitioners is "severe" because, with the exception of the few domestic Petitioners, they would be forced to submit to "to a foreign nation's judicial system." *Id.* at 114. Further, dismissing Petitioners imposes no great burden on the State because it would still be able to obtain recovery from the other defendants in the case, many of whom are domestic entities that are part of the same corporate family as Petitioners. *See id.* at 113-14.

allegations—much less evidence—establishing a prima facie case for personal jurisdiction under the proper *J. McIntyre* standard. What is more, Petitioners offered uncontested affidavits that would have factually defeated the complaint's jurisdictional allegations under the proper test—and for some Petitioners even under the faulty Justice Brennan test applied by the court of appeals.

The court of appeals nonetheless turned a blind eye to this evidence under its conception of the standard of review at this procedural stage. The court of appeals recognized Petitioner's argument: "The Companies contend that when a defendant moves to dismiss for lack of personal jurisdiction and, in doing so, offers affidavits or declarations to rebut the allegations in the plaintiff's complaint, the plaintiff may not rely on the complaint's factual averments but, rather, must submit evidence in order to satisfy its burden of proof." Op. at 9. But the court rejected the argument as contrary to Washington law, concluding that "[f]or purposes of determining jurisdiction, this court treats the allegations in the complaint as established." Op. at 9-10 (citation omitted). Washington courts have not fully elucidated the CR 12(b)(2) procedures, and this Court should take the opportunity to do so now.

The court of appeals' approach is contrary to Washington law. The court acknowledged that precedents from Division I and Division II would consider Petitioners' uncontested evidence. Op. at 7-13 & n.14 (citing *Carrigan v. California Horse Racing Board*, 60 Wn. App. 79, 802 P.2d 813 (1990); *Access Rd. Builders v. Christenson Elec. Contracting Eng'g Co.*, 19 Wn. App. 477, 576

P.2d 71 (1978); *Puget Sound Bulb Exch. v. Metal Bldgs. Insulation Inc.*, 9 Wn. App. 284, 513 P.2d 102 (1973)). The court also cited this Court for support, claiming that this Court had "recognized this approach and adopted the same." Op. at 10. But the two cases it cited do not address the issue presented here. Neither case involved a defendant's affidavit that conflicted with the unsworn jurisdictional allegations in the complaint. *See FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 963-64, 331 P.3d 29 (2014); *Lewis v. Bours*, 119 Wn.2d 667, 669-70, 835 P.2d 221 (1992).

The court of appeals' holding also ignores this Court's directive that "Washington courts treat as persuasive authority federal decisions interpreting the federal counterparts of our own court rules." *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). Federal courts have interpreted the federal analogue of CR 12(b)(2) as providing for exactly the type of procedure Petitioners advocate here. In analyzing a motion to dismiss for lack of personal jurisdiction, federal courts credit the plaintiff's allegations if uncontroverted by affidavit, and they credit the plaintiff's affidavits over those of the defendant where there is a conflict. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). But federal courts elevate the defendant's uncontested affidavit over a bare allegation in the complaint: "[F]or purposes of personal jurisdiction, 'we may not assume the truth of allegations in a pleading which are contradicted by affidavit.'" *Alexander v. Circus Circus Enters., Inc.*,

972 F.2d 261, 262 (9th Cir. 1992) (citation omitted). Yet the court of appeals rejected this well-established federal approach.

The court of appeals' method wastes judicial and private resources and imperils due process rights. There is no reason for parties to remain in a case after they have presented uncontested facts that conclusively demonstrate they are beyond the jurisdiction of the court. The extreme rule adopted by the court of appeals violates a party's due process rights by forcing it to undergo burdensome pre-trial discovery simply to vindicate its right to avoid being haled into a foreign court in the first place. The federal approach employs procedures that safeguard those important substantive rights.

KPNV is the poster child for the injustices of the court of appeals' approach. KPNV is a Dutch *holding company* that manufactures and sells *nothing*, not CRTs or anything else, and it consequently has no relevant connections to Washington whatsoever. CP 105. KPNV's affidavit on these jurisdiction-dispositive facts remains uncontested. But under the court of appeals' approach, KPNV will have to undergo even more burdensome pre-trial discovery—in addition to the over two million pages Petitioners have already produced, Hr'g Tr. 46, 49-50—before it could present its uncontested jurisdictional facts, Op. at 8, 11-13.

The trial court's denial of yet more discovery also cannot justify the court of appeals' ruling. Despite the voluminous documents already produced, the State failed to offer any reason why additional discovery would yield anything

contrary to the dispositive jurisdictional facts in Petitioners' affidavits or even "what discovery would actually be." Hr'g Tr. 66-67, 76. Thus, the trial court did not abuse its broad discretion in denying that additional discovery. *See Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 562 (9th Cir. 1995) (denying jurisdictional discovery when the plaintiff "failed to demonstrate how further discovery would allow it to contradict the [defendant's] affidavits").

3. This Court's guidance is long overdue on these issues of substantial public interest

This Court's guidance is needed on these personal-jurisdiction questions. The United States Supreme Court has twice waded into the stream-of-commerce debate, in *Asahi* and in *J. McIntrye*, each time failing to achieve a majority opinion. State supreme courts across the country have interpreted these touchstone cases to provide direction to the courts of their respective states on this increasingly common issue.[5]

There can be no doubt that this issue is of "substantial public interest" given the enormous implications for companies across the country and across the globe. RAP 13.4(b)(4). Yet this Court has never offered a definitive interpretation of either key case, leaving lower Washington courts adrift in the delicate and complex area of stream-of-commerce personal jurisdiction. Indeed,

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[5] *See, e.g., Ex Parte Edgetech I.G., Inc.*, 2014 WL 3700359, at *9-12 (Ala. July 25, 2014) (interpreting *J. McIntyre* to preserve the post-*Asahi* status quo); *Russell v. SNFA*, 987 N.E.2d 778, 791-94 (Ill. 2013) (same); *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, 755-59 (Tenn. 2013) (same); *Willemsen v. Invacare Corp.*, 352 Or. 191, 196-209, 282 P.3d 867 (2012) (interpreting *J. McIntyre* to adopt Justice Brennan's approach from *Asahi*).

this Court has not addressed a stream-of-commerce personal jurisdiction question at all in over twenty-five years, and even that was dicta. *See Grange*, 110 Wn.2d at 762.

This case arises in a factual setting that has become increasingly common in the globalized economy—a foreign component-part manufacturer who did not specifically target the Washington market, but whose products nevertheless end up being sold as part of finished products in Washington through the actions of third parties over whom the component-part manufacturers had no control. This case presents an ideal opportunity for the Court to end the confusion in this troubled area and announce Washington's theory of stream-of-commerce personal jurisdiction.

The court of appeals' errors make the need for this Court's intervention all the more urgent. If this Court does nothing, component-part manufacturers half a world away who have never taken any actions targeted to Washington will nevertheless be haled into Washington courts based solely on the actions of third parties who incorporate those parts into finished products and sell them in Washington. Just as troubling, companies like KPNV who have done nothing that would justify personal jurisdiction *under any test* will be haled into Washington courts without any opportunity to defend themselves before undergoing pointless discovery. This Court should weigh in on these issues now, before the court of appeals' ill-conceived holdings take root in Washington jurisprudence.

4. Petitioners are entitled to the reasonable attorney's fees awarded by the trial court

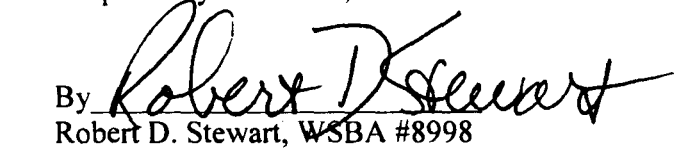
The trial court properly awarded certain Petitioners their attorney's fees and costs under Washington's long-arm statute, RCW 4.28.185(5) (attached as Appendix D). CP 1070-83. The CPA also entitles these Petitioners to recover their fees. RCW 19.86.080(1) (attached as Appendix E). The court of appeals reversed this award of fees only because Petitioners were no longer the prevailing parties after the court's reversal of the trial court's ruling on the motion to dismiss. Op. at 31. Because the court of appeals erred in that ruling, it also erred in reversing the trial court's proper award of attorney's fees.

F. CONCLUSION

For the reasons above, Petitioners request that this Court grant review of this case under RAP 13.4(b) and reverse the court of appeals. Petitioners further request that this Court affirm the trial court's dismissal of the case for lack of jurisdiction and its award of attorney's fees.

Dated this 11th day of February, 2015.

Respectfully submitted,

By 

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COUNSEL FOR PETITIONERS SAMSUNG SDI CO., LTD. F/K/A SAMSUNG DISPLAY DEVICE CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI MEXICO S.A. DE C.V., SAMSUNG SDI BRASIL LTDA.; SHENZHEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; AND SAMSUNG SDI (MALAYSIA) SDN. BHD.

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SUPREME COURT
OF THE STATE OF WASHINGTON

CANDANCE NOLL, Individually and as Personal Representative of the Estate of DONALD NOLL, deceased, Respondent, v. SPECIAL ELECTRIC COMPANY, INC., Petitioner.	NO. 91998-4 DECLARATION OF SERVICE

I, Alyssa Stout, declare and state as follows:

1. I am and at all times herein a citizen of the United States, a resident of Kitsap County, Washington, and am over the age of 18 years.

2. On the 27th day of August, 2015, I caused to be served true and correct copies of:

   (1) Respondent's Answer to Petition for Review;
   (2) Appendix A; and
   (3) Declaration of Service, on the following:

I. Via Electronic Mail, With Consent:

Counsel For:

WEINSTEIN COUTURE PLLC
818 STEWART STREET, SUITE 930
SEATTLE, WASHINGTON 98101
(206) 508-7070 - FACSIMILE (206) 237-8650

Special Electric Company Melissa K. Roeder, WSBA No. 30836 Sarah Stevens Visbeek, WSBA No. 44016 Forsberg & Umlauf P.S, 901 Fifth Avenue, Suite 1400 Seattle, WA 98164-1039 Phone: (206) 689-8500 Fax: (206) 689-8501 Email : mroeder@forsberg-umlauf.com Email : svisbeek@forsberg-umlauf.com Michael B. King, WSBA No. 14405 Justin P. Wade, WSBA No. 41168 Carney Badley Spellman, P.S. 701 Fifth Avenue, Suite 3600 Seattle, WA 98164-1039 Phone: (206) 622-8020 Fax: (206) 467-8215 Email: king@carneylaw.com Email: wade@carneylaw.com	( ) ( ) ( ) ( ) (X) ( )	Legal Messenger Facsimile U.S. Mail Federal Express E-Mail Hand Deliver

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington this 27th day of August, 2015.

WEINSTEIN COUTURE PLLC

Alyssa Stout
Legal Assistant

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OFFICE RECEPTIONIST, CLERK

To: Alyssa Stout
Cc: asbestos@carneylaw.com; asbestos3@forsberg-umlauf (asbestos3@forsberg-umlauf.com); Bill Kohlburn; Brooke Pryor; Justin P. Wade; Michael B. King; Rob WoodWard; Ryan Kiwala; Sarah Stevens Visbeek; Tim Thompson; WeinsteinCouture Service
Subject: RE: Noll v. Special Electric Company / Cause No. 91998-4

Rec'd on 8-27-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Alyssa Stout [mailto:Alyssa@weinsteincouture.com]
Sent: Thursday, August 27, 2015 2:09 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: asbestos@carneylaw.com; asbestos3@forsberg-umlauf (asbestos3@forsberg-umlauf.com) <asbestos3@forsberg-umlauf.com>; Bill Kohlburn <bkohlburn@simmonsfirm.com>; Brooke Pryor <bmank@simmonsfirm.com>; Justin P. Wade <wade@carneylaw.com>; Michael B. King <king@carneylaw.com>; Rob WoodWard <rwoodward@simmonsfirm.com>; Ryan Kiwala <rkiwala@simmonsfirm.com>; Sarah Stevens Visbeek <svisbeek@forsberg-umlauf.com>; Tim Thompson <tthompson@simmonsfirm.com>; WeinsteinCouture Service <service@weinsteincouture.com>
Subject: Noll v. Special Electric Company / Cause No. 91998-4

Dear Clerk,

Attached please find the following documents for filing:

1. Answer to Petition for Review;
2. Appendix A; and
3. Declaration of Service.

Case Name: Candance Noll, individually and as Personal Representative of the Estate of Donald Noll, Deceased, v. Special Electric Company, Inc.

Cause No.: 91998-4

Filing Attorney: Brian D. Weinstein, WSBA No. 24497
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