

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 20, 2025)

SUSAN SOARES and BRIAN SOARES :

*Plaintiffs,* :

v. :

AVON PRODUCTS INC. *et al.*, :

*Defendants.* :

C.A. No. PC-2024-01631

**DECISION**

**GIBNEY, P.J.** Before this Court for decision are several motions to dismiss for lack of personal jurisdiction. Defendants Intercos America Inc. (Intercos), PTI Union, LLC (PTI Union), PTI Royston, LLC (PTI Royston), The Stephan Company (Stephan Co.), IMI Fabi, LLC (Fabi), IMI Fabi (Diana), LLC (Fabi Diana), IMI Fabi (USA), Inc. (Fabi USA), and Sumitomo Corporation of Americas (Sumitomo) (collectively Defendants) each argue that this Court lacks personal jurisdiction over them under Rule 12(b)(2) of the Superior Court Rules of Civil Procedure. For the reasons provided forthwith, several of the motions are granted while others are denied. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

**I**

**Facts and Travel**

Plaintiffs Susan and Brian Soares (collectively Plaintiffs) allege that several corporate entities are liable for Plaintiff Susan Soares's (Susan<sup>1</sup>) mesothelioma. *See generally* Compl.

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<sup>1</sup> Due to both Plaintiffs sharing the same last name, they will be referred to by their first names to distinguish each individually. No disrespect is intended.

Beginning in 1966, Susan used cosmetic products such as baby powder, eyeshadows, blushes, bronzers, foundation, and more which included asbestos-containing talc products. *Id.* ¶ 3. As a result of using these products, Plaintiff Susan inhaled the asbestos-containing talc for decades, which Plaintiffs allege was the cause of her malignant pleural mesothelioma diagnosis on October 30, 2023. *Id.* ¶¶ 2, 5.

On March 25, 2024, Plaintiffs filed their Complaint against some fifty-six defendants. *See* Compl. Included in that Complaint are several allegations pertaining to this Court’s jurisdiction over each defendant. *See id.* ¶¶ 25-81. Relevant to the movants here, Plaintiffs allege that they all were

“authorized to do business in the State of Rhode Island while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment[.]” *See id.* ¶¶ 44-47, 66-67, 74, 77.

They further allege that the Defendants have done and continue to do “substantial business in the State of Rhode Island, including the sale and distribution of its dangerous and/or defective products/services in the State of Rhode Island.” *Id.* Plaintiffs claim that Susan’s disease arose from the business each Defendant conducted in Rhode Island. *Id.*

Defendants responded with motions to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Superior Court Rules of Civil Procedure. *See generally* Intercos’s Mot. to Dismiss; *see also* PTI Union’s Mot. to Dismiss; PTI Royston’s Mot. to Dismiss; Fabi’s Mot. to Dismiss; Fabi Diana’s Mot. to Dismiss; Fabi USA’s Mot. to Dismiss; Stephan Co.’s Mot. to Dismiss; Sumitomo’s Mot. to Dismiss. Each argues that it does not have sufficient contacts with the State of Rhode Island and/or that Plaintiffs’ claims do not arise out of or relate to any of their forum related conduct. *See* Intercos’s Mem. in Supp. of Mot. to Dismiss (Intercos’s Mem.) 3; *see*

also PTI Union’s Mem. in Supp. of Mot. to Dismiss (PTI Union’s Mem.) 8; PTI Royston’s Mem. in Supp. of Mot. to Dismiss (PTI Royston’s Mem.) 8; Fabi’s Mem. in Supp. of Mot. to Dismiss (Fabi’s Mem.) 9; Fabi Diana’s Mem. in Supp. of Mot. to Dismiss (Fabi Diana’s Mem.) 15; Fabi USA’s Mem. in Supp. of Mot. to Dismiss (Fabi USA’s Mem.) 15; Stephan Co.’s Mem. in Supp. of Mot. to Dismiss (Stephan Co.’s Mem.) 7; Sumitomo’s Mem. in Supp. of Mot. to Dismiss (Sumitomo’s Mem.) 6-8. Plaintiffs object to the motions, arguing that they have laid out a *prima facie* case for this Court to hold personal jurisdiction over each of the Defendants based upon each placing its products into the stream of commerce causing such products to end up in Rhode Island. *See* Pls.’ Obj. to Intercos’s Mot. 10; *see also* Pls.’ Obj. to PTI Union’s Mot. 11; Pls.’ Obj. to PTI Royston’s Mot. 10-11; Pls.’ Obj. to IMI Fabi Defendants’<sup>2</sup> Mots. 16-17; Pls.’ Obj to Stephan Co.’s Mot. 12; Pls.’ Obj. to Sumitomo’s Mot. 10.

Each party was afforded the opportunity to provide oral arguments on the motions on October 10, 2024, October 24, 2024, and November 20, 2024. They are now ripe for adjudication.

## II

### Standard of Review

“[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint.” *Rhode Island Affiliate, American Civil Liberties Union, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989). “[D]efenses may at the option of the pleader be made by motion [including] (2) [l]ack of jurisdiction over the person[.]” Super. R. Civ. P. 12(b)(2). “When the Court is faced with a ‘motion to dismiss a complaint for lack of in personam jurisdiction, a plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction.’” *Freitas v. A.O. Smith Water*

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<sup>2</sup> Plaintiffs address their objection to Fabi, Fabi Diana, and Fabi USA in one memorandum. Hereinafter, those defendants will be referred to as the “IMI Fabi Defendants” collectively.

*Products Corp.*, No. PC-2022-02370, 2024 WL 3935247, at \*2 (R.I. Super. Aug. 20, 2024) (quoting *Bendick v. Picillo*, 525 A.2d 1310, 1311-12 (R.I. 1987). “The Court must ‘examine the pleadings, accept the facts alleged by the plaintiff as true, and view disputed facts in the light most favorable to the plaintiff.’” *Id.* (quoting *Cassidy v. Lonquist Management Co., LLC*, 920 A.2d 228, 232 (R.I. 2007)).

### III

#### Analysis

#### A

##### **Specific Personal Jurisdiction in Rhode Island<sup>3</sup>**

This Court has had the opportunity to discuss specific personal jurisdiction as it relates to the stream of commerce theory in *Freitas*, 2024 WL 3935247, at \*2-4, and it will restate the applicable law here. In that case, it was noted that “[t]o establish a *prima facie* showing of personal jurisdiction . . . , a plaintiff’s allegations must satisfy the demands of Rhode Island’s long-arm statute, [G.L. 1956] § 9-5-33.” *Freitas*, 2024 WL 3935247, at \*2 (quoting *Cassidy*, 920 A.2d at 232). The Rhode Island long-arm statute provides “[e]very foreign corporation . . . that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of . . . Rhode Island[.]” G.L. 1956 § 9-5-33. That statute has been interpreted by our Supreme Court “to permit the exercise of jurisdiction over a nonresident defendant to the fullest extent

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<sup>3</sup> General personal jurisdiction need not be addressed because none of the Defendants are incorporated in Rhode Island nor do they have their principal places of business in Rhode Island. *See St. Onge v. USAA Federal Savings Bank*, 219 A.3d 1278, 1283 (R.I. 2019) (quoting *Daimler Ag v. Bauman*, 571 U.S. 117, 139 (2014)) (“[A] court has general jurisdiction over a corporation in the state in which it is incorporated, where it has its principal place of business, and where the ‘corporation’s affiliations with the state are so continuous and systematic as to render it *essentially at home* in the forum state.’”). Additionally, Plaintiffs do not argue that this Court has general jurisdiction over Defendants.

allowed by the United States Constitution.” *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 757 (R.I. 2022). In determining whether a court has specific jurisdiction over a defendant, it must perform “a two-step inquiry: (1) determining whether the defendant has sufficient minimum contacts with the forum state and (2) determining whether the litigation offends traditional notions of fair play and substantial justice.” *Id.* at 757-58 (internal quotations omitted).

Regarding minimum contacts, “a party makes a successful *prima facie* showing of specific jurisdiction over a defendant where the claim sufficiently relates to or arises from any of a defendant’s purposeful contacts with the forum.” *Id.* at 758 (quoting *St. Onge v. USAA Federal Savings Bank*, 219 A.3d 1278, 1284 (R.I. 2019)). A defendant must “purposefully avail[] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Rose v. Firststar Bank*, 819 A.2d 1247, 1251 (R.I. 2003) (internal quotation omitted). Included in the consideration of whether jurisdiction can be maintained is the quality and quantity of the contacts. *Martins*, 266 A.3d at 758. “‘When there is no such connection to the forum state, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the state.’” *Id.* (quoting *St. Onge*, 219 A.3d at 1285). “Furthermore, ‘specific jurisdiction must rest on a defendant’s voluntary contact with the forum and not on the unilateral activity of another party or a third person.’” *Id.* (quoting *Knox v. MetalForming, Inc.*, 914 F.3d 685, 692 (1st Cir. 2019)).

When deciding whether it has jurisdiction pursuant to the stream of commerce theory, the Court must analyze whether “[the defendant] should reasonably anticipate being haled into court [in the forum state].” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). “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.” *Id.* at 297-98 (emphasis added). However, “it is the defendant’s actions, not his expectations, that empower a State’s courts to subject him to judgment.” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011). As explained in *Freitas*, “‘it is not enough that the defendant might have predicted that its goods will reach the forum State.’” *Freitas*, 2024 WL 3935247, at \*3 (quoting *Nicastro*, 564 U.S. at 882). Rather, “many courts require ‘*something more* than that the defendant was aware of its product’s entry into the forum [s]tate through the stream of commerce in order for the [s]tate to exert jurisdiction over the defendant.’” *Id.* (quoting *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 111 (1987) (emphasis added in *Freitas*)).

This Court has provided the following example of when a state court may impose personal jurisdiction under the stream of commerce theory:

“[I]n *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), the Supreme Court upheld the lower court’s determination that Montana and Minnesota state courts had specific jurisdiction to hear cases regarding an allegedly defective automobile sold by the defendant. *Ford Motor Company*, 592 U.S. at 354. The Supreme Court reasoned that the defendant conducted ‘substantial business’ in the forum states by ‘advertising, selling, and servicing’ the allegedly defective model in those states. *Id.* at 355. In sum, the Supreme Court concluded that the defendant had ‘systematically served’ the market of those states. *Id.* at 365. Thus, there was ‘a strong relationship among the defendant, the forum, and the litigation.’ *Id.* (internal citations omitted); *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 781 (1984) (holding that the defendant magazine publisher ‘continuously and deliberately exploited the [forum state] market’ by ‘purposefully directing’ ‘regular monthly sales of thousands of magazines [to the forum state]’ and therefore, ‘must reasonably anticipate being haled into court there’).” *Freitas*, 2024 WL 3935247, at \*3.

Therefore, although placing a product into the stream of commerce that reaches the forum state can support the imposition of jurisdiction over a defendant, there must be some additional overt

act which the defendant purposefully directed toward the forum for him or her to anticipate being haled into court there. *See id.*; *see also Asahi Metal Industry Co., Ltd.*, 480 U.S. at 112 (“The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.”); *Anderson v. Metropolitan Life Insurance Co.*, 694 A.2d 701, 703 (R.I. 1997) (holding that jurisdiction could not be imposed over an asbestos company solely for shipping raw asbestos into the United States for general sale and did not target Rhode Island specifically).

## **B**

### **Intercos, PTI Union, PTI Royston, The Stephan Co., and Sumitomo**

#### **1**

#### **The Prima Facie Case for Specific Personal Jurisdiction**

Plaintiffs first argue that this Court should impose specific jurisdiction over Intercos because:

“Here, [Plaintiff Susan] is a resident of Rhode Island, she purchased and used asbestos-containing Revlon, Covergirl, Estee Lauder, and Gold Bond brand talcum powder products . . . in Rhode Island, and she suffered an injury from exposure to asbestos from those products in Rhode Island. Plaintiffs’ claims against Intercos naturally arise from the connection between Intercos, the asbestos-containing talc it supplied to these talcum powder manufacturers and their . . . talcum powder products, and [Plaintiff Susan] in Rhode Island. Intercos does not, in fact, dispute that it supplied the talc to these talcum powder product manufacturers, nor does it not deny that [Plaintiff Susan] purchased and used these very products in Rhode Island or that the use of this product contributed to cause her mesothelioma. Accepting the facts plead in the Complaint as true, as this Court must, Plaintiffs’ pleadings state a *prima facie* case for specific jurisdiction.” (Pls.’ Obj. to Intercos’s Mot. 10.)

Plaintiffs make the same argument, almost verbatim, against PTI Union, PTI Royston, The Stephan Co., and Sumitomo. *See* Pls.’ Obj. to PTI Union’s Mot. 11; *see also* Pls.’ Obj. to PTI Royston’s

Mot. 10-11; Pls.’ Obj to Stephan Co.’s Mot. 12; Pls.’ Obj. to Sumitomo’s Mot. 10. They claim that because these Defendants could reasonably expect their products to be sold in Rhode Island, they have made a prima facie showing of specific jurisdiction under the guidance of *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351, 354 (2021). See Pls.’ Obj. to Intercos’s Mot. 9-10; see also Pls.’ Obj. to PTI Union’s Mot. 10-11; Pls.’ Obj. to PTI Royston’s Mot. 10; Pls.’ Obj to Stephan Co.’s Mot. 11-12; Pls.’ Obj. to Sumitomo’s Mot. 10. This Court disagrees with Plaintiffs, as their analysis focuses on the actions of Plaintiff Susan within the State of Rhode Island rather than any actions these Defendants directed toward it.

As stated above, the Supreme Court determined that specific jurisdiction was properly held over the defendant in *Ford Motor Company* due to its frequent advertising in the forum states, despite the fact the injured parties did not purchase the products in those states. *Ford Motor Co.*, 592 U.S. at 367-68. In conducting such advertisements and business in the forum states, the defendant “‘enjoy[ed] the benefits and protection of [their] laws’—the enforcement of contracts, the defense of property, the resulting formation of effective markets.” *Id.* at 367 (quoting *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310, 319 (1945)). Further, as the advertising included the very same products at issue in the underlying cases, there was a sufficient relationship between the defendant, the forum, and the litigation to support the imposition of jurisdiction. *Id.* at 371. Likewise, in *Freitas*, this Court declined to find jurisdiction over a defendant where it was only shown to have performed business with a nationwide brand and did not have any contacts with the State of Rhode Island specifically. *Freitas*, 2024 WL 3935247, at \*3-4.

Here, Plaintiffs only assert allegations that connect Plaintiff Susan to the State of Rhode Island—that she purchased the asbestos-containing products in Rhode Island and was injured here.



*See* Pls.’ Obj. to Intercos’s Mot. 10; *see also* Pls.’ Obj. to PTI Union’s Mot. 11; Pls.’ Obj. to PTI Royston’s Mot. 10-11; Pls.’ Obj to Stephan Co.’s Mot. 12; Pls.’ Obj. to Sumitomo’s Mot. 10. However, the jurisdictional analysis performed here requires the Court to look toward the voluntary actions of Defendants, and “not on the unilateral activity of another party or a third person.” *Martins*, 266 A.3d at 758 (internal quotation omitted). Similarly, the fact that these Defendants supplied national brands with asbestos-containing talc does not show that they targeted Rhode Island specifically, even if they may have expected their products to reach Rhode Island. *See Asahi Metal Industry Co., Ltd.*, 480 U.S. at 112-13; *see also Anderson*, 694 A.2d at 703. As a result, this Court cannot impose jurisdiction over them.

## 2

### **Jurisdictional Discovery**

Plaintiffs additionally argue that they should be allowed to conduct jurisdictional discovery. Although they believe that these motions should be denied, they state “if there is any doubt, Plaintiffs should be given the opportunity to conduct jurisdictional discovery regarding [Defendant’s] direct contacts with Rhode Island.” *See* Pls.’ Obj. to Intercos’s Mot. 12; *see also* Pls.’ Obj. to PTI Union’s Mot. 12; Pls.’ Obj. to PTI Royston’s Mot. 12; Pls.’ Obj to Stephan Co.’s Mot. 14; Pls.’ Obj. to Sumitomo’s Mot. 12. In Rhode Island, “jurisdictional fact discovery is acceptable in certain limited circumstances.” *Martins*, 266 A.3d at 761 (quoting *Smith v. Johns-Manville Corporation*, 489 A.2d 336, 339 (R.I. 1985)). Such “[d]iscovery . . . should be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.” *Id.* (internal quotation omitted). However, this Court will “not grant the plaintiff a license to engage in a ‘fishing expedition.’” *Id.* (quoting *Coia v. Stephano*, 511 A.2d 980, 984 (R.I. 1986)).

In *Smith*, the Rhode Island Supreme Court held that a plaintiff was entitled to engage in jurisdictional discovery to determine whether a defendant asbestos-company had sufficient minimum contacts with this state for jurisdiction to be imposed over it. *Smith*, 489 A.2d at 339-40. In that case, the plaintiff alleged that the defendant was either directly or indirectly responsible for the presence of asbestos in a school which caused the plaintiff's injury. *Id.* at 339. Although the defendant provided an affidavit stating that it never provided asbestos directly to any company in Rhode Island, it failed to address the allegation that it indirectly provided the asbestos. *Id.* Therefore, jurisdictional discovery could properly commence in that case because there was an actual controversy over how much asbestos the defendant may have indirectly supplied to Rhode Island. *Id.* Additionally, the plaintiff was able to articulate specific contacts that the defendant had with Rhode Island to support a finding of jurisdiction at oral argument, countering the defendant's affidavit. *Id.* at 339 n.2.

In *Coia*, our Supreme Court held that jurisdictional discovery was not warranted where there was "not a great deal of controversy surrounding the question of minimum contacts[.]" *Coia*, 511 A.2d at 984 (internal quotation marks omitted). In that case, the plaintiff alleged that the defendant—a dog breeder—advertised its products and services in Rhode Island, however, the Court determined that those advertisements were "not calculated to solicit Rhode Island." *Id.* Additionally, the defendant's participation in a dog show held in Rhode Island was an insufficient contact to maintain jurisdiction. *Id.* Further, beyond general denials of the jurisdictional allegations, the defendant supplied affidavits countering each allegation specifically, which the plaintiff failed to respond to. *Id.* Because the plaintiff failed to respond to the affidavits showing why the defendant lacked minimum contacts with Rhode Island, our Supreme Court determined that allowing jurisdictional discovery in that case would amount to a fishing expedition. *Id.*

Likewise, in *Martins*, the Rhode Island Supreme Court held once more that allowing a plaintiff to engage in jurisdictional discovery after it had failed to address a defendant's affidavit would result in a fishing expedition. *Martins*, 266 A.3d at 761-62.

Here, Plaintiffs have alleged that these Defendants were

“authorized to do business in the State of Rhode Island while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment[.]” Compl. ¶¶ 44-47, 66-67, 74, 77.

They further allege that these Defendants continue to conduct substantial business in Rhode Island through their sale of asbestos-containing products. *See id.* Defendants have all submitted affidavits that counter those allegations, and Plaintiffs have not responded to them.<sup>4</sup> As Plaintiffs have failed

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<sup>4</sup> Specifically, Intercos provided an affidavit from Morena Maurizia Genziana, President of Intercos, stating, *inter alia*, that Intercos designs and manufactures certain cosmetic products in New York and does not control how its customers distribute its products, that it is not licensed to do business in Rhode Island, has never operated any manufacturing, sales, or distribution facilities in Rhode Island, and that it has never directed any advertising to Rhode Island or its residents. *See generally* Intercos's Mem. Ex. A. Genziana Aff.

PTI Union provided an affidavit from Michael Brasher, PTI Union's Director of Quality, who stated that PTI Union “had no role in the distribution, marketing or sale of *any*” of the talc it supplied to its customer who then sold the finished cosmetic products. *See* PTI Union's Mem., Ex. A. Michael Brasher Aff. ¶ 11. PTI Royston provided an affidavit stating the same. *See* PTI Royston's Mem. Ex. A. Matthew Milner Aff. ¶ 11.

The Stephan Co. provided an affidavit from Henry Jacobi, Chief Executive Officer of the Stephan Co., stating that it is not registered to do business in Rhode Island, had no employees in Rhode Island, is not a party of any contracts to perform services in Rhode Island, and that it never advertised the offending product in Rhode Island. *See* The Stephan Co.'s Mem., Ex. A. Henry Jacobi Aff. ¶¶ 10, 13.

Finally, Sumitomo provided an affidavit from Kim Spiniello, Operation Controller at Sumitomo, stating that Sumitomo has no facilities or employees in Rhode Island, is not authorized to do business in the state, and that it supplied talc only to Presperse, LLC, and that it never arranged for any sale of talc to Rhode Island. *See generally*, Sumitomo's Mem. Ex. 1., Kim Spiniello Aff.

to rebut any of the affidavits provided by this group of Defendants, there is “not a great deal of controversy surrounding the question of minimum contacts[.]” *Coia*, 511 A.2d at 984 (internal quotation marks omitted). Further, as Plaintiffs’ allegations for jurisdiction amount to these Defendants placing a product into the stream of commerce—without anything more that targets Rhode Island—this Court will not authorize Plaintiffs to engage in discovery that would amount to a fishing expedition.<sup>5</sup> *See id.*; *see also Martins*, 266 A.3d at 761-62.

## C

### IMI Fabi Defendants

#### 1

#### **The Prima Facie Case for Specific Personal Jurisdiction**

Unlike the previous group of Defendants, Plaintiffs provide the “something more” with relation to the IMI Fabi Defendants. First, in 2001, Fabi Diana entered into a distribution agreement with Cosmetic Specialty, Inc. (CSI); the territory covered by that agreement is listed as the United States and Canada. *See generally*, Fabi Diana’s Mem. Ex. B2, 2001 CSI Distribution Agreement. Plaintiffs contend that because Rhode Island is a part of the United States, this distribution agreement suffices as a contact with Rhode Island to allow this Court to maintain jurisdiction over Fabi Diana. *See* Pls.’ Obj. to IMI Fabi Defendants 6. However, this contract indicates that the distribution agreement was to sell specific products to the United States generally, not Rhode Island specifically, and, thus, it fails to serve as contact with Rhode Island. *See Asahi Metal Industry Co., Ltd.*, 480 U.S. at 112-13; *see also Anderson*, 694 A.2d at 703.

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<sup>5</sup> Sumitomo has additionally moved this Court to strike and issue a protective order against certain discovery requests pertaining to jurisdiction from Plaintiffs; however, that motion is now moot as the Court dismisses Sumitomo from this matter and has explained why such discovery is not warranted.

Next, Plaintiffs point to another distribution agreement between Fabi and CSI; this contract was negotiated and agreed to in 2004, and specifically listed Rhode Island, among other places, as territories to be covered by the agreement. *See generally* Fabi’s Mem. Ex. B4, 2004 CSI Distribution Agreement. That contract serves as a purposeful contact with Rhode Island, that Fabi intended to serve the state with its products, and it directly rebuts the affidavit provided by Fabi claiming that it “never specifically intended that its cosmetic, pharmaceutical, and food grade talc was to be shipped to the State of Rhode Island or used or consumed within the State of Rhode Island.” *See* Fabi’s Mem. Ex. B, Corrado Fabi Aff., ¶ 24. Additionally, Plaintiffs’ claims relate to that contact, since the 2004 distribution agreement deals with the distribution of Fabi’s talc products that are alleged to have been a factor in causing Plaintiff Susan’s mesothelioma here in Rhode Island. *See Ford Motor Company*, 592 U.S. at 353 (holding that for a claim to be related to impose jurisdiction, there must be a “relationship among the defendant, the forum, and the litigation”).

Further, Fabi’s act of targeting Rhode Island in this distribution agreement was voluntary. Fabi presents no evidence to suggest that the 2004 distribution agreement was anything more than an arm’s length agreement between CSI and itself. *See Martins*, 266 A.3d at 758 (holding that “specific jurisdiction must rest on a defendant’s voluntary contact with the forum and not on the unilateral activity of another party or a third person”) (internal quotation omitted). Being haled into a Rhode Island Court was thus foreseeable to Fabi because it specifically contracted with CSI to distribute its products into Rhode Island, opening itself up to the very type of litigation Plaintiffs now bring as a result of their products. *See Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 717 (1st Cir. 1996) (“Exercising jurisdiction is appropriate where the defendant purposefully derives economic benefits from its forum-state activities.”). Additionally, “a single act having impact in

and connection with the forum state can satisfy the minimum-contact test of *International Shoe Co.*” *Rose*, 819 A.2d at 1252 (internal quotation omitted). Having targeted Rhode Island specifically in the 2004 distribution agreement, Fabi “deliver[ed] its products into the stream of commerce with the expectation that they [would] be purchased by consumers in [Rhode Island,]” and, therefore, the Court “does not exceed its powers under the Due Process Clause” by asserting jurisdiction over it. *World-Wide Volkswagen Corp.*, 444 U.S. at 297-98.

Exercising jurisdiction over Fabi is also reasonable when the Court applies the Gestalt factors. *See St. Onge*, 219 A.3d at 1286-87. “The first factor is the burden on the defendant.” *Id.* at 1287. Fabi has not presented any evidence or argument that litigating this matter in Rhode Island would place an extraordinary burden upon it. *See generally* Fabi’s Mem.; *see also* IMI Fabi Defendants’ Reply. “The second factor is the forum state’s interest in adjudicating the dispute.” *St. Onge*, 219 A.3d at 1287. The Plaintiffs argue that Rhode Island has an interest because the injury occurred in Rhode Island, and this Court agrees with that contention. *See id.* (holding the second Gestalt factor was met because that “case [was] about a check that was dishonored in a Rhode Island account”). “The third factor is the plaintiff’s interest in obtaining the most effective resolution of the controversy.” *Id.* Here, Plaintiffs are residents of Rhode Island, and, thus, their interest in resolving this matter effectively weighs in favor of this Court maintaining jurisdiction over their claims where they reside and where their injury occurred. *See id.* (holding the third factor weighed in favor of the matter being heard in a Florida court as the defendant was a Florida resident and most of the events occurred in Florida). “The final factor is the shared interest of the several states in furthering fundamental substantive social policies.” *Id.* Again, this factor weighs in favor of Rhode Island being the proper forum to hear Plaintiffs’ claims because most of the events that

allegedly caused Plaintiff Susan’s mesothelioma occurred in Rhode Island. *See id.* Therefore, this Court may maintain jurisdiction over Fabi.<sup>6</sup>

## 2

### **Jurisdictional Discovery**

Although the Court is comfortable in exercising jurisdiction over Fabi, it is not satisfied that it may do so over the remaining IMI Fabi Defendants—Fabi Diana and Fabi USA. As with the previous group of Defendants, Plaintiffs request that they be permitted to conduct jurisdictional discovery relative to them. *See* Pls.’ Obj. to IMI Fabi Defendants 18. In correspondence with the Court and at oral argument, Plaintiffs brought an order from the United States District Court for the District of South Carolina to the Court’s attention. In that case, *Sarah J. Plant and Parker Plant v. Avon Products, Inc. et al.*, No. 2022-CP-40-01265, (D.S.C. 2024), the court found that attorney Michael Sommerville, National Counsel for IMI Fabi, “committed a fraud on the Court by intentionally, repeatedly, knowingly and willfully not producing relevant and material documents and talc samples.” *Id.* at 18. As a result of the intentional fraud displayed by the IMI Fabi Defendants’ National Counsel, the United States District Court of South Carolina granted the plaintiffs’ motion for a new trial. *Id.* at 20.

The Court finds the National Counsel’s intentional failure to produce requested documents troubling. Therefore, it will allow Plaintiffs to request from the IMI Fabi Defendants any information from the discovery withheld in the *Plant* action that could pertain to establishing jurisdiction over them.

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<sup>6</sup> The Court further notes that the same 2004 distribution agreement with CSI allowed the Superior Court of Connecticut to exercise personal jurisdiction over Fabi in *Phelan v. Arkema*, No. FBT-CV-23-6124450-S, 2024 WL 3873508, at \*11 (Ct. Super. Ct. Aug. 13, 2024).

## **IV**

### **Conclusion**

For the foregoing reasons, the motions to dismiss from Intercos, PTI Union, PTI Royston, The Stephan Co., and Sumitomo are **GRANTED**. Fabi's motion to dismiss is **DENIED**. The motions from Fabi Diana and Fabi USA are **RESERVED** until Plaintiffs have received further jurisdictional discovery. Counsel shall submit the appropriate order for entry.





**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Susan and Brian Soares v. Avon Products Inc., et al.

**CASE NO:** PC-2024-01631

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 20, 2025

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

**For Plaintiff:** Brian P. Kenney, Esq.

**For Defendant:** Stephen T. Armato, Esq.; Andrew R. McConville, Esq.; Christopher C. Storm, Esq.; James R. Oswald, Esq.; Jacqueline A. Crockwell, Esq.; Kelly Kincaid, Esq.; Peter Mathieu, Esq.; Matthew C. Oleyer, Esq.; Stephanie M. Batchelder, Esq.; Paul E. Dwyer, Esq.; Karlene E. Manley, Esq.; Lisa O. White, Esq.; Emyr T. Remy, Esq.; Michael F. McVinney, Esq.; Nancy Kelly, Esq.; Monica R. Nelson, Esq.; Nicole L. Andrescavage, Esq.; Kimberly A. Caplik, Esq.; Benjamin A. Pushner, Esq.