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No. 74225-6

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**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

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LINDA M. HOFFERBER,

Appellant,

v.

GEORGIA-PACIFIC, LLC, et al.,

Respondents.

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***CORRECTED BRIEF OF APPELLANT***

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Matthew P. Bergman, WSBA #20894  
Brian F. Ladenburg, WSBA #29531  
Anna D. Knudson, WSBA #37959  
BERGMAN DRAPER LADENBURG  
821 2<sup>nd</sup> Avenue, Suite 2100  
Seattle, WA 98104  
(206) 957-9510

Leonard J. Feldman, WSBA #20961  
PETERSON WAMPOLD ROSATO  
LUNA KNOPP  
1501 4<sup>th</sup> Avenue, Suite 2800  
Seattle, WA 98101  
(206) 624-6800

Attorneys for Appellant

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## I. INTRODUCTION

Linda Hofferber has lived in Washington for the past thirty-five years and was exposed to asbestos from Georgia-Pacific (“GP”) products. She was diagnosed with mesothelioma in Washington – where she lives – and brought suit against GP in Washington. The Fourteenth Amendment to the United States Constitution permits Washington to exercise jurisdiction over this action because: 1) GP purposefully availed itself of the protections of Washington laws through its continuous, systematic sales of asbestos products to Washington consumers; 2) the GP asbestos products that Ms. Hofferber purchased in South Dakota are identical to products that GP sold to Washington consumers during the same period; and 3) assumption of Washington jurisdiction over GP will not offend traditional notions of fair play and substantial justice.

In *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 57, 558 P.2d 764 (1977), the Washington Supreme Court held that Washington courts may constitutionally assert jurisdiction over foreign manufacturers who market products to Washington consumers even where the cause of action “aris[es] entirely from activities occurring outside of the forum.” In the past 30 years, *Crose*’s precedential holding has never been called into question. The trial court erred in accepting GP’s argument that *Crose* was superseded by the United States Supreme Court’s opinion in *Daimler AG v.*

*Bauman*, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), which was explicitly limited to general jurisdiction and provides no guidance on the specific jurisdiction allegations in this case. Even if general jurisdiction were at issue, *Daimler* addressed state court jurisdiction over foreign companies for claims involving foreign plaintiffs and conduct occurring entirely abroad, an inquiry wholly distinguishable from the product liability claims in this case which involve a manufacturer that distributed commodities throughout the United States.

Here, similar to *Croze* and unlike *Daimler*, GP's systematic sales of asbestos products to Washington consumers were of such a character as to give rise to a legal obligation for claims arising out of those products. Haling GP to defend this action in Washington courts is entirely consistent with traditional notions of fair play and substantial justice. The trial court's dismissal for lack of jurisdiction should therefore be vacated and this case promptly remanded for trial while Ms. Hofferber is still alive and able to testify at her trial.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in granting GP's motion for summary judgment and dismissing Ms. Hofferber's claims based on lack of jurisdiction. CP 366-67.

2. The trial court abused its discretion in denying Ms. Hofferber's request to conduct discovery under CR 56(f) before deciding GP's motion for summary judgment. CP 366-67.

### **III. ISSUES PRESENTED**

1. Whether the trial court erred in holding that the Fourteenth Amendment to the United States Constitution prohibited the exercise of general jurisdiction over GP in this case even though there is ample evidence that GP has systematic and continuous contacts with Washington State. (Assignment of Error No. 1.)

2. Whether the trial court erred in holding that the Fourteenth Amendment to the United States Constitution prohibited the exercise of specific jurisdiction over GP in this case even though: (a) GP purposefully availed itself of Washington's economy; (b) GP's contacts with Washington "relate to" and are "connected with" Ms. Hofferber's cause of action; and (c) exercising jurisdiction over GP comports with traditional notions of fair play and substantial justice. (Assignment of Error No. 1.)

3. Whether the trial court abused its discretion in denying Ms. Hofferber's motion to continue GP's motion for summary judgment under CR 56(f) when GP had improperly and unjustifiably refused to produce a CR 30(b)(6) witness to testify regarding GP's contacts in Washington. (Assignment of Error No. 2.)

#### IV. STATEMENT OF THE CASE

**A. Ms. Hofferber Was Exposed to GP Asbestos Products and Was Recently Diagnosed – in Washington (Where She Lives) – With Mesothelioma.**

Plaintiff-Appellant Linda Hofferber is 65 years old and lives in Indianola, Washington. CP 333-34. Ms. Hofferber's only identified asbestos exposure occurred in 1976 and 1977 in Fort Pierre, South Dakota where she and her former husband converted an unfinished basement into living space. CP 230, 174-75, 224-26, 341. They constructed walls from sheetrock and troweled GP asbestos-containing joint compound between the sections of drywall. CP 174, 227-30. After the joint compound dried, Ms. Hofferber sanded the material causing dust to be emitted into her breathing zone. *Id.*

Ms. Hofferber moved to Washington State in 1978 and worked as an elementary schoolteacher for the North Kitsap School District until 2013 when she was diagnosed with mesothelioma. CP 126, 151, 162, 166. Mesothelioma is terminal cancer of the lining of the lung caused by asbestos exposure with a latency period of 30 to 50 years between exposures and diagnosis.<sup>1</sup>

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<sup>1</sup> ASBESTOS: RISK ASSESSMENT, EPIDEMIOLOGY, AND HEALTH EFFECTS 360-61 (Ronald F. Dodson & Samuel P. Hammar eds., CRC Press, 2006).

**B. GP Has Systematic and Continuous Contacts With Washington State.**

GP has been registered to do business in Washington since 1951. CP 301-02. A division of Koch Industries,<sup>2</sup> GP currently has nearly 35,000 employees.<sup>3</sup> GP maintains a significant physical presence in Washington by virtue of its ownership of three manufacturing facilities here: (1) a tissue mill in Camas with several associated parcels of real estate; (2) a gypsum wallboard manufacturing facility in Tacoma; and (3) a corrugated-box manufacturing facility in Olympia. CP 300-01.<sup>4</sup> The company also leases a sales office in Covington and a warehouse in Spokane. It owns two landfills in Bellingham, as well as real estate in Kelso and Port Angeles. CP 301.

GP and its subsidiaries had net sales of \$396 million in Washington in 2014, and 14 entities registered to conduct business here. CP 302. The company and its subsidiaries presently employ 694 people in Washington and participate in the Washington workers compensation fund. CP 284, 303. GP also confirmed that “required fees, taxes, and assessments are now and have been in the past paid in the ordinary course of the consolidated

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<sup>2</sup> See, e.g., Agreement and Plan of Merger, dated November 13, 2005, between Koch Industries, Inc., et al., and GP Corp., Accession Number 1193125-5-228536, SEC File 5-30246, available at <http://www.secinfo.com/d14D5a.z6V5n.3.htm#1stPage>.

<sup>3</sup> GP Company Overview, <http://www.gp.com/aboutus/companyoverview/index.html>.

<sup>4</sup> See also, GP Washington State Economic Impact, available at <https://www.gp.com/~media/Corporate/GPCOM/Files/State-Fact-Sheets/washington.ashx?force=1> (last visited March 23, 2016).

entities' businesses." CP 283. Currently, GP's advertising connections to Washington are part of its national campaign to promote its undoubtedly familiar consumer products business (*e.g.*, bath tissue, paper towels, paper napkins etc.). CP 305.

GP began manufacturing asbestos-containing joint compound products under its own label in 1965 and continued selling asbestos products until 1977. CP 301. In the mid-1970s, the company operated five distribution centers in Washington, which were located in Bellingham, Pasco, Seattle, Spokane and Tacoma. CP 298. GP's asbestos-containing joint compounds were shipped either by truckload or railcar. CP 298. The company advertised its asbestos-containing joint compounds to Washington consumers from 1965 to 1977. CP 305.

**C. Procedural History.**

Ms. Hofferber filed her complaint on March 13, 2015 and received an expedited trial date pursuant to RCW 4.44.025 due to her terminal condition. CP 1-4. In August 2015, GP filed its motion for summary judgment seeking to dismiss Ms. Hofferber's claims for lack of jurisdiction. CP 269-74. Ms. Hofferber, in turn, filed a motion for continuance under CR 56(f) based on GP's refusal to produce a CR 30(b)(6) witness to testify on GP's contacts in Washington. CP 113-21. On October 16, 2015, the trial court granted GP's motion for summary judgment and denied Ms.

Hofferber's request for continuance. CP 366-67; RP 25-26. Ms. Hofferber timely appealed.

## V. ARGUMENT

### A. **The Trial Court Erred In Granting GP's Motion For Summary Judgment and Dismissing Ms. Hofferber's Claims Based On Lack Of Jurisdiction.**

#### 1. **Standard of Review.**

A motion for summary judgment may only be granted if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to any material fact on which jurisdiction is based. *See* CR 56(c); *Hontz v. State*, 105 Wn.2d 302, 311, 714 P.2d 1176 (1986). In considering whether GP's contacts in Washington are sufficient to confer jurisdiction over this case, this Court must view the evidence in the light most favorable to Ms. Hofferber and make all inferences in her favor. *See Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989).

#### 2. **Under the Controlling Precedent of *International Shoe and Crose*, a Washington Court May Exercise General Jurisdiction Over this Case.**

In *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the Supreme Court considered whether Washington could constitutionally subject a Missouri shoe manufacturer to jurisdiction in this state to recover funds under Washington's

Unemployment Compensation Act. The manufacturer had no physical or corporate presence in Washington but it employed commissioned salesmen to market its shoes to Washington customers. The salesmen transmitted the customer orders to the manufacturer's office in St. Louis and the merchandise was shipped to the purchasers within Washington.

The manufacturer argued that its lack of any physical or corporate presence in Washington deprived state courts of jurisdiction. The Supreme Court rejected this argument, holding that jurisdiction could be exercised over an out-of-state defendant with "certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U.S. at 316. In upholding Washington State jurisdiction over the Missouri shoe manufacturer, the Supreme Court described reasoned that

the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights.

*Id.* Applying its concept of "fair play" the Court held that a state court's jurisdictional reach over an out-of-state corporation is directly related to the benefits the defendant derives from its activities in the forum state:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

*Id.* at 319.

In *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 52, 558 P.2d 764 (1977), the Washington Supreme Court applied *International Shoe* to a product liability claim arising from an automobile accident that occurred in California. The car was owned by a California resident who purchased the vehicle in Germany and shipped it to California. *Id.* The injured plaintiff, a passenger in the vehicle and a Washington resident, filed a product liability claim against the foreign automobile manufacturer and U.S. distributor in Washington state court. *Id.* The automobile manufacturer argued that Washington lacked personal jurisdiction over the case because the injurious product was never shipped to Washington and the accident giving rise to the claim occurred in California.

The Supreme Court rejected the manufacturer's argument that the lack of a Washington nexus to the claim divested Washington courts of jurisdiction. Instead, quoting *International Shoe*, the Court held that "[t]he essence of the issue here is one of fairness to the parties," and set forth the

following factors to consider when determining whether jurisdiction could be properly exercised:

Factors which we consider in concluding that [out-of-state defendants] are justifiably subject to service of process in the State of Washington include the interest of the state in providing a forum for its residents; the ease with which the Respondents could gain access to another forum; the amount, kind and continuity of activities carried on by the foreign corporations in the State of Washington; the significance of the economic benefits accruing to the foreign corporations as a result of activities purposefully conducted in the State of Washington; and the foreseeability of injury resulting from the use of [defendant's] products . . . .

88 Wn. 2d at 57 (citations omitted). Applying these factors, the Supreme Court concluded that assertion of jurisdiction in a Washington court did not violate Due Process:

We have no hesitancy in finding that the distribution scheme for Volkswagen products provides a sufficient basis for holding that VW-America and VW-Germany are 'doing business' in the State of Washington . . . . What constitutes 'doing business' is not easily formulated. The answer to this question is necessarily dependent upon the facts of each situation. However, it is clear here that the economic realities are such that the purchase of Volkswagen products in this state generates income for the manufacturer and the importer as well as the regional distributor and local dealer. This is not an unforeseeable or fortuitous event. Rather, it is the result of a well-organized, full-integrated worldwide chain of distribution.

*Id.* at 54-55. The fact that the automobile manufacturer did not sell cars directly in Washington but operated through a local distributor did not

defeat jurisdiction. Rather, if “the manufacturer sells its products in circumstances such that it knows or should reasonably anticipate that they will ultimately be resold in a particular state, it should be held to have purposefully availed itself of the market for its products in that state.” *Id.*

As *Crose* confirms, a Washington court can properly exercise jurisdiction over GP even if, as GP claims, Ms. Hofferber’s cause of action “aris[es] ... from activities occurring outside of the forum.” *Id.* at 57. As with the auto manufacturer in *Crose*, that same GP product alleged to have caused Ms. Hofferber’s injuries was sold extensively in Washington as part of a profitable and “fully integrated . . . chain of distribution.” *Id.* at 55. Indeed, GP’s relationship to Washington is significantly stronger than the defendant’s in *Crose*, for GP had its own distribution system in place and, in some cases, shipped products directly to Washington customers via truckload or railcar. CP 298.

The tortious conduct that gave rise to Ms. Hofferber’s harmful exposures in South Dakota – manufacturing a hazardous asbestos product without adequate warnings and selling and shipping that product for distribution domestically in the United States – is the precise conduct for which GP has been haled before Washington courts in hundreds of product liability suits over the past two decades. The asbestos products GP sold in Washington were identical to the products sold in South Dakota in their

composition and labeling. As in *Crose*, jurisdiction is proper because the nature of GP's contacts with Washington were "continuous in that it is distinguished from merely a causal or occasional transaction [and was] of such a character as to give rise to a legal obligation." 88 Wn.2d at 54.

### **3. The Trial Court Also Had Specific Jurisdiction Over GP.**

In *International Shoe*, the Supreme Court held that when a corporation enjoys the benefits and protection of the laws of a state it may incur legal obligations "[s]o far as those obligations arise out of *or are connected with* the activities within the state." 326 U.S. at 319 (emphasis supplied). With this language, the Court provided the initial groundwork for the doctrine of specific jurisdiction. As set forth below, specific jurisdiction over GP also was appropriate here.

The test for determining whether a court has specific jurisdiction over a non-resident defendant is a single inquiry, which reflects both Washington statutory and Constitutional Due Process requirements. *Noll v. American Biltrite, Inc.*, 188 Wn. App. 572, 578, 355 P.3d 279 (Div. 1, 2015). In *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 783 P.2d 78 (1989), the Washington Supreme Court set forth the following three-part test for specific jurisdiction:

- (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;

- (2) the cause of action must arise from, *or be connected with*, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice . . . .

*Id.* at 767-68 (emphasis supplied) (citations omitted). Applying these three factors here, it is evident that GP is subject to specific jurisdiction, and that the trial court erred by granting GP's motion for summary judgment.

**a. GP Purposefully Availed Itself of Washington's Economy.**

"A state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L. Ed.2d 490 (1980) (quoting *International Shoe*, 326 U.S. at 316). In *World-Wide Volkswagen*, the plaintiffs, residents of New York, purchased a car from a dealer in New York and were involved in an accident while driving through Oklahoma. 444 U.S. at 288. There was evidence that neither the auto manufacturer nor dealer transacted any business in Oklahoma, shipped or sold any products to or in that State, had an agent to receive process there, or purchased advertisements in any media calculated to reach Oklahoma. *Id.* at 289. Nevertheless, the plaintiffs argued that because it was foreseeable to the seller that a car would travel interstate, the manufacturer should be subject

to suit wherever the accident arose. The Supreme Court rejected this argument, holding that the appropriate jurisdictional inquiry was not the location of the plaintiff at the time of injury but whether the defendant “purposely avails itself of the privilege of conducting activities with the forum.” *Id.* at 297 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958)). Thus, where a manufacturer purposefully markets its products in the forum state, jurisdiction is proper:

[I]f the sale of a product of a manufacturer or distributor . . . is not simply 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 has there been the source of injury to its owner *or to others*. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

444 U.S. at 297-98 (emphasis supplied).

Critically, the Supreme Court recognized in *World-Wide Volkswagen* that exercise of jurisdiction may be proper in “one of those states” where the product is so marketed and distributed for injury sustained by the product’s purchaser “or to others.” *Id.* at 297. The Supreme Court therefore explicitly recognized that the state where the product injury occurs is not the *only* state where suit for that product’s defects is constitutionally

appropriate. Rather, suit can be brought in *any* state where that defective product is marketed and sold as part of a distribution scheme where there is an expectation that the product will be purchased by consumers within the forum state. *Id.* at 297-98.

This Court's recent rulings in two cases involving jurisdictional challenges confirm the validity of this analysis, as adapted to reflect recent U.S. Supreme Court jurisprudence. In *State v. LG Electronics, Inc.*, 185 Wn. App. 394, 341 P.3d 346, *review granted*, 183 Wn.2d 1002, 349 P.3d 856 (2015), Washington's Attorney General invoked the Washington Consumer Protection Act to sue foreign businesses that had supplied component parts for electronics sold in Washington, alleging they had participated in a price fixing conspiracy to raise prices and set production levels causing Washington residents to pay inflated prices. *Id.* at 399-400. In response, the companies filed motions to dismiss for lack of jurisdiction, asserting they had never sold their products directly to Washington customers, nor done business in Washington. *Id.* at 401. The Court rejected that argument because the foreign businesses had "purposefully availed" themselves of the privilege of conducting activities here, by virtue of the substantial volume of sales of the finished product that took place in Washington. *Id.* at 423.

Similarly, in *Noll*, this Court considered whether Washington could exercise specific jurisdiction over a Wisconsin-based supplier of raw asbestos fiber that sold its product to a manufacturing plant in California, where the asbestos was used as an ingredient in asbestos-cement pipe, which was then shipped to Washington. 188 Wn. App. at 575. This Court held that the asbestos fiber supplier purposefully established minimum contacts in Washington because its contacts were systematic, in that pipe containing its asbestos “flowed into Washington in the regular stream of commerce, not in a mere eddy.” *Id.* at 587. Notably, the *Noll* plaintiff did not need to prove that the asbestos supplier – which had neither staff nor offices in Washington – had actual knowledge that its pipe might be shipped to Washington. Rather, the law required only “objective facts evidencing a regular flow or regular course of sales by which the product enters the forum state.” *Id.* at 585.

In both *LG Electronics* and *Noll*, this Court relied heavily on Justice Breyer’s concurring opinion in *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 887, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011). In *LG Electronics*, this Court concluded that Justice Breyer’s analysis should be read to infer that:

the minimum contacts inquiry ... seeks to determine whether the incidence or volume of sales into a forum signifies something *systematic*—informed by either the purpose or

the expectation of the foreign manufacturer—such that it is fair, in light of the relationship between the defendant, the forum, and the litigation, to subject the foreign defendant to personal jurisdiction in the forum.

*Id.* at 418-19 (emphasis in original). In other words, if the volume of sales into a forum is systematic – as opposed to anomalous – then “purposeful availment” will be found. *Id.* at 419. *See also Noll*, 188 Wn. App. at 583 (applying same standard).

Applying this Court’s analysis in *LG Electronics* and *Noll*, there can be little doubt that Ms. Hofferber can easily meet the first prong of the specific jurisdiction test to show that GP had purposeful, systematic contacts with Washington. GP’s shipments of asbestos-containing joint compounds between 1965 and 1977 were so large that, at times, they were sent directly to customers in Washington *by the truckload or railcar*. CP 298. Alternatively, GP delivered its joint compounds through five company-operated distribution centers in Washington. CP 298. Through these repeated contacts, GP purposefully availed itself of the benefits and privileges of conducting business in this state. Based on GP’s longstanding and systematic commercial activities in Washington, “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen*, 444 U.S. at 297.

**b. GP's Contacts with Washington "Relate To" and are "Connected With" Ms. Hofferber's Cause of Action.**

The second factor of the test for specific jurisdiction is that the "cause of action must arise from, or be connected with, such act or transaction." *Shute*, 113 Wn.2d at 767. The "'arise from or relate to' requirement is the essence of specific personal jurisdiction because it defines the necessary relationship between the defendant and the forum state." Mark M. Maloney, *Specific Personal Jurisdiction and the "Arise from or Relate to" Requirement...what Does It Mean?* 50 WASH. & LEE L. REV. 1265, 1271 (1993). As the Second Circuit has observed, "the relatedness test is but a part of a general inquiry which is designed to determine whether the exercise of personal jurisdiction in a particular case does or does not offend 'traditional notions of fair play and substantial justice.'" *Chew v. Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998) (quoting *International Shoe*, 326 U.S. at 316).<sup>5</sup>

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<sup>5</sup> One commentator invoked John Locke's theory of consent to emphasize that the "fair play" principle from *International Shoe* is a recognition of the reciprocity inherent in the social contract:

Locke asserts that individuals surrender their natural autonomy to governments in order to obtain the liberties found in an ordered society, thus avoiding the hazards present in a natural state. This leads me to a critical understanding— that a reciprocity binds court and party. The party has garnered the benefits offered by the government in which the court sits. These benefits include the laws, the administrative framework and their restraining effects. In return, the party concedes to that

This second factor of the specific jurisdiction test frames the requisite relationship between the defendant's contacts in the forum state and the plaintiff's cause of action in the disjunctive: the injury must *either* "arise from," "relate to" or "be connected with" the defendant's contacts with the forum. In *Shute*, the Washington Supreme Court, citing *International Shoe*, reiterated that the cause of action must "arise from, *or be connected with*" the defendant's activity in the forum for specific jurisdiction to attach. 113 Wn.2d at 767 (emphasis supplied.). In *Noll*, this Court quoted the Supreme Court's holding in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), that the plaintiff's cause of action must "arise out of or relate to" the defendant's activity in the forum. *Noll*, 188 Wn. App. at 579 (quoting *Helicopteros*, 466 U.S. at 414). Thus, under both Washington and federal case law, a court may exercise specific jurisdiction over a cause that does not "arise from" the defendants' forum related activities, so long as it is "related to" or "connected with" those activities. This interpretation is consistent with the Supreme Court's holding in *World-Wide Volkswagen* that Due Process can be met in "one of those states" where the defendant

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government a quantum of power to govern his conduct, a power which he himself holds in a natural autonomous state.

Lawrence W. Moore, *The Relatedness Problem in Specific Jurisdiction*, 37 IDAHO L. REV. 583, 599 (2001).

regularly, systematically sells its products (and not only the state where the actual product at issue was sold or where the injury was sustained). 444 U.S. at 297.

GP's contrary argument erroneously presumes that Ms. Hofferber's injury could only have arisen from its contacts in Washington if she had been *exposed* here. See CP 21-22. GP relied on *Shute*, 113 Wn.2d at 772, to argue that Ms. Hofferber could not show that "but for" the company's contacts with Washington, she would not have been harmed. However, in *Shute*, "the sole question" was whether an injury that occurred on a cruise ship in international waters could "arise from" the foreign defendant's advertisement of its cruises in Washington. *Id.* at 764. The trial court entirely ignored the "connected with" and "relate to" language as an alternative type of connection between Ms. Hofferber's exposure to GP asbestos products in South Dakota and GP's purposeful availment of Washington as a marketplace for the same asbestos products. The trial court also ignored the fact that GP's contacts with South Dakota and Washington and its conduct in committing the tort alleged in this case are identical and indistinguishable. GP committed one tort in both states in a systematic, consistent manner, triggering jurisdiction in both states for claims that relate to its multi-state tortious conduct.

It is equally clear that Ms. Hofferber's mesothelioma is "related to" GP's contacts with Washington, which is one of the states where the company marketed, distributed and sold its asbestos-containing products. GP's sale of dangerous, defective, asbestos-containing products throughout the country – including in Washington – is a proximate cause of her illness. GP's relationships with both South Dakota and Washington were functionally equivalent and indistinguishable (especially from the perspective of a plaintiff like Ms. Hofferber.) In both states, the company placed into the stream of commerce hazardous asbestos-containing products for sale without adequate warnings to consumers of asbestos hazards. Because GP's tort-causing conduct was indistinguishable from state to state, its supply of its toxic joint compounds in Washington is "connected" to Ms. Hofferber's injuries.

Although the Washington Supreme Court focused on general (doing business) jurisdiction in *Crose*, the Court's holding confirms that the "arise out of" and "related to" inquiries provide separate analytical bases for jurisdictional support. *Crose* explicitly held that "the Due Process clause of the Fourteenth Amendment permits the State of Washington to obtain *in personam* jurisdiction over a foreign corporation for a cause of action arising entirely from activities occurring outside of the forum." 88 Wn.2d at 57. The Supreme Court reasoned that a product liability claim against an

automobile manufacturer involving a car sold in California involved in an accident in California causing injury to Washington residents in California was sufficiently related to the manufacturer's sales activity of the same or similar type of vehicles in Washington to permit the exercise of personal jurisdiction. This constitutional reasoning is fully consistent with the disjunctive language in *International Shoe* and *Helicopteros* that the cause of action must "arise from" or relate to" the defendant's activity in the forum. That disjunctive test, as noted, is satisfied here.

Other courts agree with this analysis. In *Chew*, for example, the Second Circuit considered the totality of circumstances to hold that Rhode Island's exercise of jurisdiction over a German yacht owner would not violate Due Process in a claim brought by the family of a crewmember who died on international waters. The court enunciated a "sliding scale" approach to the analysis by requiring a proximate cause standard when a defendant has had "only limited contacts" with a state, but permitting a more relaxed standard when the defendant's contacts are more substantial. 143 F.3d at 29. The Second Circuit emphasized flexibility as "necessary in the jurisdictional inquiry: relatedness cannot merely be reduced to one tort concept for all circumstances." *Id.* (quoting *Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 716 (1st Cir.1996), *cert. denied*, 520 U.S. 1155 (1997)). *See also Del Ponte v. Universal City Dev. Partners, Ltd.*, 07-CV-2360

KMK LMS, 2008 WL 169358, at \*11 (S.D.N.Y. Jan. 16, 2008) (holding that where the defendant had “consistent activity” in the forum, the “relatedness bar” could be lowered, thus permitting a broader interpretation of “arise from or relate to,” and finding that specific jurisdiction was proper, even though the product that caused the injury may have been obtained from a different jurisdiction altogether); *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 926 P.2d 1085, 58 Cal. Rptr. 2d 899 (1996) (finding that a claim need not arise directly from a nonresident defendant's forum contacts, as long as the claim bears a substantial connection to the nonresident's forum contacts, embracing a “sliding scale” approach.)

The Washington Supreme Court also emphasized in *Croze* that “[t]he essence of the issue here is one of fairness to the parties.” In this case, it is manifestly fair to subject GP to jurisdiction in Washington given “the relationship among the defendant, the forum, and the litigation.” *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 2572, 53 L. Ed. 2d 683 (1977). A flexible approach to interpreting the second factor is appropriate precisely because of GP’s systematic and consistent commercial presence in Washington, including through sales of the *identical* products that gave rise to Ms. Hofferber’s injury. Such an approach is also consistent with *Noll*, in which this Court highlighted the known hazardous nature of asbestos, commenting that this was “one of the factors mentioned by Justice

Stevens” in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 105, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987), as affecting the jurisdictional inquiry. *Noll*, 188 Wn. App. at 583.

Although Ms. Hofferber was not exposed to joint compounds in Washington, GP’s contacts with Washington were equivalent to those that it had with South Dakota: it supplied large quantities of asbestos-containing joint compounds to sell in the open marketplace in both states. In truth, there is no significant difference between GP’s contacts with South Dakota and Washington during the 1960s and 1970s. Accordingly, this Court should hold that Ms. Hofferber’s cause of action is related to, and connected with, GP’s contacts with Washington.

**c. Jurisdiction Over GP Comports with Traditional Notions of Fair Play and Substantial Justice.**

Lastly, the “fair play and substantial justice” consideration is also satisfied here. “Due Process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate defendant that has ‘certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Helicopteros*, 466 U.S. at 414 (quoting *International Shoe*, 326 U.S. at 316). The Due Process clause “gives a degree of predictability to the legal system that allows potential defendants to structure their primary

conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *World-Wide Volkswagen*, 444 U.S. at 297. In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 52 (1985), the Supreme Court further explained that:

the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because “modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,” it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity.

Accordingly, the third factor of the test for a plaintiff to prove a state has specific jurisdiction over a nonresident defendant is the “reasonableness” inquiry mandating fairness.

The law is equally clear that the “reasonableness” inquiry is multifaceted. As Professor Tribe explains:

[T]he determination of the reasonableness of the exercise of jurisdiction in each case will depend upon an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief. A court must also weigh the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 6-39 (3d ed. 2000) (citations and quotations omitted).

In Washington, courts consider: 1) the quality, nature, and extent of the defendant's activity in Washington; 2) the relative convenience of the plaintiff and the defendant in maintaining the action here; 3) the benefits and protection of Washington's laws afforded the parties; and 4) the basic equities of the situation. *State v. AU Optronics Corp.*, 180 Wn. App. 903, 926, 328 P.3d 919 (2014) (citation and quotations omitted). In addition, if the plaintiff has satisfied the first two factors (minimum contacts and relatedness), the burden then shifts to the defendant to set forth a compelling case that the exercise of jurisdiction would not be reasonable. *Id.* at 914-15.

Application of these considerations to this case confirms that it is eminently reasonable for GP to defend Ms. Hofferber's claims in Washington. Considering the "extent of activity" that GP manifested in this state, it is undisputed that the company sold asbestos joint compound to Washington consumers during the identical years that Ms. Hofferber was exposed to asbestos from GP products in South Dakota. Given that GP supplied asbestos-containing products throughout the United States, there is nothing unfair in subjecting the company to Washington courts' jurisdiction to defend claims brought by a long-time Washingtonian – whose serious injuries from the company's products first manifested here in our state. Moreover, GP has a major corporate presence in Washington

to this day: it owns three manufacturing facilities and has 694 employees here; it had nearly \$400 million in net sales in Washington in 2014; and it still advertises its consumer products here. CP 252.

Regarding the relative convenience of the parties, requiring GP to defend itself in the King County Superior Court does not place *any* burden on it given GP's permanent, lasting corporate presence in Washington. Not surprisingly, GP never argued before the trial court that defending this case in Washington was unduly burdensome. Furthermore, it is obviously far more convenient for Ms. Hofferber and her family for GP to be subject to Washington's jurisdiction. Not only has Ms. Hofferber lived here for over three decades, but her asbestos-related cancer presented here in 2013, and her treatments and doctor visits are all occurring in Washington.

Conversely, it would place a considerable burden on Ms. Hofferber, her family members, treating doctors and other witnesses for this Court to uphold the trial court's dismissal, resulting in her case being filed in South Dakota. Given Ms. Hofferber terminal diagnosis, it will be a tremendous burden on her and her family to bring her lawsuit in South Dakota, necessitating travel across half the country. More realistically, the delay caused by GP's success with its jurisdictional defense will mean that Ms. Hofferber will not live to see her day in court. In other words, the requirement for an alternative forum (in South Dakota) rises beyond the

level of a mere *burden* for Ms. Hofferber; it may result in extreme prejudice to her by, in effect, preventing her from living to see justice fulfilled.

Additionally, Washington has a considerable interest in providing a forum for Ms. Hofferber to prosecute her personal injury claims here in her home state – where she has lived, worked and raised her family for more than 35 years. *See e.g., Willemssen v. Invacare Corp.*, 352 Or. 191, 208, 282 P.3d 867 (2012) (a state has a strong interest in providing a forum for its injured residents to recover for their injuries); *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 387 (9th Cir. 1990) *rev'd on other grounds, Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991) (a state has a strong interest in protecting its citizens against the tortious acts of others). Thus, Washington has a strong interest in maintaining jurisdiction over Ms. Hofferber's claims, given the extent to which GP's harmful products were sold here, as well, in 1975 and 1976.

In sum, the basic equities of the situation involving a terminally ill plaintiff strongly weigh in favor of this Court asserting jurisdiction over GP considering the probable dire consequences for Ms. Hofferber should she be forced to bring her cause of action against GP in South Dakota. For all these reasons, the Court should reverse the trial court's jurisdictional holding, conclude that Washington has specific jurisdiction over GP, and remand the case for trial on an expedited schedule.

#### 4. GP's Reliance on *Daimler* is Misplaced.

In its summary judgment motion, GP placed primary reliance on the United States Supreme Court's ruling in *Daimler* to support its contention that Washington courts lack general jurisdiction over it in this case. *See, e.g.*, CP 18-22, RP 5-7. However, the Supreme Court's holding in *Daimler* is explicitly limited to "general (all purpose) jurisdiction." *See* 134 S. Ct. at 758 ("Plaintiffs have never attempted to fit this case into the *specific* jurisdiction category."). Thus, to the extent that specific jurisdiction applies here, *Daimler* is irrelevant to this Court's analysis.

Even as to general jurisdiction, GP's reliance on *Daimler* is misplaced. *Daimler* involved a lawsuit by Argentine citizens filed in a California court against a German Corporation. *Id.* at 750-51. The plaintiffs alleged that an Argentine subsidiary of Daimler automobiles collaborated with the military during the "Dirty War" in the late 1970s at a factory in Argentina. *Id.* at 751. The plaintiffs brought suit in California against Daimler, the German company famous for manufacturing Mercedes-Benz automobiles in Germany. *Id.* at 752. The district court dismissed the case for lack of jurisdiction, but the Ninth Circuit reversed and held that the United States distributor Mercedes-Benz USA, LLC was an agent for Daimler and its contacts with the state of California were therefore imputable to the German manufacturer. The limited purpose for the

Supreme Court’s grant of certiorari was “to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts *for claims involving only foreign plaintiffs and conduct occurring entirely abroad.*” *Id.* at 753 (emphasis supplied).

*Daimler* does not – as GP has argued – eradicate the notion of general jurisdiction over foreign corporations. Instead, quoting *International Shoe*, *Daimler* reaffirms that jurisdiction over a nonresident defendant is proper where the defendant’s “continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.” *Daimler*, 134 S. Ct. at 754 (alterations in original). *Daimler* makes clear that while the place of incorporation and the principal place of business are locales where a corporation is subject to jurisdiction, courts must also look to the degree of continuous contact with the forum state. *Id.* at 760 (“*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums.”).

In light of the foregoing, it is readily apparent that the Supreme Court’s opinion in *Daimler* was intended to limit the “sprawling view of general jurisdiction” in which Argentine plaintiffs could sue a German

manufacturer in a California court for events that transpired in Argentina and were entirely unrelated to the actions of the manufacturer's California subsidiary. 134 S. Ct. at 760. In rejecting general jurisdiction in such a circumstance, the Supreme Court held that Due Process entitled defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* at 762. However, this concern is satisfied when a company "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King*, 471 U.S. at 475 (citation omitted).

Unlike the transnational imposition of general jurisdiction from a corporate subsidiary to its foreign parent rejected in *Daimler*, this case involves a Washington citizen suing an American corporation for injuries which manifested themselves in this state and arose from products that were distributed to Washington consumers. Unlike the circumstances in *Daimler*, GP is being sued directly for products it manufactured and sold in an identical, indistinguishable fashion in *both* South Dakota and Washington. While the human rights abuses in Argentina at issue in *Daimler* were totally unrelated to the defendant's sales of automobiles in California, the tortious conduct that GP is alleged to have committed in this case is conduct for which GP has been sued in Washington State on

hundreds of occasions. Washington is indeed “one of those states” where GP has established sufficient regular, systematic contacts through a well-developed distribution network to be reasonably subject to suit here, even for injuries triggered by exposures that occurred elsewhere. *World-Wide Volkswagen*, 444 U.S. at 297.

Equally important, *LG Electronics* and *Noll* post-date *Daimler* and provide overwhelming support for exercising jurisdiction in Washington. See Section V.A.2 above. Indeed, *LG Electronics* cited *Daimler*. 185 Wn. App. at 411. Thus, *LG Electronics* and *Noll* are clear testament that the doctrine set forth in *World-Wide Volkswagen* governing specific jurisdiction in products liability cases, which places primary emphasis on the *defendant’s* relationship to the forum, survives to this day. For all these reasons, *Daimler* is inapposite.

**B. Alternatively, the Trial Court Abused its Discretion by Denying Ms. Hofferber’s Request for a Continuance to Conduct Jurisdictional Discovery.**

As set forth in Section V.A above, there is sufficient evidence to establish general jurisdiction, specific jurisdiction, or both. That is especially so when, as required, the evidence is viewed in the light most favorable to Ms. Hofferber. That being said, Ms. Hofferber served on GP a CR 30(b)(6) deposition notice to obtain *additional* evidence regarding GP’s contacts in Washington and to test GP’s jurisdictional assertions. GP

refused to make a CR 30(b)(6) witness available to testify regarding these topics and the trial court denied Ms. Hofferber's request to conduct discovery under CR 56(f) before deciding GP's summary judgment motion. As set forth below, the trial court abused its discretion in so ruling.

Under CR 56(f), where affidavits of the party opposing the motion for summary judgment show reasons why the party cannot present facts justifying its opposition, the court may refuse the motion for summary judgment or order a continuance to allow the non-moving party to conduct the discovery sought. *Coggle v. Snow*, 56 Wn. App. 499, 507, 784 P.2d 554 (1990). Conversely, the court may deny a continuance under the rule if:

(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.

*Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). Ultimately, however, when ruling on a motion for a CR 56(f) continuance, the trial court's primary consideration must be justice. *Coggle*, 56 Wn. App. at 508. A trial court's denial of a CR 56(f) motion is reviewed for abuse of discretion. *MRC Receivables Corp. v. Zion*, 152 Wn. App. 625, 629, 218 P.3d 621 (2009).

Here, none of the justifications for denying Ms. Hofferber's request for a continuance was present. First and foremost, Ms. Hofferber's counsel

had a valid reason for the delay in obtaining the desired discovery: GP's counsel refused to provide a corporate representative to answer counsel's questions relevant to jurisdiction. *See* CP 244, 262-67. This unilateral refusal was a partial reversal of the parties' prior agreement. CP 118. Moreover, counsel emphasized during oral argument that GP's jurisdictional defense is relatively new in asbestos litigation:

[E]ven though asbestos is a mature litigation, and even though often, on the merits of the liability case, for example, against Georgia Pacific, I already have the benefit of prior discovery responses, prior 30(b)(6) testimony, et cetera, this is the first time, this case and the Cox case, is the first time we've seen a *Daimler* jurisdiction motion raised, and we have not had the opportunity in any of our cases before to develop facts to properly respond to the issues on specific jurisdiction and on general jurisdiction, and I see no down side to allowing us to do that.

RP 16-17. Ms. Hofferber also explained precisely what additional discovery was sought, in both specific and general terms. *See* CP 118-21 (providing some examples of the information that would have been sought via deposition).

The only remaining basis on which the trial court could have properly denied the continuance was if “the desired evidence [would] not raise a genuine issue of material fact.” *Kohler*, 54 Wn. App. at 693. In essence, the trial court abused its discretion by ruling that “personal jurisdiction cannot be established on this record” and that “the record is

complete.” RP 24. The trial court reached this premature decision even though GP was already scheduled to undergo a deposition on jurisdictional issues conducted by Ms. Hofferber’s counsel in another case. During oral argument, GP even acknowledged the possibility that the trial court might grant the continuance to allow supplemental briefing because the reality was that the deposition was “going to take place” regardless in the other case. RP 21. Nonetheless, the trial court denied the continuance, convinced that deposition testimony could not elicit *any* material facts that would warrant Washington having specific or general jurisdiction over GP. RP 25-26. The trial court also failed to consider the greater context: the intersection of a terminally ill plaintiff, a relatively new defense, and relevant jurisdictional discovery that was already scheduled to occur forthwith.

The trial court’s ruling is also contrary to controlling case law. In *LG Electronics*, this Court emphasized the importance of affording the non-moving party faced with a motion to dismiss for lack of jurisdiction the opportunity to fully complete discovery. “Resolving jurisdictional matters at an early stage is an important objective; yet, our liberal notice pleading system, which allows plaintiffs to use the discovery process to uncover the evidence necessary to pursue their claims, tempers this aspiration.” 185 Wn. App. at 407 (citations and quotations omitted). In *LG Electronics*, the defendants brought their motions to dismiss, which were supported by their

factual averments, prior to full discovery being completed, but then successfully resisted the Attorney General's efforts to conduct jurisdictional discovery. *Id.* This Court recognized the defendants' strategy as one "designed to subvert, rather than advance, the purpose of our liberal notice pleading regime – to facilitate a proper decision on the merits," and held that their objective of refusing to engage in discovery needed to be rebuffed. *Id.* at 409.

The Washington Supreme Court has applied these same legal principles. In *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 963, 331 P.3d 29 (2014), the court held: "At this stage of the litigation, the allegations of the complaint establish sufficient minimum contacts to survive a CR 12(b)(2) motion.... [The defendant] may renew its jurisdictional challenge after appropriate discovery has been conducted." The Washington Supreme Court has also recognized the importance of a plaintiff's right, as here, to "use the discovery process to uncover the evidence necessary to pursue their claims." *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 983, 216 P.3d 374 (2009). Consistent with Washington case law, courts in other jurisdictions

have likewise held that a plaintiff has a right to jurisdictional discovery before a motion to dismiss can properly be decided.<sup>6</sup>

In sum, the trial court's refusal to grant Ms. Hofferber's request for a short continuance to complete discovery is based on untenable grounds. In addition, the facts do not meet the requirements of the correct legal standard. These circumstances constitute an abuse of discretion under Washington law. *See State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (trial court abuses its discretion when its decision is manifestly unreasonable or its discretion is exercised on untenable grounds or for untenable reasons); *Sherron Assocs. Loan Fund V (Mars Hotel) LLC*

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<sup>6</sup> *See* 4 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 26.70[2], at 461 ("The intention of a party to move for judgment on the pleadings is not ordinarily sufficient to justify a stay of discovery."); *Powerteq, LLC v. Moton*, No. C-15-2626 MMC, 2016 WL 80558, \*2 (N.D. Cal. Jan. 7, 2016) ("if allowing discovery 'might well demonstrate facts sufficient to constitute a basis for jurisdiction,' a district court should first afford the plaintiff an opportunity to conduct jurisdictional discovery."); *Lopes v. JetsetDC, LLC*, 994 F. Supp. 2d 135, 142 (D.D.C. 2014) ("When a 'plaintiff is faced with a motion to dismiss for lack of personal jurisdiction,' he is 'entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.'"); *Laub v. U.S. Dep't of the Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) ("[D]iscovery should ordinarily be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary."); *Metcalf v. Renaissance Marine, Inc.*, 566 F.3d 324, 336 (3d Cir. 2009) (where plaintiff is "faced with the difficult task of trying to establish personal jurisdiction over a corporation," the court improperly granted the motion to dismiss without permitting jurisdictional discovery.); *Cent. States, Southeast and Southwest Areas Pension Fund v. Phencorp Reinsurance Co., Inc.*, 440 F.3d 870 (7th Cir. 2006) (district court abused its discretion in denying plaintiff's request for discovery on general jurisdiction over Barbados insurance company); *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003) (district court abused its discretion in denying jurisdictional discovery where "the record is simply not sufficiently developed to enable us to determine whether the alter ego or agency tests are met").

*v. Saucier*, 157 Wn. App. 357, 361, 237 P.3d 338 (2010) (trial court “acts for untenable reasons if it uses an incorrect standard of law or the facts do not meet the requirements of the standard of law”). Accordingly, if this Court concludes that additional evidence is necessary to subject GP to jurisdiction in Washington, the trial court’s discovery ruling should be reversed and the matter should be remanded to the trial court so that Ms. Hofferber can complete discovery – including deposing a CR 30(b)(6) witness – regarding GP’s contacts in Washington.

## **VI. CONCLUSION**

For the foregoing reasons, Ms. Hofferber asks this Court to hold that the trial court erred in dismissing her claims for lack of jurisdiction or, alternatively, that it abused its discretion when it denied her the opportunity to conduct additional jurisdictional discovery against GP.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of May 2016.

BERGMAN DRAPER LADENBURG, PLLC

By: Anna D. Knudson  
Matthew P. Bergman, WSBA # 20894  
Brian F. Ladenburg, WSBA # 29531  
Anna D. Knudson, WSBA # 37959  
Attorneys for Linda M. Hofferber  
821 Second Avenue, Suite 2100  
Seattle, WA 98104  
Phone: (206) 957-9510

and

Leonard J. Feldman, WSBA #20961  
PETERSON WAMPOLD ROSATO  
LUNA KNOPP  
1501 4<sup>th</sup> Avenue, Suite 2800  
Seattle, WA 98101  
Phone: (206) 624-6800

Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I certify that on May 5, 2016, I caused to be served a true and correct copy of the foregoing document upon:

Brian D. Zeringer  
Rachel T. Reynolds  
Megan M. Coluccio  
SEDGWICK LLP  
520 Pike Street, Suite 2200  
Seattle, WA 98101

Dated at Seattle, Washington this May 5, 2016.

BERGMAN DRAPER LADENBURG

  
Shane A. Ishii-Huffer