RICKIE LLAUGER, Plaintiff-Appellant, v. KLEIN PRODUCTS INC., MIKE ZYNDORF EQUIPMENT, LLC, BROOKSIDE EQUIPMENT SALES INC., AHERN RENTALS INC, KLEIN PRODUCTS OF KANSAS, INC., KLEIN-NIECE OF KANSAS, INC.; NIECE PRODUCTS OF KANSAS, INC., NIECE EQUIPMENT, LP, ABC CORPORATION, JOHN DOE, their employees, servants, agents and/or representatives jointly, severally or in the alternative, Defendants-Respondents	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-2604-24 CIVIL ACTION Law Division: Morris County Docket No. MRS-L-642-22 Sat Below: Honorable Vijayant Pawar, J.S.C. Submitted: June 13, 2025

PLAINTIFF-APPELLANT'S AMENDED BRIEF IN SUPPORT OF REVERSAL OF TRIAL COURT'S ORDER DISMISSING COMPLAINT FOR LACK OF PERSONAL JURISDICTION AGAINST DEFENDANTS, NIECE PRODUCTS OF KANSAS, INC., AND NIECE EQUIPMENT, LP

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PRELIMINARY STATEMENT

This matter arises from a products liability lawsuit. The case concerns the severe personal injuries sustained by Plaintiff Rickie Llauger while he was servicing a 12,000-gallon tank water tower in April 2020 during the course of his employment in New Jersey. Plaintiff avers that the subject tower was not reasonably fit, suitable or safe for its intended purpose for multiple reasons, including defect in design, in violation of New Jersey Products Liability Law, N.J.S.A. 2A:58(c)(1), et seq.

Plaintiff asserts claims against Niece Products of Kansas, Inc. ("Niece Products") (f/k/a Klein-Niece of Kansas, Inc. ("Klein-Niece")) and Niece Equipment, LP ("Niece Equipment") (collectively "Niece Defendants"), on strict products liability theory under the NJPLA. The Niece Defendants moved to dismiss for lack of personal jurisdiction based on their assertion that they did not manufacture, distribute or market the water tower that entered New Jersey, and that their contact with the State was less than minimal. Such representation disregards their relationship to the tower's manufacturer, however.

Substantial evidence demonstrates that, like other manufacturers in the construction equipment industry, including the company they acquired, most of Niece Defendants' sales are made to national and regional distributors, including those with locations in New Jersey and those which sell/lease equipment there. The Niece Defendants do not place any restriction on the sale of their equipment and

parts in New Jersey. To be sure, the history of the subject water tower, manufactured by an entity which Niece Products succeeded in ownership, is that it was sold to a dealer and other middlemen in New Jersey or who routinely sell to New Jersey businesses. These activities are sufficient to establish personal jurisdiction in New Jersey because they demonstrate that the moving defendants purposely direct water towers, among other water tanks and parts, to the State, and, in addition, have New Jersey customers and vendors.

Moreover, to the extent liability is predicated on the continuation of predecessor Klein Products of Kansas' ("Klein") business following Niece Products' purchase of same, the Niece Defendants are also subject to personal jurisdiction in the State. Evidence demonstrates Klein's designs/trademarks for the subject water tower/tanks were passed on to Niece Products, and its alleged alter ego Niece Equipment. This entity took over Klein's facility, retained its employees, purchased substantially all its assets and assumed its liabilities, and Niece Products continued to and to this day does manufacture water towers. Indeed, the expansion of Niece Equipment's product line to include larger water tanks, including water towers, was the specific reason for the asset purchase in the first place. The evidence shows that, like Niece Defendants, Klein sold construction equipment to New Jersey end-users, as well as dealers in construction equipment with a footprint in New Jersey. This includes the distributor of the subject tank here.

Notwithstanding the foregoing, on March 14, 2024, the trial court on motion granted Niece Defendants' motion to dismiss for lack of personal jurisdiction.

The trial court's decision is erroneous for the following reasons.

First, the trial court acknowledges the record is incomplete and that information which it recognized was not disclosed to Plaintiff during jurisdictional discovery could support a finding of personal jurisdiction here. No inference in favor of Plaintiff was given, nor did the trial court deny the motion without prejudice so that additional limited jurisdictional discovery could take place prior or to conduct an evidential hearing to decide this dispositive application.

Second, the trial court incorrectly states that Niece Products' assets purchase specifically excluded the water tower Plaintiff claims was defectively designed and which serves as the very basis of his claim. The Asset Purchase Agreement states no such thing. It serves as a basis for finding specific personal jurisdiction here.

Finally, the trial court's ruling exclusively relies upon Third Circuit caselaw which interprets successor liability and successor jurisdiction under New York law. In finding that Plaintiff's claim of successor liability and jurisdiction was improper, the court's sole reliance upon a decision dependent upon New York's long arm statute and New York's rejection of the product-line exception to non-liability of successors, a doctrine long recognized in New Jersey, supports reversal of the court's dismissal of Plaintiff's claims against Niece Defendants on jurisdictional grounds.

PROCEDURAL HISTORY

On April 15, 2020 New Jersey resident Plaintiff was injured in New Jersey while servicing a water tower in the course of his employment as a heavy equipment mechanic with Petillo, Inc., which is headquartered in Flanders, New Jersey. (Pa1)

In addition to setting forth claims against the entity which sold the construction equipment (used) to Plaintiff's employer, Defendant Mike Zyndorf, LLC ("Zyndorf")[1], Plaintiff filed a Complaint against the Klein Products, Inc. and/or ABC Corporation, which were alleged to have "designed, manufactured, assembled, created, tested, inspected, produced, labeled, packaged, marketed, promoted, imported, distributed, and/or sold" the water tower at issue. (Pa1). Plaintiff alleged that the water tower equipment was defective in its design and/or manufacturing or was otherwise in violation of the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, *et seq*.

In the course of discovery, defendants identified the subject product's manufacturer as Klein. Specifically, Defendant Zyndorf, LLC, who sold the water tower to Petillo, Inc. in March 2020, identified the water tower as a "2008 Klein Water Tanker" and produced a photograph of a plate affixed to it bearing the words "Klein Products of Kansas, Inc." (Pa205). Similarly, Defendant Klein Products,

[1] Other intermediary sellers of the subject water tower within New Jersey were identified and named in amended pleadings, including Brookside Equipment Sales, Inc. (Pa 29) and Ahern Rentals, Inc (Pa 49).

Inc. produced a certification of its President, Brian McManus, stating "[t]he tanker in question was manufactured by Klein Products of Kansas, Inc." (Pa407 at ¶ 8[2]).

Based on this information and independent research, leave was granted to amend the Complaint to name as party defendants Klein, Klein-Niece, and Niece Products as previously fictitiously plead. (Pa 71)

Niece Products' First Motion To Dismiss For Lack of Personal Jurisdiction

On July 14, 2023, Niece Products (f/k/a Klein-Niece) moved to dismiss Plaintiff's Complaint for lack of personal jurisdiction. Among other things, Niece Products relied upon an Asset Purchase Agreement dated July 31, 2012, wherein Klein-Niece and guarantor E.L. Niece agreed to purchase the assets and assume the liabilities of Klein. (Pa275)

On August 15, 2023, the Honorable Rosemary Ramsey, P.J.Cv. denied the Motion without prejudice, and, with the consent of the parties, jurisdictional discovery was ordered to proceed (Pa648). Jurisdictional discovery was extended to November 15, 2023 by Amended Consent Order. (Pa95)

Niece Products' Second Motion to Dismiss for Lack of Personal Jurisdiction and Plaintiff's Cross-Motions

At the purported completion of jurisdictional discovery, Niece Products renewed its Motion to dismiss on December 20, 2023 (LCV20233678909).

[2] Although Klein Products, Inc. denies any affiliation with Klein, discovery as to this issue is ongoing and incomplete.

Plaintiff filed a Cross-Motion to compel jurisdictional discovery, arguing that Niece Products' discovery responses were incomplete and/or deficient.

On January 19, 2024, Judge Ramsay again denied Niece Products' motion without prejudice and compelled more complete answers to jurisdictional discovery; "Defendants cannot simply object in the abstract or refuse to supply discovery. Defendants must identify the information and or discovery that is being withheld in a sufficiently detailed privilege log in order to permit the other party, and if necessary, the Court to determine whether the information is discoverable." (Pa97). Judge Ramsay extended jurisdictional discovery ninety days. (Pa97).

On January 19, 2024, Judge Ramsay also granted Plaintiff leave to amend his Complaint to name Niece Equipment as a defendant based upon jurisdictional discovery findings of an alleged alter ego relationship as between Niece Defendants (Pa99)

Jurisdictional discovery was extended by the Court by Case Management Order entered on April 16, 2024. (Pa156). It was to conclude on May 31, 2024 (Pa156, ¶2). The Order memorialized Niece Equipment's objection to any further extension of jurisdictional discovery beyond this date as to them (Pa156, ¶3).

Niece Defendants' Motion to Dismiss for Lack of Personal Jurisdiction

On June 17, 2024, the same day Niece Defendants objected to and would not produce information relating to their equipment sales/leases to their

national/regional distributors and produced the unredacted invoices which disclosed the names of entities Niece Defendants sold equipment/parts to in New Jersey (Pa578-579), Niece Defendants moved the court for an order to dismiss Plaintiff's Complaint. This now third application was denied without prejudice by Judge Ramsay due to procedural deficiency on February 11, 2025. (Pa159).

Niece Defendants resubmitted the motion to dismiss (filing the very same papers), the fourth dispositive motion (Pa161), which Plaintiff opposed (Pa398). Niece Defendants' motion is premised upon the absence of general jurisdiction over Niece Defendants in New Jersey. (T5:25-6:1). Despite Plaintiff's argument of successor liability and product line-exception in this products liability action, Niece Defendants contend Plaintiff did not raise specific jurisdiction in opposition to their motion to dismiss. (T11:12-13).

Order Granting Niece Defendants' Motion to Dismiss

On March 14, 2025, the Honorable Vijayant Pawar, J.S.C. entertained oral argument of Niece Defendants' motion to dismiss. On this same date, Judge Pawar entered an Order dismissing Plaintiffs' Complaint (Fourth Amended) against Niece Defendants on jurisdictional grounds with a Statement of Reasons accompanying same (Pa632).

Appellate Division Order Granting Plaintiff Leave to Appeal Order Granting Niece Defendants' Motion to Dismiss

On April 3, 2025, Plaintiff filed a Motion for Leave to Appeal the March 14,

2025 Order granting Niece Defendants' Motion to Dismiss. Plaintiff's Motion for Leave was granted on April 24, 2025 by Hon. Ronald Susswein, J.A.D. (Pa711).

STATEMENT OF FACTS (Jurisdictional)

During Jurisdictional Discovery, the Niece Defendants produced employees for deposition and additional disclosures, including Klein's customer list. This discovery revealed the following pertinent facts:

A. Niece Products purchased Klein Products and continued its business operations, including the manufacture of water towers.

In 2012, Klein-Niece was incorporated as a vehicle for acquiring Klein's assets and continuing its business operations. Pursuant to the Asset Purchase Agreement, Klein-Niece agreed to purchase "all of the assets constituting [Klein's] business," including real property, machinery and equipment, furniture and fixtures, and automobiles and trucks. (Pa275 at § 1); (Pa265). Also included in the list of assets transferred to Klein-Niece were all "notes, drawings, models, or designs of water tanks, pumps, valves, [and] mining equipment." (Pa275 at § 1). These assets were purchased in "'as is/where is' condition." (Pa275 at § 2)

In addition, trademarks for water towers, tanks, and other equipment were conveyed from Klein to Klein-Niece. Renee Clark, the CFO of Niece Products and former CFO of Niece Equipment, testified that these trademarks were conveyed via the Asset Purchase Agreement (Pa430 at 36:13-23).

The Asset Purchase Agreement provides that Klein would continue to run the business "in a manner consistent with its current practices" until closing, that "the parties agree that Buyer shall take over Seller's business effective August 1, 2012," that the parties "acknowledge and agree that they are currently taking steps to transition the business from Seller to Buyer," and that "Buyer contemplates hiring substantially all of Seller's employees . . . as of closing." (Pa275 at §§ 5, 6, 8). Klein-Niece further agreed to complete all work in progress and handle orders for equipment and parts placed pre-closing (Pa275 at § 3(ii); Pa431, 40:6-10).

As consideration for the transaction, Klein-Niece agreed to assume certain liabilities of Klein, including but not limited to warranty claims (capped at $85,000), accounts payable, business credit lines, utilities, tax obligations, and unused employee PTO, among other obligations necessary for the uninterrupted continuation of normal business operations. (Pa279)

The Bill of Sale appended to the subject Asset Purchase Agreement states that "Seller sold *substantially all* of its business assets to Buyer for the purchase price stated therein (emphasis added)." (Pa280)

Klein-Niece and Niece Products are the same entity. CFO Clark confirms that Klein-Niece was formed "according to the Asset Purchase Agreement" before being renamed Niece Products of Kansas, Inc. a few months after the transaction was completed. (Pa424, 23:2-17; Pa198 at ¶¶ 4, 6). Clark testified that Niece Products

has continued manufacturing water towers and tanks at the same location ever since purchasing Klein and that Niece Products is the sole manufacturer of this equipment for Niece Defendants;

> Q: Is Niece Products of Kansas the only manufacturer of water towers and water tanks in the -- in this Niece umbrella of entities?
> A: Yes.
> Q: And that would be at the Fort Scott location in Kansas?
> A: That's correct.
> Q: Was Niece Equipment manufacturing water tanks or towers prior to the Asset Purchase Agreement?
> A: No.

(Pa429, 33:1-23; Pa432, 45:7-18).

Niece Defendants acknowledge that by reason of the asset purchase, Klein Products "totally went out of business" (T8:5-8).

B. Niece Equipment is a closely affiliated corporation responsible for the sales and distribution of water towers manufactured by Niece Products and is its alter ego.

Whereas Niece Products took over Klein's water tower manufacturing business, Niece Equipment was responsible for sales and distribution of Niece Products' equipment (Pa432, 45:18-19). Following the asset purchase, water towers and other equipment manufactured by Niece Products were sold online or by telephone, although Clark was unable to testify about the percentage of sales through online purchases. (Pa426-27, 28:24-29:16; see, also, Pa442, 14:6-9; Pa443, 19:13-16; Pa444, 22:25-23:18; Pa358, 60:6-63:16).

However, Niece Equipment, once a customer of the acquired Klein (Pa548),

holds itself out in a way that suggests it is the same entity as Niece Products. For instance, Niece Products has no website, but it maintains that it "uses the domain name nieceequipment.com" (Pa453 at No. 16). Although Niece Products' telephone number and address are provided on the Niece Equipment website (https://nieceequipment.com/), it is nowhere mentioned by name. (Pa425-36, 27:11-28:13).

Based upon Niece witness testimony and additional representations made to the public, the Niece Defendants are affiliated, and plausibly, one and the same. Niece Product's purchase of Klein was publicized in an article about Niece Equipment in the online trade magazine ConstructionEquipmentGuide.com titled "*Niece Equipment acquires Klein Products of Kansas, expanding product line and services*" (Pa468). "Niece Equipment/NIEMCO has added Klein Products of Kansas to its family of companies" and the acquisition "complete[s] a full line of larger units for mines and quarries worldwide" (Pa468-69). Niece Equipment's line of "smaller water trucks and tanks manufactured by NIEMCO will continue its operations in Austin, Texas" (Pa468).

Water towers manufactured by Niece Products are featured in a recent Construction Equipment Guide Facebook post about a Niece Equipment event at its facility in Fort Worth, Texas (Pa471), as well as Niece Equipment's September 2023 advertising in the Construction Equipment Guide website (Pa474). Reflecting the

fact that Niece Equipment either held itself out as a manufacturer of water towers, or that it operated in a manner that obfuscated Niece Products' identity, a purchase order for a water truck submitted to Niece Equipment lists Niece Equipment as the manufacturer (Pa 478). Indeed, the very label on a NPT120 water tower does not identify Niece Products as its manufacturer, but rather "Niece Equipment Mfg."

Likewise, Niece witnesses testified to having overlapping job responsibilities. William Rose is employed as the parts and rental manager of Niece Products. (Pa307, 9:10-13). His office is located at the Niece Products facility in Kansas, however, the equipment he rents is owned by Niece Equipment and located at Niece Equipment's facility in Buda, Texas. (Pa325, 27:6-28:12). Mr. Rose also helps maintain the Niece Equipment website by updating pricing for parts (Pa358, 60:6-63:16). Conversely, John Rainey was formerly employed by Niece Equipment, where he sold equipment manufactured by Niece Products (Pa438, 10:2-16). Sales invoices for parts and equipment produced in discovery bear the Niece Products letterhead and they also refer to the Niece Equipment website (Pa477).

There is also considerable overlap in the leadership and ownership of Niece Products and Niece Equipment. Clark served as CFO at Niece Equipment while

serving as CFO of Niece Products, which she had an ownership interest in. (Pa421 at 20:21-21:6, 23:18-23:25). She shared ownership of Niece Products with E.L. (Al) Niece, who also owned Niece Equipment. (Pa422-23, 20:15-21:11). Clark was the secretary/treasurer of Niece Products and Al Niece was the President (Pa536-37).

Additional facts suggest a joint enterprise. The Niece Defendants are insured under the same policy, and they used the same insurance brokers and accountants. (Pa533). Other than unsigned Niece Products Annual Board Meeting Minutes for 2012 and 2013, no other meetings of Niece Products' Board were provided (Pa536-40). Niece Products' ledger reveals $50,000 in debt to Niece Equipment as of December 31, 2012, including a $20,000 loan from Niece Equipment received that month. (Pa648). Similarly, the Notice of Service of process on Niece Products lists the primary contact for service of process as "Tony Polce, Niece Equipment, LP." (Pa202). Therefore, it appears the Niece Defendants operate as a single enterprise.

C. Klein, and subsequently the Niece Defendants, sold their products directly to New Jersey end users but primarily targeted New Jersey through national or regional dealerships or distributors with a presence in New Jersey where it was reasonably foreseeable that water towers and tanks, among other equipment would be delivered.

Klein and its successors, the Niece Defendants, targeted the forum both directly and indirectly.

Klein's customer list, which was acquired by Niece Products in the asset purchase, identifies seven customers located in New Jersey. (Pa542 at Pa555, Pa563,

Pa568, Pa571, Pa572, Pa576). Among these customers are distributors located in New Jersey who distribute construction equipment within New Jersey. Specifically, and by way of example, according to Klein's client list JESCO, Inc. (Pa555) is a New Jersey based distributor of construction equipment for short and long term rental (Pa568, Pa682), Vacuum Sales, Inc., is a New Jersey distributor of vacuum trucks for rent/sale (Pa572, Pa689-92), and Uni-Select, USA, is a national automotive/truck parts distributor with a distribution center in Moorestown, New Jersey (Pa572, Pa693-699).

Invoices of Niece Products sales identify sales to nine customers located in New Jersey, and additional sales to a Canadian company that were shipped to a freight company in Newark, New Jersey (Pa477-Pa520). Notably, seven of these ten Niece Products customers do not appear on Klein's customer list, which indicates that Niece Products and/or Niece Equipment actively cultivated a market in New Jersey after acquiring Klein.

At deposition, William Rose, Niece Products' parts and rental manager, testified that Ocean County Landfill, a customer identified in Klein Products' customer list, has been and is currently a New Jersey customer of Niece Products (Pa307, 9:10-13; Pa355-56, 57:17-58:15).

In addition, the invoices show two sales of water equipment to New Jersey customers. An August 10, 2022 purchase order submitted to Niece Equipment

documents the sale of a 5,000-gallon water truck that was delivered to Hamburg, New Jersey. (Pa478). An invoice dated December 11, 2019 documents the sale, on-site installation, and testing of a 9,000-gallon tank on behalf of a business located in East Windsor, New Jersey[3] (Pa515). Invoices show that forty-one additional sales of various parts and equipment shipped to New Jersey since 2013. (Pa477-520)

Sales of and by Niece Equipment are not restricted to any number of the lower 48 states. (Pa427, 29:7-24; Pa441-42, 12:9-13:19; Pa443, 21:11-15; Pa449-450, 45:25-46:12; Pa536, 24:19-20; see Pa578 at Nos. 5 and 6).

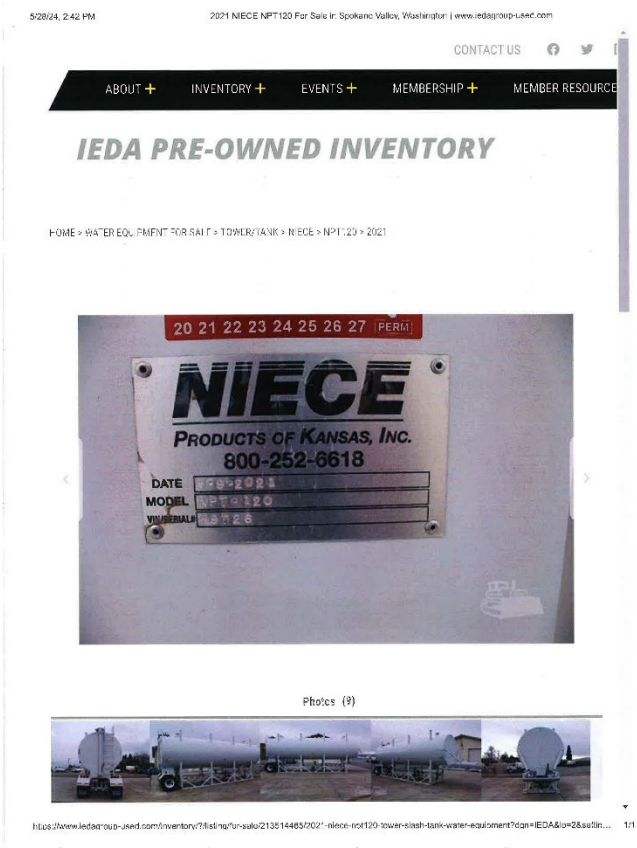
Importantly, approximately 80% of Niece Equipment's sales are made to dealers who either resell or lease Niece Equipment. (Pa447-48, 37:21-38:2). Niece Equipment's dealer-customers were the "middlemen" equipment dealers, like Caterpillar, John Deere, Volvo, and Komatsu. (Pa447, 36:8-21). These dealers-customers all have a national presence with locations in New Jersey.[4] Document information requested as to the identity of the dealers and/or distributors to end users by purchase or lease was not provided in discovery by Niece Defendants, and thereby has precluded Plaintiff from learning from said entities of sales and leases

[3] The invoice contains a shipping address in California; however, because the Niece Defendants did not supply unredacted copies of the relevant invoices until after witnesses were deposed, counsel did not have the opportunity to clarify whether installation was performed on-site in New Jersey, California, or at a Niece location in Kansas or Texas.

[4] A current list of equipment dealer locations for Caterpillar, John Deere, Volvo, and Komatsu can be accessed at the following web addresses, respectively: https://www.cat.com/en_US/support/dealer-locator.html (50 New Jersey locations) (Pa713); https://www.powerplaceinc.com/locations#map (3 New Jersey locations) (Pa718); https://hoffmanequip.com/locations/ (2 New Jersey locations)(Pa720); https://www.komatsustores.com/locations.htm (2 New Jersey locations) (Pa727).

made to and/or as to construction equipment delivered within New Jersey (Pa578-580).

The Niece Defendants, and other members of the trade association called the Independent Equipment Dealers Association ("IEDA"), actively market Niece Defendants' pre-owned products nationally through IEDA. According to its website, the IEDA "is a non-profit trade association promoting participation, professionalism and advancement in the independent distribution of heavy equipment." The IEDA, which Niece Defendants owner Al Niece is a director of, "focuses its efforts on providing discounts, marketing, advertising, education and networking opportunities to members that will result in increased sales for member companies." (See, https://iedagroup.com/about-the-ieda/). Niece Defendants' water towers are marketed on this re-sale marketplace.



During jurisdictional discovery, however, the Niece Defendants objected to providing any information about dealers and distributors who have purchased or

leased Niece and/or Klein equipment, which data is reasonably anticipated to lead to the discovery of additional information about the flow of Niece Products into the forum. (Pa578, Nos. 1-4). Information concerning the leasing of its equipment was among the disclosures denied to Plaintiff months earlier, and any further extension of jurisdictional discovery was objected to by Niece Equipment, LP in connection with the re-filing of its dispositive motion, as was memorialized in the court's case management order dated April 16, 2024 (Pa98, Pa156). Notably, Niece Equipment's website specifically acknowledges that its 12,000-gallon water towers are among the machinery available for rent (Pa709).

D. The history of the subject water tower in the heavy machinery manufacturing industry illustrates how national marketing and sales to third-party dealerships, distributors, and rental companies creates an industrial stream of commerce flowing into New Jersey.

Like the majority of Niece Equipment's sales/rentals, the subject water tower was sold to a third-party who went on to sell or lease its equipment to end users across the country. Ahern Rentals, a party defendant herein, purchased the subject water tower from Klein in 2007 and rented the product as part of its commercial equipment leasing business. Ahern Rentals bills itself as "the largest independent family-owned equipment rental company in the world"[5] (Pa209). According to its website, Ahern has locations in 49 states (all but Hawaii), Puerto Rico, and ten

[5] https://www.ahern.com/about (Pa731)

Canadian territories; Ahern has twenty-five locations in New Jersey. (Pa736)

Niece Products' CFO testified that in addition to Klein Products' having a business relationship with Ahern, so did Niece Equipment which rented equipment to Ahern (Pa433, 57:3-16; Pa434, 59:1-5).

On March 7, 2017, Defendant Ahern conveyed the subject water tower to another entity in "a trade package." (Pa209 at C(4) No. 2). On March 30, 2017, Defendant Brookside Equipment Sales Inc. ("Brookside") purchased the subject water tower at auction in Atlantic City[6] (Pa582 at C No. 7). Brookside never took possession of the water tower but instead consigned it to Defendant Mike Zyndorf, LLC, Id. at C(4) No. 2, a seller/renter of construction equipment, who transported the subject water tower from the auction site in Atlantic City to its premises in Mays Landing, New Jersey, (Pa589). On March 18, 2020, Plaintiff's New Jersey employer purchased the subject water tower from Mike Zyndorf, LLC (Pa403).

Accordingly, the subject product entered the forum via the manufacturer's sale to a large national dealer/distributor, who re-sold the water tower to other distributors of such construction equipment in New Jersey following the lease expiration. This series of transactions in the heavy equipment industry was not unusual, unexpected or departed from the usual course of re-sale of such

[6] According to its website, Brookside buys, sells, and trades heavy construction equipment with delivery promised nationwide. https://www.brooksideequipment.com/default.htm (Pa739)

construction machinery. To the contrary, and as indicated by the 212 enumerated nationwide and regional sellers of Klein's manufactured water towers and tanks and accessories identified within its customer list, supports that this was and remains the practice in the industry (Pa542-576). It aligned with the "regular and anticipated flow of products from manufacture to distribution to retail sale." Asahi Metal Ind. Co. v. Superior Court of Cal., Solano Cty., 480 U.S. 102, 117 (1987).

E. Niece Defendants Direct Sales and Purchases from Vendors in New Jersey

Niece Defendants are not strangers to New Jersey. Clark acknowledged sales of Niece Products' manufactured products and parts to its products by Niece Equipment, LP to end users in the State of New Jersey. She also acknowledged that Niece Products purchases materials and component parts from New Jersey vendors for manufacture and assembly of its products (Pa427-28; Pa456, No. 1).

STANDARD OF REVIEW

Whether a court has personal jurisdiction over a defendant is a question of law, and the standard governing appellate review of an order dismissing an action for lack of personal jurisdiction under R. 4:6-2 is *de novo* review. YA Global Investments, L.P. v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011).

Personal jurisdiction itself is considered a "mixed question of law and fact" Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017) (quoting Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996). Accordingly,

on an appeal from an order determining whether there is personal jurisdiction over a party defendant, the appellate court reviews a trial court's finding of fact with respect to jurisdiction. The appellate court reviews the trial court's findings to "determine if those findings are supported by substantial, credible evidence in the record." Rippon, 449 N.J. Super. at 358.

On appeal, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); State v. Dorff, 468 N.J. Super. 633, 644 (App. Div. 2021) "[We] are not bound by a trial court's interpretation of the legal consequences that flow from established facts.")

A plaintiff bears the burden of pleading sufficient facts to establish personal jurisdiction when a defendant moves to dismiss a complaint on ground of lack of jurisdiction over the person pursuant to R. 4:6-2(b). Dutch Run-Mays Draft, LLC v. WolfBlock, LLP, 450 N.J. Super. 590, 598 (App. Div. 2017); Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004).

It is well established that in deciding a motion to dismiss for lack of jurisdiction, the Court must accept the plaintiff's allegations as true, and construe disputed facts in favor of the plaintiff. Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 457 (3rd Cir. 2003); Miller Yacht Sales, Inc., 384 F.3d at 97. Here, Plaintiff

alleges that Klein, Niece Products and/or Niece Equipment manufactured and distributed the subject 12,000-gallon water tower (Pa101). Plaintiff also alleges that Niece products is the successor-in-interest to Klein, and that Niece Equipment is an alter ego of Niece products (Pa168 at ¶5). There is also a factual dispute as to whether Niece Products manufactured a water tower that was substantially similar to the one manufactured by its predecessor, Klein. Thus, for purposes of this motion, it must be accepted that the Niece Defendants and/or Klein manufactured the subject water tower, and that the product line was continued after Niece Products acquired Klein.

Once plaintiff has shown minimum contacts, the burden shifts to defendant who must show that the assertion of jurisdiction would be unreasonable. Mellon Bank East PSFS, Nat'l Assn. v. Farino, 960 F.2d 1217, 1226 (3d Cir 1992); Kirkwood v. Brenntag North America, Inc., 2020 WL 1516974 at *2 (D.N.J. March 20, 2020) (Pa682).

When presented with a motion made under R. 4:6-2(b), the trial court must make findings of jurisdiction facts. Rippon, 449 N.J. Super. at 359. However, if the factual record presented to the court does not permit resolution of the issue of jurisdiction, "the trial court must conduct a preliminary evidential hearing after affording the parties an appropriate opportunity for discovery." Id.

New Jersey law is clear – when the record confronting the trial court contains disputed jurisdictional allegations that cannot be resolved on the papers – as the trial

court acknowledges in its statement of reasons here – the court must allow the parties to conduct jurisdictional discovery to develop the record in advance of an evidential hearing to resolve any factual disputes. See, e.g., Rippon, 449 N.J. Super. at 359; Citibank, N.A., 290 N.J. Super. at 532 (holding that while the question of jurisdiction "is a mixed question of law and fact," "it cannot be resolved on pleading and certifications" when the facts are disputed but instead "must be resolved by a preliminary evidential hearing after affording the parties an appropriate opportunity for discovery"); Stein v. Sam's East, Inc., 2010 WL 5058520 at * 6 (N.J. App. Div. December 13, 2010), cert. den., 205 N.J. 318 (2011) (reversing order dismissing plaintiff's complaint for lack of personal jurisdiction in products liability action against alleged successor of distributor of office chair, appellate court held trial court should have allowed some limited jurisdictional discovery to determine whether defendant specifically manufactured the subject chair and placed it in stream of commerce for sale to a customer in New Jersey) (Pa662); Ginsburg on behalf of P.G. v. Golden Arrow, LLC, 2023 WL 6209599 at **3-4 (N.J. App. Div. September 25, 2023) (vacating order dismissing plaintiff's complaint for lack of personal jurisdiction, remanding for trial court to allow for brief period of jurisdictional discovery and a plenary hearing to resolve the factual dispute because factual issues prevented appellate court from determining whether defendant purposefully directed its activities at New Jersey for purposes of establishing specific jurisdiction)

(Pa668); Edelman v. Merrill Lynch Bank and Trust Co. (Cayman) Ltd., 2009 WL 425906 at *7 (N.J. App. Div. February 24, 2009)(where record "permits the reasonable inference" of purposeful availment of this forum and thereby created sufficient minimum contacts to warrant jurisdiction over defendant, trial court should have permitted plaintiff the opportunity for jurisdictional discovery. The Appellate Division held that "plaintiff should not be deprived at this juncture from attempting to establish a sufficient basis to proceed") (Pa673).

LEGAL ARGUMENT

I. THERE ARE SUFFICIENT CONTACTS RELATED TO THIS MATTER TO SUBJECT THE NIECE DEFENDANTS TO SPECIFIC JURISDICTION IN THIS STATE (Pa641-644)

New Jersey courts may exercise in personam jurisdiction over a non-resident defendant "consistent with due process of law." Doe 70 v. Diocese of Metuchen, 477 N.J. Super. 270, 280 (App. Div. 2023). Jurisdiction over non-resident defendants is exercised "to the uttermost limits permitted by the United States Constitution." Jardim v. Overley, 461 N.J. Super. 367, 377 (App. Div. 2019) (quoting Avdel Corp. v. Mecure, 58 N.J. 264 (1971).

For a non-resident defendant to be subject to personal jurisdiction over a non-resident defendant consistent with due process of law, the defendant must have "certain minimum contacts with the forum such that maintenance of the suit does

not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Miliken v. Meyer, 311 U.S. 457, 463 (1940).

The required contacts, both in quality and quantity, depends upon whether general or specific jurisdiction is asserted. Citibank, N.A., 290 N.J. Super. at 526. General jurisdiction requires affiliations which are "so continuous and systematic" as to render' a non-resident organizational defendant 'essentially at home in the forum State.'" Daimler AG v. Bauman, 571 U.S. 117, 133 n.11 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011).

Plaintiff does not aver that general personal jurisdiction exists as to Niece Defendants in New Jersey. Consistent with Plaintiff's papers submitted before the trial court in opposition to Niece Defendants' motion to dismiss and contrary to representations made on behalf of Niece Defendants at oral argument before the trial court (Pa714, 6:23-25; Pa717,11:12-13), Plaintiff maintains that New Jersey has specific jurisdiction over Niece Defendants.

For the state court to exercise specific jurisdiction over a non-resident defendant, the lawsuit "must arise out of or relate to the defendant's contacts with the forum." Doe 70, 477 N.J. Super at 281 (quoting Daimler, AG, 571 U.S. at 127). This is interpreted to mean that courts examine the "relationship among the

defendant, the forum, and the litigation." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989)(quoting Shaffer v. Heitner, 433 U.S.186, 204 (1977).

"A conclusion of specific jurisdiction requires that the 'purposeful acts by the [defendant] directed toward this State' be of a kind that 'make[s] it reasonable for the [defendant] to anticipate being haled into court here.'" Rippon, 449 N.J. Super. at 360-61 (quoting Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 268 (App. Div. 2007).

New Jersey courts recognize the "stream of commerce" theory as a basis for asserting specific jurisdiction over a non-resident defendant. Charles Gender & Co., Inc., v. Telecom Equipment Corp., 102 N.J. 460, 477 (1986). Under stream of commerce theory, courts may exercise specific jurisdiction over a non-resident defendant "which has injected its goods, albeit indirectly, into the forum state and either 'derived [a] substantial benefit from the forum state or had a reasonable expectation of [deriving a substantial benefit from it]." Penzoil Prod. Co. v. Colelli & Assoc., Inc., 149 F.3d 197, 203 (3d Cir. 1998) (quoting Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, 300 (3d Cir. 1985)). Although New Jersey courts have expanded this doctrine, typically the stream of commerce theory applies in products liability cases. DeJames v. Magnificence Carriers, Inc., 654 F.2d 280, 285 (3d Cir. 1981).

The foreseeable market served by a manufacturer or distributor is one with the intention to make their product available for purchase in as many forums as possible, such that the sale of its product is not "simply an isolated event but the result of a corporation's efforts to cultivate the largest market for its product." Gendler, 102 N.J. at 478 (quoting Nelson by Carson v. Park Indus., Inc., 717 F.2d 1120,1125 (7th Cir. 1983). In Gendler, the New Jersey Supreme Court explained the application of the stream of commerce theory as follows:

> **As applied to a manufacturer, the stream-of-commerce theory supports the exercise of jurisdiction if the manufacturer knew or reasonably should have known of the distribution system through which its products were being sold in the forum state.** The manufacturer's awareness of the distribution system satisfies the requirement that the manufacturer have a reasonable expectation that its products will be purchased in the forum state. **It makes no difference whether the manufacturer had actual or constructive knowledge of the distribution system.** A manufacturer that should have known, like one that actually knows, that its products will be sold in the forum state purposefully avails itself of the benefits of the forum's laws.
>
> **By definition, a stream-of-commerce case involves a sale not by the manufacturer, but by another entity in the chain of distribution**. To be subject to the stream-of-commerce theory in some jurisdictions, the manufacturer must purposefully participate in or control the distribution of its products. **We believe, however, that a manufacturer need not so control the distribution system to place its products into the stream of commerce and, therefore, control of that system is not necessary to subject the manufacturer to the jurisdiction of the forum state.** The focus is on the manufacturer's actual or constructive awareness of the system, not on control of the distribution of its products. A manufacturer's establishment or control of a distribution system, of course, satisfies the requirement that the

manufacturer was aware of that distribution system.

> A manufacturer's awareness of the distribution system, through which it receives economic and legal benefits, justifies subjecting the manufacturer to the jurisdiction of every forum within its distributors' market area. **Accordingly, a manufacturer that knows its products are distributed through a nationwide distribution system should reasonably expect that those products would be sold throughout the fifty states and that it will be subject to the jurisdiction of every state. By attempting to preclude the distribution and sale of its products in the forum state, however, a manufacturer can avoid the jurisdiction of the courts of that state.** A manufacturer that prohibits the distribution of its products in a particular state would not reasonably expect its products to be sold in that state. Thus, the stream-of-commerce theory should not subject such a manufacturer to the forum state's jurisdiction. (Emphasis added) (Citations omitted).

Plaintiff maintains that specific jurisdiction of Niece Defendants can be found here consistent with and under the stream of commerce theory based upon the nature of the construction equipment industry as understood by Niece Defendants. (Pa719-20,16:11-17:3).

A. Most of Niece Defendants' sales are made to customer-dealers with locations in New Jersey (Pa641-643)

A State may have personal jurisdiction over a non-resident defendant who places a product within the stream of commerce flowing to the forum state and who may never enter the forum state. "Flow of a manufacturer's products into the forum . . . may bolster an affiliation germane to specific jurisdiction." Goodyear, 564 U.S. at 927. This is particularly true where a defendant's products make their way to the

forum as a result of a "regular course of dealing." J. McIntyre, 564 U.S. at 889 (Breyer, J., concurring) (quoting Asahi, 480 U.S. at 122 (Stevens, J., concurring).

The Niece Defendants are subject to personal jurisdiction in New Jersey because they targeted the forum indirectly, by selling a substantial volume of their products to dealerships ("We had middlemen" (Pa447, 36:11)), including the likes of Ahern, John Deere, Caterpillar, Volvo, and Komatsu, who have numerous locations within this State. The Niece Defendants have thus far refused to produce anything responsive to Plaintiff's demands for information identifying customer-dealers and the revenue Niece generates from them (Pa578-80). However, former sales representative, Johnny Rainey, who worked for Niece Equipment from approximately 2014 to 2024, testified that Niece sold on average between 30 and 50 water towers annually, and that 80% of equipment sales were to customer-dealers (Pa441, 10:2-7; Pa442, 17:12-19; Pa443-44, 21:21-22:1; Pa447-48, 37:21-38:2). According to Mr. Rainey's testimony, Niece Products' products made their way to sale through auction houses (Pa448; 41:11-22). Based upon Rainey's testimony, Niece Defendants likely sold approximately 200 water towers to customer-dealers in the eight years between Niece Products' acquisition of Klein and the date of Plaintiff's accident, and approximately 300 water towers up to the present date. Thus, one can reasonably assume that Niece Products equipment, including water towers, have found their way to New Jersey indirectly, through sales to regional and

national distributors who then resell or lease Niece Products to New Jersey end users and through auction houses as well.

Additionally, the construction equipment manufacturers in order to cultivate a broad market rely upon sale/lease of new and pre-owned equipment, including equipment coming off of a lease. Rental of heavy machinery is recognized as an avenue to provide equipment to multiple end-users in multiple forums. To be sure, Niece Equipment's website recognizes that rental fleets of late model products including its 12,000-gallon water tower (Pa709). Most construction equipment distributors or "middlemen" have websites which auction pre-owned equipment, and such websites often do not limit the purchase and/or delivery by geography.

Indeed, the flow of this commerce is how the subject water tower entered New Jersey. Klein sold the water tower to a large national dealer, Ahern, who re-sold the product at auction in New Jersey. The water tower remained at the auction site until it was re-sold by Brookside, a national equipment dealer, to a New Jersey equipment dealer who sold it to a New Jersey end user. This chain of ownership illustrates the manner in which Niece's overall sales and marketing efforts insert Niece's products into a stream of commerce flowing into the State. It is unreasonable to assume that the Niece Defendants should not expect to be haled into a New Jersey court simply because the majority of their sales are made to customer-dealers, especially when those customers rent and sell equipment in New Jersey.

By contrast, in Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County, 582 U.S. 255 (2017), the U.S. Supreme Court determined that California lacked personal jurisdiction over non-resident prescription drug manufacturer where the majority of the plaintiffs were not California residents, did not purchase the pharmaceutical product in California, were not injured in the State, did not receive treatment for injuries in California, and where there was no identifiable link between the State and the plaintiff's product liability claim. Indeed, with respect to the non-resident plaintiffs, the manufacturer's sole connection to the forum was a contractual relationship with a non-party distributor located in California. The Court reasoned that this connection to the forum was insufficient because there was no evidence linking the pills distributed to the California contractor to the non-resident plaintiffs.

Bristol-Myers Squibb is distinguishable because Plaintiff is a New Jersey resident who was injured in the course of his employment in New Jersey. His injuries were caused by alleged defective equipment manufactured by Klein and which Niece continues to manufacture and sell in New Jersey. Unlike the California distributor in Bristol-Myers Squibb, the entity that purchased the subject water tower from Niece, Ahern, is a dealership with more than two dozen locations in New Jersey, who then re-sold through auction the product in New Jersey. Niece Equipment's Rainey testified that he knew that Niece Defendants' equipment

ultimately made its way to sale through auction houses. (Pa448, 41:11-22). The subject water tower's presence in the forum was a predictable result of the Niece Defendants' sales and marketing efforts. It was neither random nor fortuitous that the subject water tower ultimately was sold to a New Jersey end user by a New Jersey equipment distributor. Therefore, it is reasonable to subject them to the jurisdiction of New Jersey's courts.

It is of no moment that the product was "used" and not newly manufactured, or that it had been leased, resold and ultimately auctioned and resold again. There is no bright-line rule for the stream of commerce which explicitly defines it for reasonableness and foreseeability purposes. Whether the manufactured item was new or used is "a distinction without jurisdiction difference for minimum contact purposes." Michelin North America, Inc. v. DeSantiago, 584 S.W.3d 114, 134 (Tx Ct. App. 2018).

Additionally, because a products liability case focuses on the condition of the product at the time it left the manufacturer's possession, subsequent sales on a secondary market outside of the control of Niece Defendant's direct control does not deny a finding of personal jurisdiction;

> If a manufacturer takes a shotgun shell approach to marketing and deliberately aims a batch of products at multiple states, it seems at odd to let the manufacturer complain that even though its product actually struck a targeted state, the point should not count simply because there was an unexpected ricochet along the way.

> Michelin targeted Texas. The tire hit its target. Michelin expected and wanted the tire to hit its target. Whether Michelin made money off the specific sale [] is not strictly relevant to the minimum contacts theory. Id. at 134.

New Jersey courts exercise personal jurisdiction to the outermost limits permitted by the federal Constitution. Patel v. Karnavati America, LLC, 437 N.J. Super. 415, 425 (App. Div. 2014) (citing Avdel Corp. v. Mecure, 58 N.J. 264 (1971)). A defendant's contacts with the forum will subject it to suit in New Jersey unless the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice. Ibid.; see also Goodyear v. Dunlop Tires Ops., 564 U.S. 915, 923 (2011).

It is well established that in deciding a motion to dismiss for lack of jurisdiction, the Court must accept the plaintiff's allegations as true, and construe disputed facts in favor of the plaintiff. Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 457 (3rd Cir. 2003). Here, Plaintiff alleges that Klein, Niece Products, and/or Niece Equipment manufactured and distributed the subject water tower. (Pa1). Plaintiff also alleges that Niece Products is the successor-in-interest to Klein, and that Niece Equipment is an alter ego of Niece Products. (Pa1at ⁋ 16). There is also a factual dispute as to whether Niece Products manufactured a water tower that was substantially similar to the one manufactured by its predecessor, Klein. Thus, for

the purposes of this motion, it must be accepted that the Niece Defendants and/or Klein manufactured the subject water tower, and that the product line was continued after Niece Products acquired Klein.

B. The Court may exercise personal jurisdiction because, beyond Niece Defendants' nationwide distribution through national and regional "middlemen", the Niece Defendants directly targets sales of its products to New Jersey end users (Pa641-643)

Here, the Niece Defendants have additional contacts with New Jersey to justify the exercise of specific personal jurisdiction. Niece purposefully targeted the forum by selling their products, equipment and parts, directly to customers in this State. In particular, sales invoices and customer lists produced in discovery demonstrate that Niece Defendants not only continued to ship products to existing New Jersey customers when it acquired Klein, but that it also developed new customers in the State. There were no restrictions on the type or volume of products that Niece sold or shipped to New Jersey customers. See Gendler, 102 N.J. at 481 ("By attempting to preclude the distribution and sale of its products in the forum state, however, a manufacturer can avoid the jurisdiction of the courts of that state").

To wit, Niece sold New Jersey customers its water equipment on at least two occasions. This was purposeful activity directed at the forum involving the sale of water equipment. The exercise of personal jurisdiction is therefore reasonable and fair because Plaintiffs' claims arise out of and relate to sales and distribution of water

equipment in New Jersey. The Defendants present no compelling evidence why it would be unfair or unjust to litigate the dispute in New Jersey – where it is admitted they sell and deliver manufactured equipment and component parts to New Jersey end users and where they also have component part/accessory vendors.

C. Klein's contacts with the forum are imputed to the Niece Defendants based on evidence establishing successor-liability (Pa643-644)

The Niece Defendants argue that because Klein manufactured the subject water tower, they can only be subject to personal jurisdiction if their predecessor entity, Klein, had sufficient contacts with the forum. This proposition is incorrect on the law.

Courts in New Jersey and across the country adopt a theory of "successor jurisdiction" whereby the activities of a predecessor entity may be imputed to an entity facing liability as a successor in interest. See e.g., In re Nazi Era Cases Against German Defendants Litigation, 153 Fed. Appx. 819, 825 (3d Cir. 2005) (stating the proposition and collecting cases). Personal jurisdiction will be found in such circumstances. Id. However, successor jurisdiction does not cabin the analysis of the successor's contacts. Instead, the predecessor's contacts may become relevant if the successor entity named in the suit does not have sufficient minimum contacts. See Id. at 825-26 (analyzing the forum contacts of the successor and predecessor separately); Jeffrey v. Rapid American Corp., 448 Mich. 178 (MI 1995) ("[B]ecause

the defendant has never done business in Michigan as Rapid American, due process may be satisfied only if the contacts of old Carey can be imputed to it"). The Niece Defendants will be subjected to the jurisdiction of this Court if they *or* Klein had sufficient contacts with the forum.

Even if the Niece Defendants do not have sufficient contacts with the forum, they are still subject to personal jurisdiction in this State based on the activities of their predecessor, Klein. In particular, the customer list Klein maintained and conveyed to Niece Products when it was acquired contains seven customers located in New Jersey. Klein not only sold products directly to New Jersey end users, but it also sold equipment to numerous customer-dealers with a presence in New Jersey, including Ahern, who purchased the subject water and re-sold it in New Jersey. (See, Pa687-708). Independent research of Klein's customers indicates that 212 of its customers either re-sell or lease new and used equipment. No additional information about Klein's sales to the New Jersey-based customer and customer-dealers; i.e., the type of equipment sold or the volume of sales, has been produced in jurisdictional discovery by Niece Defendants and Niece defendants represents that the company is defunct; Klein "totally went out of business" (T8:5-8).

Assuming that Klein did manufacture the subject water tower, Niece would still be subject to jurisdiction here and would face liability for claims sounding in

strict products liability. Successor jurisdiction is predicated on successor liability, which may be based on any one of the following scenarios:

> The general rule of corporate-successor liability is that when a company sells its assets to another company, the acquiring company is not liable for the debts and liabilities of the selling company simply because it has succeeded to the ownership of the assets of the seller. Traditionally, there have been only four exceptions: (1) the successor expressly or impliedly assumes the predecessor's liabilities; (2) there is an actual or de facto consolidation or merger of the seller and the purchaser; (3) the purchasing company is a mere continuation of the seller; or (4) the transaction is entered into fraudulently to escape liability.

Lefever v. K.P Hovnanian Ents., 160 N.J. 307, 310 (1999). In addition to these, New Jersey recognizes another exception to the general rule of successor non-liability, which is when a corporation that acquires all or substantially all the manufacturing assets of another corporation continues the same product line. Id. at 310 (citing Ramirez v. Amsted Industries, Inc., 86 N.J. 332 (1981)).

> Where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor.

Ramirez, 86 N.J. at 358.

Multiple bases for applying successor liability are evident here. First, Niece Products expressly assumed Klein's liabilities, as stated in the Asset Purchase

Agreement:

> 3. Assumption of Liabilities and Obligations. Except as specifically set forth herein, Buyer is assuming Seller's liabilities and obligations limited to: (i) the liabilities listed on Exhibit 1 attached hereto and incorporated herein by reference; (ii) the obligation to complete all work in progress, as well as any orders for equipment or parts that have been placed prior to Closing; (iii) any of Seller's warranty obligations/claims up to the
>
> maximum amount as stated on Exhibit 1 (together, the "Liabilities").

Pa275 at § 3. Second, the assets and liabilities transferred to Niece – which included the real property and equipment located at the site and the rights to designs and trademarks of Klein products – and the stated goal of retaining all of Klein's employees clearly demonstrate that the Asset Purchase Agreement was entered into with the intention of continuing Klein's business under new ownership. Third, as the Niece Defendants concede, Niece Products continued to manufacture water towers that are substantially the same as those manufactured by Klein. The only design difference is the addition of two legs, such that Niece's water tower, model NPT120, has eight legs, whereas Klein's water tower, model KPT 120, has six legs.

Because Niece Products chose to purchase a manufacturing enterprise that was well established and benefitted from the purchase (it "complete[s] a full line of larger units for mines and quarries worldwide" (Pa468-69)), it cannot avoid successor liability, even if the design of the product line changed over time. See Bussell v. DeWalt Products Corp., 259 N.J. Super. 499 517-18 (App. Div. 1992) (imposing liability on a successor who received the good will, trademarks, inventory, equipment, and the same manufacturing plant of the predecessor via an intermediary

entity, even though the assets had changed since the predecessor was acquired by the intermediary); Gallemore v. Four M. Corp., 1999 WL 33964477 at *4 (N.J. App. Div. July 8, 1999) ("the imposition of successor liability is not predicated on whether the successor corporation continued to manufacture the product in the identical form that injured the plaintiff") (Pa623). In this case, the water towers manufactured by Niece Products are substantially the same design as those manufactured by Klein.

Moreover, the policy considerations motivating successor liability are found here. The rationale for imposing liability is that the successor's acquisition of a defective product's manufacturer would otherwise bar the plaintiff's recovery, whereas the successor remains in a better position than the user of a product to bear accident avoidance costs. Nieves v. Bruno Sherman Corp., 86 N.J. 361, 369 (1999); Ramirez, 86 N.J. at 354; Mettinger v. Globe Slicing Mach. Co., Inc., 153 N.J. 371, 380-81 (1998) (The Supreme Court continues to believe the product-line exception to successor corporation liability "strikes sound accommodation of the competing interests"); Bussell, 259 N.J. Super. at 520 ("The product-line approach to liability was adopted by the Supreme Court in order to provide plaintiffs with a remedy where they otherwise would not have one . . . . The burden of defective products should not be placed on the injured party, but instead should be borne by the manufacturers who are able to both calculate and adjust the risk").

"Public policy requires that having received the substantial benefits of the continuing manufacturing enterprise, the successor corporation should also be made to bear the burden of the operating costs that other established business operations must ordinarily bear." Bussell, 259 N.J. Super. At 517-18 (quoting Ramirez, 86 N.J. at 352-53). Public policy trumps any express or implied contractual language that would otherwise limit successor liability: "[D]isclaimers are ineffective in insulating the buyer from successor liability when other principles of law require the imposition of liability." Lefever, 160 N.J. at 319 (citing Ramirez).

The arguments advanced by the Niece Defendants below are squarely opposed to New Jersey public policy. They argue for dismissal on the grounds that Klein manufactured the subject product, that they cannot face liability as successors to Klein, and that therefore they cannot be subject to jurisdiction in this State. Yet successor liability is imposed precisely so that plaintiffs have an opportunity to recover from an entity that has benefitted from the acquisition of a defunct manufacturer, as the Niece Defendants clearly have. The evidence adduced at this early stage of litigation demonstrates that the Niece Defendants acquired Klein and continued its business operations, including production of its 12,000-gallon water towers and water tanks. Dismissing these defendants based on the lack of contacts between Klein and the forum, when Niece marketed and sold water towers and other equipment and parts in New Jersey, both directly and indirectly, would contravene

the policy behind both successor liability and successor jurisdiction, because Plaintiff would have no remedy against the subject product's alleged original manufacturer.

D. Niece Products' contacts should be imputed to Niece Equipment for the purposes of the jurisdictional analysis (Issue Not Raised Below)

Niece Products' contacts with New Jersey should be imputed to Niece Equipment, because the evidence suggests they are a unitary business. New Jersey courts recognize that jurisdiction extends to a defendant corporation's functional alter ego. Star Video Ent., L.P. v. Video USA Assocs. 1 L.P., 253 N.J. Super. 216, 223 (App. Div. 1992); see also Taca Int'l. Airlines v. Rolls Royce, Ltd., 84 N.J. Super. 140 (Law Div. 1964) (finding English, Canadian, and Delaware corporations "one cohesive unit" for jurisdictional purposes). "It would be anomalous, and would defeat the purposes of the law creating substantive liability, to permit a corporate officer to shield himself from jurisdiction by means of the corporate entity, when he could not interpose the same shield as a defense against substantive liability." Id. (quoting Donner v. Tams-Witmark Music Library, Inc., 480 F. Supp. 1229 (E.D. Pa. 1979)).

Under New Jersey law, jurisdiction extends to a foreign parent if the subsidiary is an alter ego or agent of the parent. Dewey v. Volkswagen AG, 558 F.Supp.2d 505, 513 (D.N.J. 2008). To determine whether a subsidiary is acting as an agent of a parent, courts consider four factors:

> (1) whether the subsidiary is doing business in the forum that would otherwise be performed by the parent; . . . (2) whether there is common ownership of the parent and subsidiary; (3) whether there is financial dependency; and (4) whether the parent interferes with the subsidiary's personnel, disregards the corporate formalities, and/or controls the subsidiary's marketing and operational policies.

Id. Thus, a parent who exerts "considerable control" over the activities of its subsidiary will be imputed with the latter's contacts in the forum. Pfundstein v. Omnicom Group Inc., 285 N.J. Super. 245, 253 (App. Div. 1995). Given the considerable overlap in ownership, management, and operations between Niece Products and Niece Equipment, the Court should consider them one and the same for the purposes of jurisdiction. Niece Equipment effectively operates as the sales and marketing division of Niece Products. Niece Products does not sell equipment. Instead, Niece Products are sold through the Niece Equipment website or by phone contact with Niece Equipment sales representatives. Niece invoices bear the Niece Products letterhead but also reference the Niece Equipment website. Both entities are owned by E.L. Niece, who is also an officer and director of each entity. CFO Clark has an ownership share in Niece Products and served as an officer and director of both entities concurrently. Niece Equipment shares insurance coverage with Niece Products, loans it money, and accepts service on its behalf.

This evidence is sufficient to establish jurisdiction over Niece Equipment based on the contacts of Niece Products and vice versa, even if additional discovery fails to establish a unitary business. In Star Video, the Appellate Division ruled that

disputed facts as to the relationship between a New Jersey-based limited partnership and its foreign general partners were sufficient to exercise jurisdiction over the foreign defendants, even if it were later found that the individual defendants were not operating as the limited partnership's alter ego. "Should later trial of the matter fail to establish the requisites for alter ego liability, these defendants may move to dismiss the complaint against them." Id. at 223. Thus, for the purposes of this Court's jurisdictional analysis, the Niece Defendants' contacts with the forum should be viewed collectively and attributed to them both. After further discovery, either party may challenge jurisdiction based on a more complete record establishing the relationship between the two entities.

II. THE TRIAL COURT'S ORDER DISMISSING PLAINTIFF'S COMPLAINT AGAINST NIECE DEFENDANTS FOR LACK OF PERSONAL JURISDICTION IS UNSUPPORTABLE, LACKS ANY RATIONAL LEGAL BASIS, AND SHOULD BE REVERSED (Pa640-645)

The trial court's analysis of the arguments and law set forth by the parties with respect to finding personal jurisdiction over Niece Defendants in New Jersey considered the parameters of the stream of commerce set forth in J. McIntyre Machinery, Ltd. v. Nicastro, 564 U.S. 873 (2011). The court's basis for ruling that Niece Defendants is not subject to specific personal jurisdiction in New Jersey was as follows:

> [P]laintiff highlights that the majority of the Niece defendants' sales are made to customer-dealers with locations in New Jersey. This includes

> "the likes of Ahern, John Deere, Caterpillar, Volvo, and Komatsu, who have numerous locations in this State."
>
> According to plaintiff, while Niece defendants have refused to respond to plaintiff's demands for information identifying customer-dealers and the revenue generated from same, testimony from [Niece Equipment] former sales representative, Johnny Rainey, indicates that "Niece sold on average between 30 to 50 water towers annually, and that 80% of equipment sales were to customer-dealers." Ibid. Plaintiff surmises then, that in in the eight years between [Niece Products of Kansas]'s acquisition of Klein and the date of plaintiff's accident, the Niece defendants sold approximately 200 water towers to customer dealers. Id. at 15. Plaintiff thus asks the court to assume that the Niece defendants' products, e.g., water towers, have found their way to New Jersey "through sales to regional and national distributors who then resell or lease Niece products to New Jersey end users."
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> **If the court were to accept these assumptions as true, then the court would be satisfied that the stream of commerce analysis described above triggers personal jurisdiction such that the Niece defendants would have established sufficient contacts and purposeful availment via indirect sales to consumer-dealers doing business in New Jersey. However, the court is not inclined to accept these assumptions as true. Without any definitive information regarding the Niece defendants' customer-dealers, it is far too speculative for the court to conclude that the Niece defendants should expect to be hauled into a New Jersey court on the basis of their sales to customer-dealers who rent and sell equipment in New Jersey.**

(Pa642-43, emphasis added, citations omitted)

Despite the noted absence of critical information presented on this motion concerning Niece Defendants' distribution system and distributor's market area, the trial court nonetheless and improperly found Niece Defendants was not subject to personal jurisdiction because "plaintiff's cause of action did not arise out of Niece defendants' forum-related contacts." (Pa643).

Further, the trial court's analysis of the arguments and law set forth by the parties with respect to finding personal jurisdiction over Niece Defendants in New Jersey also recognized Plaintiff's claims against Niece Defendants are premised upon successor liability in this products liability action. The trial court ruled that Plaintiff's claim for successor jurisdiction/liability was improper, stating as follows:

> The court relies upon the Third Circuit's clarification on [the issue of successor jurisdiction] in addressing the parties' dispute: **"[S]uccessor-jurisdiction…can be present in the following situations:** (1) merger or de facto merger; (2) express of implied assumption of liabilities, including by ratification of the predecessor's activities; or (3) acquisition of assets or reorganization undertaken to fraudulently avoid jurisdiction. Notably successor liability is imputed under similar circumstances. "In re Nazi Era, supra, 153 Fed.Appx. at 823. As none of the above scenarios are present – **indeed, the Asset Purchase Agreement NPK entered into with Klein explicitly excluded the subject product** – the court finds that plaintiff's reliance on the theory of successor jurisdiction/liability is improper. (Pa644 emphasis added)

The trial court's analysis of successor jurisdiction is fatally flawed for several reasons. First, it misinterprets and improperly relies upon In re Nazi Era Cases Against German Defendants Litigation, 153 Fed. Appx. 819 (3d Cir. 2005) for "clarification". Second, it incorrectly represents that the Asset Purchase Agreement between Klein and Niece Products (f/k/a Klein-Niece) "explicitly excluded the subject product." And third, the court omitted consideration of the product line exception to successor liability recognized in New Jersey in product liability cases. Respectfully, the trial court's unsupportable analysis of successor liability and

successor jurisdiction resulted in an erroneous ruling, and is one which goes beyond the issue of jurisdiction here.

A. To the extent the trial court recognizes a deficient record from which it believes it cannot determine specific jurisdiction concerning Niece Defendants' customer-dealers, jurisdictional discovery concerning Niece Defendants' customer-dealer relationships was necessary and should have been ordered (Issue Not Raised Below)

Despite finding incomplete information and a deficient record from which to determine the sufficiency of Niece Defendants' contacts with New Jersey by reason of distribution by sale or lease of its water towers, among other equipment to New Jersey end-users through its principal operations distribution method of using nationwide distributors to do such, the trial court did not dismiss without prejudice Niece Defendants' dispositive motion subject to limited jurisdictional discovery so that "definitive information" could be obtained and made available to the court. It did not require a complete record so that the court could determine if personal jurisdiction was "triggered" under the stream of commerce analysis for purposes of personal jurisdiction. Respectfully, this was in error. It was erroneous particularly as the trial judge stated his jurisdictional ruling hinged upon this information.

The trial judge states that the caselaw, and specifically Shuker v. Smith & Nephew, PLC, 885 F.3d 760 (3d Cir.), is "clear" as to the parameters of minimum contacts when an item is placed into the stream of commerce. However, his consideration of the opinion omits the addressed appropriateness of allowing the

parties to "revisit factual issues by means of limited jurisdictional discovery" as stated therein. Id. at 781. Such discovery is ordinarily allowed when a plaintiff's claim to personal jurisdiction "is not clearly frivolous." Id. (citing Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 336 (3d Cir. 2009) ("We have explained that if 'the plaintiff's claim is not clearly frivolous [as to the basis for personal jurisdiction], the district court should ordinarily allow discovery on jurisdiction in order to aid the plaintiff in discharging that burden.' Furthermore, we have found jurisdictional discovery particularly appropriate where the defendant is a corporation." (citation omitted)).

Jurisdictional discovery is warranted where the record was deemed insufficient by the court, so that the trial court may properly adjudicate the jurisdictional question presented. See, e.g., Abdul-Baatin, *supra*, 2021WL 5264648 at *3 (N.J. App. Div. November 12, 2021) (reversed and remanded for jurisdictional discovery followed by an evidentiary hearing, after which the judge shall make findings of jurisdictional facts to support his decision and properly adjudicate the motion"(Pa651); Citibank, N.A., 290 N.J. Super. at 532 (App. Div. 1996) ("The question of *in personam* jurisdiction is a mixed question of law and fact that, if timely raised, must be resolved before the matter may proceed, and if it cannot be resolved on the pleading and certifications, it must be resolved by a preliminary hearing after affording the parties an appropriate opportunity for discovery").

B. Strict liability and successor jurisdiction applies to Niece Defendants as they merely continue the work of the corporation they acquired (Pa643-644)

Even if Niece Defendants' relationship with the New Jersey forum was insufficient, personal jurisdiction may otherwise be premised upon its relationship to and the activities of Klein as its successor. Niece Defendants' position that there can be no jurisdiction because they did not manufacture or sell the water tower that injured Plaintiff does not eliminate the imputation of personal jurisdiction (and liability) by their predecessor Klein, which did sell products and have customers in New Jersey, and that did sell to distributors, like Ahern, which sold their products here. These products included water towers.

Based upon the factual record and in accordance with controlling New Jersey law, if Klein manufactured the subject water tower, successor liability arises because its purchasing company Niece Products (Klein-Niece when the Asset Purchase Agreement was entered) "is a mere continuation of the seller" and/or it "acquires all or substantially all the manufacturing assets of" and "undertakes essentially the same manufacturing operation of the selling corporation" (the "product-line"). See, Ramirez v. Amsted Industries, Inc., 86 N.J. 332 (1981); Lefever v. K.P. Hovnanian Ents., 160 N.J. 307, 310 (1999).

Niece Products (f/k/a Klein-Niece) chose to purchase a well-established manufacturing enterprise and benefitted from the purchase ("*Niece Equipment*

acquires Klein Products of Kansas, expanding product line and services") (Pa468). The Bill of Sale explicitly states that Klein-Niece purchased "*substantially all of the assets*" and assumed Klein's liabilities. By Niece Defendants' admission it continues to manufacture water towers at the same location since purchasing Klein, albeit with slight design change of the product-line over time. (Pa429 at 33:1-23; Pa432, 45:7-14). Such design modification of the product line, however, does not defeat the imposition of successor liability. See, Bussell v. DeWalt Products Corp., 259 N.J. Super. 499, 517-18 (App. Div. 1992); Gallemore v. Four M. Corp., 1999 WL 33964477 at *4 (N.J. App. Div. July 8, 1999) (Pa623).

Moreover, the facts presented – including the provisions of the Asset Purchase Agreement – in no way excluded Kleins' water towers (or designs for same) when Niece Defendants acquired Klein. (Pa275). To be sure, not only were water towers part of this business transaction (they were not "explicitly excluded" as the trial court found (Pa644), but they were the very reason Niece Products acquired Klein). Niece Defendants wished to expand their line of heavy machinery to include water towers, heavy equipment they did not manufacture (Pa468).

Klein no longer exists. Successor liability is imposed so that plaintiffs have an opportunity to recover from an entity which has benefitted from the acquisition of a defunct manufacturer for injuries sustained by reason of its manufactured product, as the Niece Defendants clearly have. Nieves v. Bruno Sherman Corp., 86

N.J. 361, 369 (1999): Ramirez, 86 N.J. at 354; Mettinger v. Globe Slicing Mach. Co., Inc., 153 N.J. 371, 380-81 (1998) ("The Supreme Court continues to believe the product-line exception to successor liability "strikes sound accommodation of the competing interests"); Bussell, 259 N.J. Super. at 520 ("The product-line approach to liability was adopted by the Supreme Court in order to provide plaintiffs with a remedy where they otherwise would not have one…The burden of defective products should not be placed on the injured party, but instead should be borne by the manufacturers who are able to both calculate and adjust the risk.")

Notwithstanding, in ruling upon Niece Defendants' motion to dismiss the trial court incorrectly found Plaintiff's reliance upon the "theory of successor jurisdiction/liability is improper" (Pa644). The court mistakenly relied upon the "situations" identified in the Third Circuit opinion of In re Nazi Era, *supra*, 153 Fed.Appx. at 823 to "clarify" when "successor-jurisdiction…can be present." However, the omitted words replaced with ellipsis in the trial court's Statement of Reasons importantly convey that such clarifying law applies specifically in New York, and it is not controlling law in New Jersey ("successor-jurisdiction **in New York** can be present in the following situations" (emphasis added)). The trial court's reliance upon New York law here is improper, particularly when New York law does not recognize successor liability based upon the product-line exception. This exception to successor non-liability has long been recognized in New Jersey. See,

Sementz v. Sherling & Walden, Inc. 7. N.Y.S.2d 819, 824 (N.Y. 2006); Huff v. Cyprus Amax Minerals Co., 2019 WL 4296778 at *6 (N.J. App. Div. September 11, 2019) (Pa655).

Plaintiff alleges and has demonstrated that Niece Products is a mere continuation of Klein as its successor. The issue here is one of imputing a corporation's New Jersey contacts to its successor. The trial court did not undertake such analysis in rendering its ruling on personal jurisdiction in this matter.

CONCLUSION

For the foregoing reasons and argument, Plaintiff-Appellant respectfully requests that the March 14, 2025 Order be reversed in its entirety, or, in the alternative, the Order be reversed and the matter remanded to the trial court for reconsideration following additional jurisdictional discovery.

Respectfully submitted,

By: *Tracey S. Bauer*
TRACEY S. BAUER, ESQ. - 012751992

Dated: June 13, 2025

RICKIE LLAUGER *Plaintiff/Appellant* v. KLEIN PRODUCTS INC., MIKE ZYNDORF EQUIPMENT, LLC, BROOKSIDE EQUIPMENT SALES INC., AHERN RENTALS INC, KLEIN PRODUCTS OF KANSAS, INC., KLEIN-NIECE PRODUCTS OF KANSAS, INC., NIECE PRODUCTS OF KANSAS, INC., NIECE EQUIPMENT LP, ABC CORPORATION, JON DOE, THEIR EMPLOYEES, SERVANTS, AGENTS, AND/OR REPRESENTATIVES JOINTLY, SEVERALLY OR IN THE ALTERNATIVE *Defendants/Respondents*	: SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION : : DOCKET NO.: A-002604-24 : : ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MORRIS COUNTY : : Sat Below: : : Hon. Vijayant Pawar, J.S.C. : Docket No.: MRS-L-642-22 : :

BRIEF OF DEFENDANTS/RESPONDENTS NIECE PRODUCTS OF KANSAS, INC. (f/k/a KLEIN-NIECE OF KANSAS, INC.) and NIECE EQUIPMENT, LP

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I. PRELIMINARY STATEMENT

The matter concerns the workplace injury from a water tower experienced by Plaintiff, Rickie Llauger. Llauger appeals from the dismissal of his Fourth Amended Complaint filed against Defendants Niece Products of Kansas, Inc. and Niece Equipment, LP (collectively, the "Niece Defendants") for lack of personal jurisdiction. The trial court correctly concluded that neither general nor specific jurisdiction exists over the Niece Defendants in New Jersey and that Llauger's successor liability theory is unsupported by the record and fails as a matter of law. Llauger now appeals, abandoning his claim of general jurisdiction and relying solely on attenuated theories of specific jurisdiction and successor liability that are contrary to controlling precedent.

Llauger's primary jurisdictional theory rests on the "stream of commerce" doctrine, arguing that the water tower at issue eventually arrived in New Jersey and caused injury. However, the product—a six-legged water tower manufactured by Klein Products in 2007—was sold by Klein Products to a Nevada company and shipped to New Mexico. The tower changed ownership multiple times over a decade before reaching New Jersey through an auction and resale, without any involvement by the Niece Defendants. As the United States Supreme Court made clear, even foreseeability that a product might reach a forum state is insufficient to establish personal jurisdiction. In other words, to

establish jurisdiction, Llauger must demonstrate more than a defendant used a distributor with contacts that included the forum state. Llauger has not shown that the Niece Defendants purposefully directed any conduct toward New Jersey in connection with the water tower, or otherwise availed themselves of the forum.

Further, Llauger cannot show that his causes of action arise from or relate to the Niece Defendants' contacts with New Jersey. Jurisdictional discovery revealed no evidence that the Niece Defendants cultivated the New Jersey market to sell the at-issue water tower in New Jersey. In fact, they have never manufactured that product.

Llauger's alternative theory of successor liability fares no better. Under New Jersey's "product line" test, a court may impose successor liability only where the successor continues the actual manufacturing operation of the predecessor and produces the same product line. The Niece Defendants have never manufactured the six-legged water tower at issue. Since its incorporation in 2012, Niece Products has exclusively manufactured an eight-legged water tower—a distinct product not implicated in Plaintiff's claims. Moreover, Niece Equipment was not a party to the Asset Purchase Agreement and has no corporate relationship with Niece Products that would support alter ego or successor liability.

Information about unrelated forum contact is relevant to general jurisdiction but not specific jurisdiction. The Niece Defendants have minimal contacts with New Jersey. Niece Products' sales to New Jersey customers account for only 0.2% of its revenue over the past decade, and Niece Equipment has had no sales or rentals in New Jersey during that time. Neither entity designed, manufactured, sold, or serviced the water tower at issue, nor did they target New Jersey in any relevant way. Llauger's attempt to impute jurisdiction based on isolated sales of unrelated products is legally insufficient.

Accordingly, the trial court's dismissal was well-founded and this Court should affirm. Plaintiff has failed to establish the minimum contacts necessary to support personal jurisdiction, and his successor liability theory is unsupported by both the facts and applicable law. The Niece Defendants respectfully request that this Court affirm the trial court's order dismissing the Fourth Amended Complaint.

II. COUNTERSTATEMENT OF SCOPE AND STANDARD OF REVIEW

A. MOTION TO DISMISS

The Appellate Division reviews a trial court's decision on a motion to dismiss for lack of personal jurisdiction under Rule 4:6-2(b) using a *de novo* standard of review. Because personal jurisdiction is a legal question, the appellate court independently assesses whether the trial court correctly applied

the law to the facts presented. E.g., Rippon v. Smigel, 449 N.J. Super. 344, 358 (App. Div. 2017); Patel v. Karnavati Am., LLC, 437 N.J. Super. 415, 423 (App. Div. 2014).

However, to the extent the trial court made factual findings relevant to the jurisdictional analysis—such as the nature and extent of the Niece Defendant's contacts with New Jersey—those findings are reviewed for support by substantial, credible evidence in the record. E.g., Rippon, 449 N.J. Super. at 358.

The scope of this Court's review is confined to the record developed before the trial court. E.g., Scott v. Salerno, 297 N.J. Super. 437, 447 (App. Div. 1997). The appellate court may not consider new evidence not presented below. E.g., R. 2:5-4(a); Middle Dep't Insp. Agency v. Home Ins. Co., 154 N.J. Super. 49, 56 (App. Div.1977).

B. DISCOVERY RULINGS

Llauger criticizes the trial court for not permitting an additional period of jurisdictional discovery presumably because the earlier periods did not uncover sufficient evidence to establish personal jurisdiction. To the extent this Court considers this issue, which it should not, the trial court's decision is reviewed for an abuse of discretion or a judge's misunderstanding or misapplication of the law. E.g., Capital Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230

N.J. 73, 79-80 (2017)). The level of deference provided to the trial court is "substantial." E.g., Trenton Renewable Power, LLC v. Denali Water Sols., LLC, 470 N.J. Super. 218, 226 (App. Div. 2022) (quoting Brugaletta v. Garcia, 234 N.J. 225, 240 (2018)).

III. COUNTERSTATEMENT OF PROCEDURAL HISTORY

Llauger initiated this action via a Civil Action Complaint filed on April 13, 2022. (Pa1-28). On May 3, 2023, Llauger filed a Third Amended Complaint in which he added Niece Products as a defendant. (Pa71-94). On July 14, 2023, Niece Products moved to dismiss the complaint for lack of personal jurisdiction. (LCV20232086216). The trial court denied the motion without prejudice, and it ordered the parties to complete jurisdictional discovery. (LCV20232341747).

At the conclusion of the jurisdictional discovery period, Niece Products again moved to dismiss the complaint for lack of personal jurisdiction. (LCV20233678909.) On the same date, Plaintiff sought leave to file a fourth amended complaint and name Niece Equipment as a defendant in this matter. (LCV20233682670.) The Court denied Niece Products' motion without prejudice, granted Plaintiff's motion, and extended jurisdictional discovery. (LCV2024164122, LCV2024164661). On January 26, 2024, Llauger filed a Fourth Amended Complaint in which he named Niece Equipment as a defendant. (Pa99-128).

After oral argument, the Court dismissed the Fourth Amended Complaint against Niece Products and Niece Equipment (collectively, the Niece Defendants). (Pa711). In so ruling, the Court rejected jurisdiction based on general personal jurisdiction, specific personal jurisdiction, and successor liability. (Pa640-645).

This Court granted Llauger's Motion for Leave to Appeal. (Pa722). In its brief, Llauger abandons his contention that the trial court had general personal jurisdiction over the Niece Defendants. See Llauger Brief, p. 25 ("Plaintiff does not aver that general jurisdiction exists as to the Niece Defendants in New Jersey").

IV. COUNTERSTATEMENT OF FACTS

A. A WATER TOWER TOOK A CIRCUITOUS ROUTE TO NEW JERSEY AFTER IT WAS MANUFACTURED AND SOLD IN KANSAS BY A KANSAS COMPANY (NOT EITHER OF THE NIECE DEFENDANTS) TO A NEVADA BUYER FOR DELIVERY IN NEW MEXICO

Petillo, Inc, Plaintiff Rickie Llauger's employer, had a water tower located on property it used in Flanders, New Jersey. (Pa101). Klein Products of Kansas, Inc. manufactured that water tower in June 2007. (Pa205, 253). Prior to its dissolution, Klein Products was a Kansas corporation. (Pa275). Klein Products did not sell the water tower directly to the end user, Petillo. Rather, the water tower took a circuitous route to Flanders, New Jersey.

On the same day Klein manufactured the product, Ahern Rentals, a Nevada corporation, purchased the product for over $30,000. (Pa207). The agreed-to shipping address was Albuquerque, New Mexico. (Pa207, Pa215, Pa222) Indeed, the product's certificate of title is from New Mexico and the registered owner of the product is located in Nevada. (Pa241).

Ahern owned the product until March 7, 2017 when it was returned to vendor "JLG" and sold to defendant Brookside Equipment Sales, Inc. ("Brookside"), a Massachusetts corporation, via an auction facilitated by Alex Lyon & Son in Atlantic City, New Jersey. (Pa221, Pa244, Pa246, Pa250). Brookside never possessed the product. (Pa244). Brookside consigned the product to defendant/third-party plaintiff Mike Zyndorf, LLC, and owned the product until it was sold to Plaintiff's employer, third-party defendant Petillo, Inc. ("Petillo"), a New Jersey corporation in March 2020. (Pa244-246; Pa253-258).

The first transaction involving New Jersey did not occur until after these many non-New Jersey transactions and a decade after Klein manufactured the product: the 2017 sale of the product from Ahern to Brookside via an auction that occurred in New Jersey. (Pa207-Pa259). The second and last transaction involving New Jersey was the 2020 sale of the product from Brookside to New Jersey-based Petillo. (Pa207-Pa259).

B. KLEIN PRODUCTS SELLS ITS ASSETS TO NIECE PRODUCTS

Klein-Niece of Kansas, Inc. was incorporated in Kansas in July 2012. (Pa199). Klein-Niece of Kansas, Inc. changed its name to Niece Products of Kansas, Inc. in December 2012. (Pa.199). With respect to these two named defendants, the only existing entity is Niece Products of Kansas, Inc. (Pa199).

Between its incorporation and name change, Niece Products purchased specific assets from Klein Products of Kansas, Inc., in 2012 via an Asset Purchase Agreement executed in the State of Kansas. (Pa199, Pa275-280). These assets did not include the water tower at issue which, as detailed above, Ahern Product had already purchased from Klein in 2007. (Pa207, Pa275-280). Furthermore, the exclusive list of liabilities and obligations assumed by Niece Products as part of the Asset Purchase Agreement did not include the product at issue:

> 3. Assumption of Liabilities and Obligations. Except as specifically set forth herein, Buyer is assuming Seller's liabilities and obligations **limited to**: (i) the liabilities listed on Exhibit 1 attached hereto and incorporated herein by reference; (ii) the obligation to complete all work in progress, as well as any order for equipment or parts that have been placed prior to Closing; (iii) any of Seller's warranty obligations/claim up to the maximum amount as stated on Exhibit 1 (together, the "Liabilities"). [. . .]

(Pa275-276, 279).

Exhibit 1 of the Asset Purchase Agreement identifies the following:

Exclusive List of
List of Liabilities and Obligations
Assumed by Buyer

1. Accounts Payable - $504,861.32, plus normal business costs through 5:00 p.m., 7-31-12
2. Credit Card Bills — up to a maximum of $50,000.00
3. Kansas Department of Labor — OSHA - $6,593.00
4. State Unemployment Payment Agreement - $16,982.97
5. Property Taxes Payable - $61,536.81, plus property taxes for 2012 not yet paid
6. Joan Rigsbay Estate (Sandra A. Higgins)- $25,000.00
7. CIT Loan - $847,169.73
8. Merchant's Bank Note 1 & 2 - $34,414.83
9. Commercial Capital Notes Payable (Burn Table Lease) - $67,303.42
10. Unfiled Expense Reports up to a maximum of $20,000.00
11. Mize Houser Fees / Payne & Jones Legal Fees — up to a maximum of $47,000.00
12. Deposits on Orders - $549,352.10
13. Warranty Claims — up to a maximum of $85,000.00
14. Employee earned but unused PTO, up to a maximum of $20,000.00, provided that Buyer may elect to attempt to provide PTO to employees that it hires from Seller in lieu of any cash payment.
15. Utilities (gas, electric, water, garbage, etc.) and phone bills on autopay
16. Misc. — up to a maximum of $10,000.00
17. Interest that has accrued or accrues on any of the above.

(Pa279).

Niece Products has never manufactured, distributed, assembled, marketed, promoted, or exported a water tower in or into New Jersey. (PA261). Niece Products did not design, manufacture, sell, or distribute the water tower at issue. (Pa199-200). It also never manufactured, distributed, assembled, marketed promoted, or exported the type of water tower involved in Llauger's accident. (Pa261). In fact, Niece Products did not exist until approximately five (5) years *after* Klein manufactured and sold the subject product. (Pa199, Pa205).

Although general sales information is relevant to a general jurisdiction analysis, which Plaintiff has admittedly abandoned, information developed in discovery shows that the Niece Defendants have no relevant or substantial business in New Jersey. Revenue from Niece Products' overall sales to New Jersey customers' accounts for two-tenths of one percent (0.2%) of the company's revenue over the past decade. (Pa200). Purchasers from the State of New Jersey account for five-tenths of one percent (0.5%) of Niece products' customers over the past decade. (Pa200). Stated differently, 99.5% of Niece Products' sales have no connection to New Jersey and 0% involve even the general type of product at issue in this case.

Also named as a Defendant is Niece Equipment, LP, even though it was not a party to the Asset Purchase Agreement. (Pa275-280). Niece Equipment is incorporated in the state of Texas and maintains its principal place of business in Texas. (Pa202). Niece Equipment is not registered to do business in New Jersey and has no office or physical location within the state. (Pa203). Niece Equipment does not employ anyone in New Jersey. (Pa203). Niece Equipment does not have an agent for service of process in New Jersey. (Pa203). No parent or subsidiary relationship exists between Niece Products and Niece Exhibits. (Pa203).

Niece Equipment has had zero ($0.00) in sales or rentals to New Jersey customers within the past decade. (Pa203). It did not design, manufacture, sell, or distribute the water tower at issue. (Pa203).

V. LEGAL ARGUMENT

A. STANDARD FOR ASSESSING SPECIFIC PERSONAL JURISDICTION

To assess a court's jurisdiction over a party, plaintiff must show that "minimum contacts" exist between the defendant and the forum state. E.g., International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). To establish minimum contacts sufficient to support specific jurisdiction, a plaintiff must demonstrate that defendant "purposefully availed itself of the privilege of conducting activity within the forum State." Hanson v. Denkla, 357 U.S. 235,

253 (1958). In other words, Llauger must show that the Niece Defendants purposefully availed themselves of the privilege of conducting activities within New Jersey, thereby invoking the benefits and protections of New Jersey's laws. E.g., Glickman v. Anderson, 269 N.J. Super. 59, 65 (App. Div. 1993) (citing Hanson, 357 U.S. at 253). To establish purposeful availment, "what is necessary is a deliberate targeting of the forum." O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 317 (3d Cir. 2007). Thus, the "unilateral activity of those who claim some relationship with a nonresident defendant" is insufficient. See Hanson, 357 U.S. at 253.

Next, Llauger must demonstrate that its cause of action "arises out of, or relates to" defendant's contacts with New Jersey. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984). This relatedness requirement "lies at the heart of specific jurisdiction by defining the required nexus between the nonresident defendant, the litigation, and the forum." Moki Mac River Expeditions v. Drugg, 221 S.W.3d 569, 579 (Tx. 2007).

Even if a plaintiff makes these two showings, a defendant still may avoid a court's jurisdiction if it can establish that allowing the suit to go forward in the forum state would be inconsistent with "fair play and substantial justice." International Shoe, 326 U.S. at 320. See, e.g., O'Connor, 496 F.3d at 317 (3d Cir. 2007) (setting forth the same three part test to establish specific

jurisdiction). The United States Supreme Court has identified several factors relevant to this factor. Among them are "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies," Burger King v. Rudzewicz, 471 U.S. 462, 477 (1985) (quotation marks omitted).

B. THE MERE FACT THAT KLEIN PRODUCTS PLACED THE WATER TOWER IN THE STREAM OF COMMERCE AND THE WATER TOWER ULTIMATELY ARRIVED IN NEW JERSEY IS INSUFFICIENT TO ESTABLISH SPECIFIC PERSONAL JURISDICTION AGAINST THE NIECE DEFENDANTS

Llauger contends that New Jersey courts have personal jurisdiction over the Niece Defendants because Klein Products, a company later acquired by Niece Products, placed the at-issue water tower in the stream of commerce and the tower found its way to New Jersey. See Llauger Brief, p. 25. To support his claim that New Jersey recognizes the "stream of commerce" theory of personal jurisdiction, Llauger relies heavily on a nearly forty year old case, Charles Gendler & Co., Inc. v. Telecom Equipment Corp., 102 N.J. 460, 477 (1986). In the subsequent forty years, the legal landscape on personal jurisdiction and the "stream of commerce" theory has substantially changed and Gendler is no longer good law.

Gendler's demise started with Nicastro v. J. McIntyre Mach. Am., Ltd., 201 N.J. 48 (2010), where the New Jersey Supreme Court actually "reaffirmed" Gendler to the extent it held that "'the stream-of-commerce theory supports the exercise of jurisdiction if the manufacturer knew or reasonably should have known of the distribution system through which its products were being sold in the forum state.'" Nicastro, 201 N.J. at 52 (quoting Gendler, 102 N.J. at 480). However, the United States Supreme Court then reversed Nicastro.[1] J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 873 (2011). In so ruling, the Supreme Court stemmed and reversed the expansion of the "stream of commerce" theory that Gendler used and Llauger asks this Court to apply.

In J. McIntyre, the Supreme Court addressed whether a New Jersey state court could exercise personal jurisdiction over a foreign manufacturer whose product caused injury within the state. A metal-shearing machine manufactured by J. McIntyre Machinery, a company based in the United Kingdom, injured plaintiff, Robert Nicastro. Id. at 893. Although J. McIntyre sold the machine through an independent American distributor and that machine ultimately ended up in New Jersey, the manufacturer had no direct contacts with the state and had

[1] The Niece Defendants will refer to the New Jersey Supreme Court Opinion as "Nicastro" and the United States Supreme Court Opinion as "J. McIntyre."

not specifically targeted New Jersey in its marketing or distribution efforts. Id. at 889, 896-97.

The Supreme Court held that New Jersey lacked personal jurisdiction over the foreign manufacturer. Writing for a plurality, Justice Kennedy emphasized that the Due Process Clause requires a defendant to have purposefully availed itself of the privilege of conducting activities within the forum state. Id. at 877, 889 (citing Hanson, 357 U.S. at 253 and World-Wide Volkswagen, 446 U.S. 286, 297-298 (1980)). Merely placing a product into the stream of commerce with the expectation that it might reach a particular state is insufficient. Id. at 882. The Supreme Court concluded that J. McIntyre had not engaged in conduct specifically directed at New Jersey, and therefore, the exercise of jurisdiction would violate traditional notions of fair play and substantial justice. Id. at 880, 887. In doing so, the Court refocused litigants on "whether the defendant's activities manifest an intention to submit to the power of a sovereign. In other words, the defendant must 'purposefully avai[l] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws[.]'" Id. at 881 (quoting Hanson, 357 U.S. at 253). Therefore, personal jurisdiction is appropriate "only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." Id.

Consequently, the expansive "stream of commerce" theory relied upon by Llauger is no longer available to him. As recognized by the Third Circuit, the Supreme Court has rejected a pure "stream of commerce" theory. Shuker v. Smith & Nephew, PLC, 885 F.3d 760, 780 (3d Cir. 2018). The Third Circuit went on to hold that allegations that defendants undertook efforts "to exploit a national market" that "necessarily included Pennsylvania" were insufficient to establish a "requirement of purposeful availment: 'what is necessary is a deliberate targeting of the forum.'" Id. Benitez v. JMC Recycling Sys., Ltd., 97 F. Supp. 3d 576, 583 (D.N.J. 2015) ("although the plurality opinion in Nicastro 'does not clearly or conclusively define the breadth and scope of the stream of commerce theory, ... there is no doubt that Nicastro stands for the proposition that targeting the national market is not enough to impute jurisdiction to all the forum states.'") (quoting Oticon, Inc. v. Sebotek Hearing Sys., LLC, 865 F. Supp. 2d 501, 513 (D.N.J. 2011)).

New Jersey courts have also found that using nationwide distributors to sell a product does not alone establish jurisdiction. First, the New Jersey Supreme Court in a non-product liability case approvingly cites to the notion in J. McIntyre that expectation is not the keystone to establishing jurisdiction; rather, the focus is on the "relationship among the defendant, the forum and the location." D.T. v. Archdiocese of Phila., 260 N.J. 27, 32 (2025) (citing J.

McIntyre, 564 U.S. at 883 and quoting Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989)).

In Desmond v. Twp. of Parsippany-Troy Hills, No. A-1922-11T2, 2013 N.J. Super. Unpub. LEXIS 525 (App. Div. Mar. 5, 2013), this Court considered whether New Jersey courts had jurisdiction over a manufacturer of an allegedly defective tarp strap that injured plaintiff in New Jersey. Id. at *2. (Ra0023-24). Like here, the manufacturer sold its tarp strap through distributors and the strap took a circuitous route to New Jersey. Id. at *9-10. (Ra0025).

Relying on McIntyre, this Court was "satisfied that [the manufacturer] did not engage in activities in New Jersey which show that it intended to invoke the protection of New Jersey's laws. It did not purposely avail itself of the New Jersey market, or the privilege of engaging in activities in New Jersey." Id. at 10. This was so, even though the manufacturer sold its straps to a distributor licensed to do business in New Jersey. Id. at *10-11. (Ra00026) This Court explicitly found this relationship was "not evidence that [the manufacturer] purposefully availed itself of the New Jersey market." Id. at *11. (Ra00026). See also Cribb v. Vapes, 2020 N.J. Super. Unpub. LEXIS 3527 (App. Div. 2020) (holding that manufacturer of batteries used in e-cigarette devices did not have sufficient contacts with New Jersey despite its product being sold there) (Ra008-22).

Consequently, Llauger must show something more than the Niece Defendants or Klein sold water towers to distributors with a nationwide reach to establish personal jurisdiction. Llauger cannot make that showing. They contend that the Niece Defendants "targeted the forum [New Jersey] indirectly, by selling a substantial volume of their products to dealerships . . . including the likes of Ahern, John Deere, Caterpillar, Volvo, and Komatsu, who have numerous locations within" New Jersey. Llauger Brief, p. 28. First, Plaintiff's argument on this point improperly shifts from consideration of the specific product in this case to sales, generally. Plaintiff's factual basis as to general sales is vague, and unsupported by evidence of actual sales to these listed companies. The argument obviously does not involve the type of water tower at issue because that product has never been made or sold by the Niece Defendants. (Pa199-200). General sales do not establish specific jurisdiction. See Section V(C), infra.

Second, the Niece Defendants never manufactured or sold the water tower at issue in this case and it was not sold to or through any of these "national dealer" companies. (Pa207, Pa215, Pa222). The product was sold by the Kansas company, Klein Products of Kansas, Inc. to Ahern Rentals, a Nevada corporation and shipped to New Mexico. (Pa207, Pa215, Pa222).The random events that occurred afterwards over the next decade that brought the product

into New Jersey were not the result of any direct or indirect action of the Niece Defendants.

Third, that the Niece Defendants admittedly now sell different products to "national dealers" is not enough to establish jurisdiction as to the subject product. Even placing a product into the stream of commerce with the expectation that it might reach a particular state is insufficient. J. McIntyre, 564 U.S. at 882. Asahi Metal Industry Co. v. Superior Court of California, Solano County, 480 U.S. 102, 112 (1987) (plurality). "Types of 'additional conduct' needed to establish purposeful availment include, *inter alia*, 'designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.'" A.V. Imps., Inc. v. Col de Fratta, S.p.A., 171 F. Supp. 2d 369, 372 (D.N.J. 2001) (quoting Asahi Metals, 480 U.S. at 112). Llauger has no evidence to support any of these activities.

Llauger tries to create some industrywide rule that construction-equipment manufacturers "cultivate a broad market" and to do so "rely upon sale/lease of new and pre-owned equipment, including equipment coming off lease." Llauger Brief, p. 29. Therefore, Llauger concludes the "subject water towers presence in the forum was a ***predictable result*** of the Niece Defendants'

sales and marketing efforts." Id. at p. 31 (emphasis added). This argument confuses the facts. The Niece Defendants "sales and marketing efforts" are not related to the product at issue. Niece Products of Kansas, Inc., the only Niece entity that entered into an Asset Purchase Agreement with Klein (the manufacturer and seller), was created five years after Klein sold and sent the product to New Mexico. The Niece Defendants did not make or sell the product, and have never made or sold that type of water tower. Plaintiff's argument requires facts that do not exist. Specifically, that the Niece Defendants actions influenced and directed this product into New Jersey.

Even if the facts were otherwise that does not change the analysis. An awareness that a product, here a product that was neither manufactured nor sold by the Niece Defendants, will likely reach a particular state whether through an initial sale or resale is simply insufficient to establish jurisdiction. McIntyre, 564 U.S. at 882. Asahi Metal, 480 U.S. at 112.

The record clearly shows no purposeful availment. Klein Products did not sell the water tower directly to the end user, Petillo. Instead, the product followed a circuitous and multistate journey before ultimately arriving in Flanders, New Jersey. On the same day Klein manufactured the water tower, Ahern Rentals, a Nevada corporation, purchased it. (Pa207). The agreed-upon shipping destination was Albuquerque, New Mexico. (Pa207, Pa215, Pa222).

Consistent with this arrangement, the certificate of title for the product was issued in New Mexico, and the registered owner was located in Nevada. (Pa241). These facts confirm that the product was not initially intended for use or sale in New Jersey, nor was it delivered there by Klein or Ahern.

Ahern retained ownership of the water tower until March 7, 2017, when it was returned to vendor "JLG" and subsequently sold to defendant Brookside Equipment Sales, Inc. ("Brookside"), a Massachusetts corporation. This sale occurred through an auction facilitated by Alex Lyon & Son in Atlantic City, New Jersey. (Pa221, Pa244, Pa246, Pa250). Notably, Brookside never physically possessed the product. (Pa244). Instead, Brookside consigned the water tower to defendant/third-party plaintiff Mike Zyndorf, LLC, and maintained ownership until it was sold in March 2020 to third-party defendant Petillo, Inc. ("Petillo"), a New Jersey corporation and the employer of the Plaintiff. (Pa244-246; Pa253-258). Thus, the product changed hands multiple times across several states before reaching Petillo, with no direct involvement by Klein in any New Jersey-based transaction.

Importantly, the first transaction involving New Jersey did not occur until a full decade after Klein manufactured the water tower. That initial New Jersey connection was the 2017 auction sale from Ahern to Brookside, which took place in Atlantic City. (Pa207-Pa259). The second and final New Jersey-related

transaction occurred in 2020, when Brookside sold the product to Petillo. (Pa207-Pa259). These two isolated events, separated by years and involving intermediaries, underscore the absence of any direct commercial relationship between Klein Products, the Niece Defendants, and New Jersey. Accordingly, the product's presence in New Jersey is not attributable to any affirmative act or purposeful availment by the Niece Defendants and cannot support the exercise of personal jurisdiction.

Further still, to the extent that the water tower's arrival in New Jersey (or any other state) should have been "reasonably foreseeable" that is not what the Due Process clause requires to establish jurisdiction. Llauger Brief, p. 13. "The [United States] Supreme Court's jurisprudence rejects jurisdictional rules 'based on general notions of fairness and foreseeability' as 'inconsistent with the premises of lawful judicial power.'" D.T., 260 N.J. at 45 (citing J. McIntyre, 544 U.S. at 883). Rather, "the minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" Id. (quoting Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989)).

For these reasons, Llauger has not established that the Niece Defendants (or Klein Products) purposefully availed itself to be haled into New Jersey courts.

C. LLAUGER'S CAUSES OF ACTION DO NOT ARISE FROM OR RELATE TO THE NIECE DEFENDANTS' CONTACTS TO NEW JERSEY

When it comes to the question of relatedness, Llauger's causes of action must "arise out of, or relate to" the Niece Defendants' contacts with the forum state. The "first half of that standard" requires a strict causal relationship between the cause of action and a defendant's contacts with the forum. Ford Motor Co. v. Mont. Eighth Judicial Dist. Court, 592 U.S. 351, 362 (2021). The "relate to" requirement does not require causation, but "contemplates that some relationships will support jurisdiction without a causal showing." Id.

Llauger does not argue that his causes of action arise out of the Niece Defendant's contacts with New Jersey. How could he? The Niece Defendants did not manufacture, sell, or service the at-issue water tower nor did they in any way direct the water tower to New Jersey. (Pa199-200, Pa.203). See Am. Guarantee & Liab. Ins. Co. v. GetFPV LLC, Civil Action No. 24-8922 (ZNQ) (RLS), 2025 U.S. Dist. LEXIS 70305, at *16 (D.N.J. Apr. 14, 2025) (holding that there was no jurisdiction based on causation when a forum resident did not purchase the product nor was the product shipped to the forum) (Ra0003).

And while the "relate to" test does not require causation, "[t]hat does not mean anything goes. In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a

forum." D.T, 260 N.J. at 44 (2025) (quoting Ford Motor Co., 592 U.S. at 362). To protect foreign defendants, a plaintiff must show "'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Id. (quoting Bristol-Myers Squibb Co. v. Superior Ct., 582 U.S. 255, 262 (2017) and Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

The Supreme Court recently addressed the "relate to" prong in prong in Ford Motor, supra. While the Supreme Court found jurisdiction in Ford Motor, the distinction between Ford Motor and this case amply demonstrate why New Jersey courts lack jurisdiction over the Niece Defendants.

In Ford Motor, the Supreme Court considered whether Montana and Minnesota state courts could exercise personal jurisdiction over Ford in a product-liability suits where the plaintiffs were injured in Minnesota and Montana by a Ford vehicle. Although the subject vehicles were neither designed, nor manufactured, nor originally sold in Montana or Minnesota, the Supreme Court found that Ford marketed *the cars at issue* in those states "by every means imaginable—among them billboards, TV and radio spots, print ads, and direct mail." Ford Motor, 592 U.S. at 355, 365. Throughout the opinion, the Court emphasized that Montana and Minnesota courts have jurisdiction

because Ford conducted "substantial business" in the forum states to cultivate a market for *the very models that plaintiffs alleged were defective*. Id. at 355, 361. Put another way, Ford's extensive reliance on in-state businesses "creates reciprocal obligations . . . [such as] ***the car models*** Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there." Id at 367-368.

That is not the case here. Llauger can point to no evidence that the Niece Defendants or Klein designed, manufactured, assembled, installed, or marketed a six-legged water tower to the New Jersey market. (Pa199-200, 203). The at-issue product is a six-legged water tower, model number KPT120 manufactured by Klein. (Pa120, 215, 229). The Niece Defendants have never manufactured a six-legged water tower. (Pa199-200). Rather, Niece Products exclusively manufacturers an eight-legged water lower, model number NPT120, since its 2012 incorporation. (Pa446).

Moreover, the Niece Defendants sales numbers support the notion that it does not market in New Jersey. Niece Products's revenue from sales to New Jersey customers' accounts for 0.2% of its revenues over the past decade. (Pa200). Moreso, New Jersey customers account for only 0.5% of Niece Products' overall customer base. (Pa200). Niece Equipment has even less to do with New Jersey. It has zero sales or rentals to New Jersey customers over the

last decade. (Pa203). To find jurisdiction here, would be equivalent to the Supreme Court finding that Montana had jurisdiction over Ford for a defective car if it had only marketed motorcycles in Montana or Minnesota. That is not the fact pattern in Ford Motor and a finding of jurisdiction runs counter to the United States Supreme Court ruling.

Similarly, Llauger contends that jurisdiction is appropriate because discovery revealed "two sales of water equipment to New Jersey customers." Llauger Brief, pp. 14, 33-34. Llauger baldly contends those sales amount to "purposeful availment" and it is "therefore reasonable and fair" to assert personal jurisdiction because "Plaintiffs' [sic] claims arise out of and relate to sales and distribution of water equipment in New Jersey." Id.

These two products were not six-legged water towers. In fact, they were not water towers at all. Llauger points to a 2022 invoice, two years after Plaintiff's accident. This invoice is for a water truck—not a water tower. (Pa441). More specifically, it is a Peterbilt tractor-trailer chassis with a 5,0000 gallon water tank attached. (Pa441, 478). The other invoice from December 11, 2019 is an off-road 9000-gallon water tank "attached to the client's [Caterpillar] 769" with a "tilt tank for easy access to service chassis. . . ." (Pa515).

Self-evidently, a water truck and a water tower are different products. A water tower is set at a stationary position with operable hydraulic legs built into the water tower itself. A water truck is a tank attached to a truck.

Llauger also alleges without citation to the record that the Niece Defendants sold component parts to New Jersey. Llauger Brief, p. 34. "[F]actual assertions made by an appellate counsel that are not supported by a specific citation to the record developed before the trial court and supported by a specific citation to the appendix violate the rules of appellate practice and will not be considered" by this Court. Thabo v. Z Transp., 452 N.J. Super. 359, 365 (App. Div. 2017). See, e.g., Spinks v. Twp. of Clinton, 402 N.J. Super. 465, 474, 955 A.2d 304 (App. Div. 2008), certif. denied, 197 N.J. 476 (2009) (explaining that it is the parties' responsibility to refer this Court to specific parts of the record to support their argument). Therefore, this Court should not consider this as a basis of jurisdiction. And even if the Court did consider it, Llauger cannot show that the components or anything sold in New Jersey by the Niece Defendants concerned a six-legged water tower as at issue here.[2]

[2] Llauger did cite in his fact section to deposition testimony that Niece Products purchased components from vendors in New Jersey. Llauger Brief, p. 19. However, Llauger makes no legal argument that these purchases are relevant. They are not. Llauger cannot show that they were related to the model of water tower at issue here.

Under Ford Motor, Llauger has not shown that Niece Products extremely limited contact with New Jersey concerning a different product meets the "related to" standard required to establish personal jurisdiction.

D. LLAUGER CANNOT ESTABLISH PERSONAL JURISDICTION BASED ON SUCCESSOR LIABILITY

Perhaps because he knows his chances of establishing personal jurisdiction over the Niece Defendants is remote, Llauger contends that it can establish jurisdiction because the Niece Defendants are Klein Products successor.[3] Llauger Brief, pp. 34-40. That is not so.

1. Niece Equipment Is Not a Party to the Asset Purchase Agreement with Klein and Therefore Llauger Cannot Establish Successor Jurisdiction

Before addressing the larger reason why this is not so, this argument certainly fails as to Niece Equipment as it is not a successor to Klein Products. The Asset Purchase Agreement was between Klein Products and Niece Products. (Pa199, Pa275-280). Nowhere in the Agreement is Niece Equipment mentioned let alone named as some sort of intended beneficiary. (Pa199, Pa275-280). Therefore, a necessary predicate is missing to establish successor jurisdiction.

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[3] In Llauger's heading to the successor liability section, he also mentions that strict liability should apply to the Niece Defendants. Llauger Brief, p. 47. Llauger does not develop this argument so it should be deemed waived. E.g., 539 Absecon Blvd., LLC v. Shan Enters. Ltd. P'ship, 406 N.J. Super. 242, 272 n.10 (App. Div.). It is also beyond the scope of this appeal which concerns personal jurisdiction.

2. There Can Be No Successor Jurisdictions Because the Predecessor Company, Klein Products, Did Not Have a Sufficient Relationship With New Jersey to Establish Personal Jurisdiction

Another necessary predicate for successor jurisdiction is that the forum state must have personal jurisdiction over the predecessor company, Klein Products. However, no evidence is before the Court upon which personal jurisdiction could be found to exist as to Klein Products and therefore the entire "successor liability" argument is not viable.

To establish general jurisdiction, a court's general jurisdiction inquiry is whether a corporation's affiliations with the forum state are so "continuous and systematic" as to render it essentially at home in the forum. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 919 (2011); Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 164 A.3d 435, 446 (App. Div. 2017). Klein Products cannot be said to be so at home in New Jersey as to permit general personal jurisdiction. At the time the at-issue water tower was manufactured, Klein Products was a Kansas corporation with its principal place of business in Kansas. (Pa275).

Llauger fares no better in attempting to establish specific personal jurisdiction. For example, the undisputed documents show that this water tower was manufactured in Kansas, sold by a Kansas company to a Nevada company, and delivered in New Mexico. The sale by Klein of Kansas has no connection

to New Jersey. Moreover, for all the reasons stated above, even if Klein Products sold to New Jersey users through national dealers, this would be insufficient to establish personal jurisdiction. However, there is no evidence as to Klein's sales in this regard. Some additional contacts of Klein Products with New Jersey is required. J. McIntyre, 564 U.S. at 881-882

Llauger also presents the Court with reference to a "customer list" that merely lists the names of seven business in New Jersey out of many thousands listed on the Klein of Kansas's customer list. (Pa542-577). While these names are on a "customer list," there is no indication what, if anything was sold or delivered to any of these businesses. (Pa542-577). Given that the product at issue in this case was not sold to any of these seven customers, Plaintiff's argument with respect to Klein of Kansas's customer list could only be considered in support of general jurisdiction. However, given the lack of evidence regarding what, if anything, was sold to any of these customers, the value of those items, or anything else regarding the assumed sales or transactions, the mere listing of seven names on a customer list that identifies many thousands of names, is not sufficient to establish contacts "so continuous and substantial" that general jurisdiction would exist. See, Baanyan Software Services, Inc. v. Kuncha, 81 A.3d 672, 676 (App. Div. 2013).

3. Since the Niece Defendants Did Not Continue the Klein Products's Product Line, Llauger Cannot Establish Successor Jurisdiction Even If It Could Somehow Show that New Jersey Has Jurisdiction Over Klein Products

Even if the Court finds that it has personal jurisdiction over Klein, Plaintiff's legal theory of "successor liability" lacks merit. New Jersey applies the "product line" test for successor liability. As set forth by the New Jersey Supreme Court in

> where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor. The social policies underlying strict products liability in New Jersey are best served by extending strict liability to a successor corporation that acquires the business assets and continues to manufacture essentially the same line of products as its predecessor, particularly where the successor corporation benefits from trading its product line on the name of the predecessor and takes advantage from its accumulated good will, business reputation and established customers.

Ramirez v. Amsted Industries, Inc., 86 N.J. 332, 358 (1981).

In adopting the "product line" test, the Ramirez court rejected the "mere continuation" exception[4] to the traditional rule of corporate successor nonliability:

> Because we believe that the focus in cases involving corporate successor liability for injuries caused by defective products should be on the successor's continuation of the actual manufacturing operation and not on commonality of ownership and management between the predecessor's and successor's corporate entities, and because the traditional corporate approach, even as broadened by *Turner* and its progeny, renders inconsistent results, we adopt substantially [the] product line analysis.

Id. at 347-48. As later noted by the Superior Court of New Jersey, Appellate Division,

> Common to all downstream corporate liability cases in the product liability context, in addition to the dissolution of the selling company, is the determination **whether there is a sufficient nexus between the successor and predecessor corporations to warrant the imposition of a duty on the former to respond to the claims of tortious conduct by the latter**. In each of the referenced cases **that nexus was found in the successor's continuation of the allegedly defective product line previously manufactured or distributed by the predecessor**. 'The product-line exception represents our perception of the appropriate balance in

[4] The "mere continuation" exception focuses on the continuation of the enterprise by analyzing such factors as the ownership and management of the successor's corporate entity, its personnel, physical location, assets, trade name, and general business operation. Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 347, 431 A.2d 811, 819 (1981).

> the ordinary case between compensating injured parties and the uninhibited transfer of assets.'

Arevalo v. Saginaw Mach. Sys., Inc., 344 N.J. Super. 490, 497, 782 A.2d 931, 936 (Super. Ct. App. Div. 2001) (citing Lefever v. K.P. Hovnanian Enterprises, Inc., 160 N.J. 307, 327, 734 A.2d 290 (1999) (internal citations omitted) (emphasis added)).

Here, the product at issue is a six-legged water tower, model number KPT120, manufactured by Klein. (Pa120, 215, 229). Niece Products and Niece Equipment have never manufactured a six-legged water tower. (Pa199-200, 203). Rather, Niece Products has exclusively manufactured an eight-legged water tower, model number NPT120, since its incorporation in 2012. (Pa446).

Ultimately, the record is void of – and Llauger has failed to produce – any evidence that the Niece Defendants continued Klein's "actual manufacturing operation" such that the product-line test adopted by the New Jersey Supreme Court in Ramirez could be satisfied. Put another way, Plaintiff has failed to demonstrate a nexus between Niece Products and Klein that would satisfy the product-line test given the evident distinction between the 6-legged water tower at issue and the 8-legged water tower manufactured by Niece Products.

Llauger further criticized the trial court for its finding that the Agreement of Sale excludes liability based on the six-legged water tower, See Llauger Brief, pp. 44, 48. The asset transfer between Klein Products and Niece Products

did not include the water tower at issue in this litigation. As detailed above, that product had already been sold by Klein to Ahern Rentals in 2007—five years prior to the execution of the Asset Purchase Agreement. (Pa275–280). Moreover, the agreement expressly limited the scope of liabilities and obligations assumed by Niece Products. Section 3 of the Asset Purchase Agreement provides that, "[e]xcept as specifically set forth herein, Buyer is assuming Seller's liabilities and obligations limited to: (i) the liabilities listed on Exhibit 1 attached hereto and incorporated herein by reference; (ii) the obligation to complete all work in progress, as well as any order for equipment or parts that have been placed prior to Closing; (iii) any of Seller's warranty obligations/claim up to the maximum amount as stated on Exhibit 1." (Pa275-276, 279).

Exhibit 1 to the Asset Purchase Agreement enumerates a specific and exclusive list of assumed liabilities, which includes items such as accounts payable, credit card bills, property taxes, certain loans and notes, warranty claims capped at $85,000, and other routine business expenses. (Pa279). Notably absent from this list is any reference to the water tower at issue or any liability arising from products previously sold by Klein Products. Thus, the agreement reflects a limited asset acquisition—not a continuation of Klein's product line or manufacturing operations.

Llauger also refer to trademarks and designs for the water tanks being transferred from Klein to the Niece Defendants. See Llauger Brief, pp. 8. That is not completely correct. What was transferred was the "word mark" for the name "Klein." (Pa413 (top right column). See 37 C.F.R. § 2.52 (describing what can be registered as a word mark). Quite literally, Klein of Kansas transferred the word mark, i.e., use of the ***word*** Klein, to Niece Products during the assert purchase agreement. Llauger did not transfer designs or trademarks for a vehicle and trailer mounted fluid storage tanks were transferred, or the subject water tower. Llauger's discussion of trademarks in such a fashion so as to suggest that some design or specification was sold is not true. Indeed, the record specifically shows that Niece Products has never manufactured the type of six legged water tower manufactured by Klein Products of Kansas, Inc. and that which is at issue here. (PA261).

For these reasons, this Court should affirm the decision of the trial court not to apply personal jurisdiction through the contacts of the successor entity.

E. NIECE EQUIPMENT AND NIECE PRODUCTS ARE SEPARATE COMPANIES, LLAUGER HAS NOT ESTABLISHED INTERCONNECTEDNESS TO PERMIT NEW JERSEY COURTS TO HAVE JURISDICTION OVER NIECE EQUIPMENT BECAUSE IT IS THE ALTER EGO OF NIECE PRODUCTS

Llauger argued to the trial court that it had jurisdiction over Niece Equipment because it was the alter ego of Niece Products. The trial court did not consider the merits of that argument likely because it correctly found that it lacked jurisdiction over Niece Products rendering the question moot. Llauger again raises the issue here. Llauger Brief, pp. 12-13; 40-45.

Before considering alter-ego liability it is important to know that New Jersey court's lack jurisdiction over Niece Equipment because it has no contacts with New Jersey and was not involved in the sale, marketing, servicing, etc. of the at-issue water tower.

Niece Equipment is incorporated in the state of Texas and maintains its principal place of business in Texas. (Pa202). Niece Equipment is not registered to do business in New Jersey and has no office or physical location within the state. (Pa203). Niece Equipment does not employ anyone in New Jersey. (Pa203). Niece Equipment does not have an agent for service of process in New Jersey. (Pa203). No parent or subsidiary relationship exists between Niece Products and Niece Exhibits. (Pa203).

Niece Equipment has had zero ($0.00) in sales or rentals to New Jersey customers within the past decade. (Pa203). It did not design, manufacture, sell, or distribute the water tower at issue. (Pa203). Niece Equipment was not a signatory or intended party of the Asset Purchase Agreement with Klein, the entity that supposedly manufactured and sold the at-issue water tower. (Pa199, Pa275-280). In other words, Niece Equipment is a complete stranger to New Jersey and the causes of action pleaded by Llauger.

The primary reason this Court should refuse to find jurisdiction through alter-ego status is that even if such a relationship exists (which the Niece Defendants deny), Llauger has not met his burden to show that New Jersey courts have jurisdiction over Niece Products as discussed above.

Further, no formal relationship exists between Niece Equipment and Niece Products. As certified by the Chief Financial Officer of Niece Equipment, "[t]here is no parent/subsidiary relationship between Niece Products . . . and Niece Equipment. . . ." (Pa202-203). Niece Equipment never owned Niece Products. (Pa203).

Even if that was not the case, personal jurisdiction over a subsidiary corporation does not automatically confer judicial jurisdiction over the parent corporation. FDASmart, Inc. v. Dishman Pharmaceuticals and Chemicals Limited, 448 N.J. Super. 195, 203 (App. Div. 2016). New Jersey law recognizes

that a corporation is a separate entity from its shareholders. State Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 500–01 (1983) (citing Lyon v. Barrett, 89 N.J. 294, 300 (1982)). Courts avoid piercing the corporate veil unless a subsidiary was "a mere instrumentality of the parent corporation." Id. Application of this principle depends on a finding that the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent. Id. Liability generally is imposed only when the parent has used the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law. Id. (citing Mueller v. Seaboard Commercial Corp., 5 N.J. 28, 34–35 (1950)).

Llauger did not show the Niece Products overwhelmed Niece Equipment or vice versa. Rather, it points to more incidental relationships like shared ownership, using the same insurance brokers and accountants, being named on the same insurance policy, or being named on the same insurance policy. Llauger offers no case law to show that these factors whether considered separately or collectively is sufficient to establish alter ego jurisdiction.

In further support of alter-ego jurisdiction, Plaintiff asserts that Niece Equipment's website features equipment manufactured by Niece Products and displays Niece Product's name. Llauger Brief, p. 41. Federal courts have repeatedly held that such allegations are insufficient to establish alter ego jurisdiction. Critically, New Jersey has adopted the federal courts' view that "the

mere accessibility of a foreign business' website through which customers may obtain information . . . is insufficient contact by itself to support general jurisdiction." Pullen v. Victory Woodworks, Inc., 461 N.J. Super. 587, 598 (App. Div. 2019) (quoting Wilson v. Paradise Village Beach Resort & Spa, 395 N.J. Super. 520, 532–33 (App. Div. 2007)).

Here, the two Niece entities function independent of one another. They are incorporated and located in different states. (Pa199, Pa202-203). Niece Products is incorporated in the state of Kansas and maintains a principal place of business in Kansas. (Pa199). Meanwhile, Niece Equipment is incorporated in the state of Texas and maintains its principal place of business in Texas. (Pa202-203). Neither company has ownership interest in the other. (Pa202-203).

Llauger urges this Court to view Niece Products and Niece Equipment's activity collectively based on Star Video Ent., L.P. v. Video USA Assocs. 1 L.P., 253 N.J. Super. 216, 223 (App. Div. 1992) which found that a non-resident, parent company was subject to jurisdiction in New Jersey due to its *New Jersey-based* limited partner. But Star Video is inapplicable here because in the present matter *both* entities are non-residents of New Jersey and there is no parent-subsidiary relationship between the Niece entities. The lack of a parent-subsidiary relationship renders Llauger's "alter ego" argument futile and irrelevant. Assuming, *in arguendo*, that such a relationship did exist, Plaintiff

cannot prove that as a "subsidiary," Niece Equipment was a mere instrumentality or alter ego of Niece Products because no evidence shows that Niece Products completely dominated and controlled Niece Equipment's policies and business practices. See Mueller, 5 N.J. at 34. Furthermore, Llauger did not allege fraud here. Ventron, 94 N.J. at 500-01. Llauger has not presented evidence that imputing Niece Product's actions to Niece Equipment is warranted here, and therefore, there is no basis for alter ego jurisdiction.

It is therefore respectfully submitted that Niece Equipment is not subject to personal jurisdiction in New Jersey, and Plaintiff's successor liability arguments are moot.

F. LLAUGER HAS NOT ESTABLISHED THAT THE TRIAL COURT ABUSED ITS DISCRETION IN NOT FURTHER EXTENDING JURISDICTIONAL DISCOVERY BEYOND THE NEARLY TEN MONTHS THAT HAD ALREADY OCCURRED

Llauger also contends that the trial court should have permitted further extensions to jurisdictional discovery so that he could keep fishing for something that would establish the jurisdiction of this Court over the Niece Defendants. See Llauger Brief, p. 7, 45-46. Llauger provides no basis to upset the discretion of the trial court.

First, Llauger was afforded ample time to conduct jurisdictional discovery. In response to the Niece Defendant's first Motion to Dismiss, the

trial court denied it in August 2023 and permitted jurisdictional discovery that was later extended to November 15, 2023. (Pa95, 648). When ruling on the Niece Defendants' Second Motion to Dismiss in January 2024,[5] the trial court denied it and opened jurisdictional discovery for another ninety days. (Pa97). Jurisdictional discovery now extended to May 31, 2024 (August 2023-May 2024). (Pa156). These extensions amounted to a healthy nine-and-a-half months of jurisdictional discovery.

More still, at the time the Court heard argument on Llauger's Motion to Dismiss, Llauger had not moved to further extend jurisdictional discovery. Therefore, this Court has no ruling to correct. Further, this Court will not consider an issue not raised with the trial court unless such an issue concerns a substantial public interest. E.g., Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Whether or not Llauger should have has more time to conduct jurisdictional discovery does not implicate a substantial public interest. Therefore, this Court should refuse to consider whether more discovery should have been allowed here. Id.

Besides being provided ample time to conduct discovery and the failure to ask for additional jurisdictional discovery, Llauger misapprehends the Niece

[5] At the same time, the trial court permitted Llauger to add Niece Equipment as a defendant. (Pa99).

Defendants discovery answers. Llauger incorrectly contends that the Niece Defendants "refused to produce anything responsive to Plaintiff's demands for information identifying customer-dealers and the revenue Niece generates from them." Llauger Brief, p. 28. But the Niece Defendants did not do that. Rather, they responded that after a search they did not turn up any responsive documents. (Pa578-80). Llauger could have deposed employees or representatives from the Niece Defendants to challenge these discovery answers. But no further discovery was going to change those answers.

Llauger also points to the fact that in its statement of reasons, the trial court recognized there was no evidence that the Niece Defendants had sold 100s of water towers through sales to distributors who then resell or lease Niece Products to New Jersey end users. (Pa642). The Court did not conclude that the discovery record was incomplete as suggested by Llauger; rather, it was concluding that Llauger was unable to support its position through the nearly ten months of discovery that had already occurred. That is not an abuse of discretion that would require this Court to overturn the trial court's opinion. Capital Health Sys., 230 N.J. at 79-80.

Moreover, to the extent the trial court contends that if Llauger had established that the Niece Defendants' products did make its way to New Jersey through distributors that would have been enough to establish jurisdiction

through the stream of commerce" theory, (Pa642), that ruling would have been in error for all the reasons discussed above. The use of a distributor alone is insufficient to trigger personal jurisdiction. J. McIntyre, 564 U.S. at 882. Further, the discovery record revealed that the Niece Defendants never manufactured that at-issue water tower so any dealings with New Jersey do not relate to the at-issue product as it must. Ford Motor, 592 U.S. at 355, 365.

VI. CONCLUSION

For these reasons, the trial court correctly determined that it lacked personal jurisdiction over the Niece Defendants. Llauger has failed to establish that either Niece Products or Niece Equipment purposefully availed themselves of the New Jersey market in any way relevant to the claims asserted. The record lacks any evidence that the Niece Defendants manufactured, sold, or distributed the water tower at issue, or that they continued Klein Products' actual manufacturing operations. Moreover, Niece Products's extremely limited contacts with New Jersey are not related in any way with the at-issue water tower.

Plaintiff's reliance on successor liability and alter-ego liability is similarly legally and factually unsupported. Accordingly, the Niece Defendants respectfully request that this Court affirm the trial court's dismissal of the Fourth Amended Complaint.

Respectfully submitted,

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RICKIE LLAUGER, Plaintiff-Appellant, v. KLEIN PRODUCTS INC., MIKE ZYNDORF EQUIPMENT, LLC, BROOKSIDE EQUIPMENT SALES INC., AHERN RENTALS INC, KLEIN PRODUCTS OF KANSAS, INC., KLEIN-NIECE OF KANSAS, INC.; NIECE PRODUCTS OF KANSAS, INC., NIECE EQUIPMENT, LP, ABC CORPORATION, JOHN DOE, their employees, servants, agents and/or representatives jointly, severally or in the alternative, Defendants-Respondents	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-2604-24 CIVIL ACTION Law Division: Morris County Docket No. MRS-L-642-22 Sat Below: Honorable Vijayant Pawar, J.S.C. Submitted: September 5, 2025

PLAINTIFF-APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

In seeking to avoid New Jersey jurisdiction, Niece Defendants misstate, misapply, and disregard material facts and findings made by the Trial Court below in consideration of the controlling caselaw in this products liability matter. They misconstrue evidence that they sell their products to distributors and end users in New Jersey and have purchased parts from vendors in New Jersey serves as Plaintiff's sole basis for establishing personal jurisdiction as to them. It is not. It is offered to demonstrate that Niece Defendants are not what they ask the Court to see them as - strangers to New Jersey whose constitutional rights are violated under governing law and who would not reasonably be expected to be haled into a New Jersey courtroom. It is offered to demonstrate something more than its stream of commerce targets New Jersey, as did its product-line predecessor, Klein Products of Kansas (Klein Products).

Niece Defendants do not allege they would suffer undue burden or unfairness if Plaintiff's lawsuit proceeds in New Jersey. Nor do they recognize New Jersey's interest in determining a products liability claim asserted by a New Jersey resident injured in New Jersey by a manufacturer's allegedly defective product which was shipped to New Jersey by the manufacturer's distributor with New Jersey locations, and where the product remained until it was sold by a New Jersey used equipment dealer to Plaintiff's New Jersey employer. Judicial interstate efficiency is not

challenged by Defendants, where no other distributor or seller of the subject tower disputes jurisdiction. Traditional notions of fair play and substantial justice are not called into doubt.

The argument that the subject tower's route to a New Jersey purchaser or end user is "circuitous" is fatally flawed and disregards the economic reality of the market as demonstrated by both Niece Defendants and the business it acquired, Klein Products, for distribution by sale or lease of new and used large construction machinery. It is this path for which the trial court found specific jurisdiction under the stream of commerce theory would apply if discovery Plaintiff sought was provided and supported its position. These trial court findings are entitled to "substantial" deference according to Niece Defendants.

Notwithstanding, and circuitous as Niece Defendants ask this Appellate Court to view the distribution stream here, the subject water tower never left New Jersey after the tower purchased from Niece Defendants' predecessor manufacturer sent it to auction for sale in New Jersey.

It is not disputed that the course, method and economic reality of distribution of the large water trucks and 12,000-gallon water towers manufactured by Niece Defendants are no different than the entity whose assets were purchased and whose product line was continued with but one noted physical modification to only one of

the products it continued to manufacture. This certainly is not the "distinct product" they claim excuses application of product-line successor liability here.

It is of no moment that Niece Defendants did not manufacture the water tower which is the subject of this products liability matter. It is the Niece Defendants' relationship to each other with respect to the purchase of substantially all of Klein Products' assets that is the issue here, an issue Niece Defendants improperly address and which the trial court improperly fails to address.

Niece Defendants do not appreciate that the posture of this case is a motion to dismiss without an evidentiary hearing and where the factual allegations presented by the plaintiff must be taken as true and the plaintiff is entitled to all reasonable inferences from those facts. The trial judge did appreciate such either. Contrary to controlling law, he granted the motion despite recognizing the merits of Plaintiff's argument with deference to Plaintiff's factual allegations, despite the incomplete record, and without an evidentiary hearing. No fair jurisdictional determination was rendered here.

I. Plaintiff Satisfies the Criteria for Establishing Personal Jurisdiction by Stream of Commerce over Niece Defendants as Product-Line Successors

Niece Defendants' analysis of the facts ignore the obvious – that it is beyond foreseeable that used products sold or delivered to end users in New Jersey, such as upon lease return to its distributors as was the case here, by auction or through a supplier, or both, in New Jersey (as happened here) represents the economic reality

of the market the Defendants seeks to serve. In fact, in representing that 80% of its equipment is sold through national distributors - none of which they aver restrict sales or delivery to New Jersey - Niece Equipment omits mention that it serves as a source of distribution worldwide without restriction upon sales in New Jersey. Niece Equipment is a member of Independent Equipment Dealer Association (IEDA), a self-regulating network of independent dealers who buy and sell heavy equipment worldwide.

The used construction equipment market represents a significant segment within the broader construction industry. It is driven by cost-effectiveness, availability and technological advancement. Even the limited documents produced demonstrate that both Niece Defendants and its product-line predecessor supplied new and used equipment to regional suppliers or national suppliers with regional offices in New Jersey to target sales in New Jersey. It is thus with intention that said defendants serve New Jersey end users, which is consistent with Niece Defendants' representation that they do not restrict sales from such distributors to or within New Jersey (Pa579). Such stream of commerce passes constitutional muster and the exercise of judicial power in New Jersey over Niece Defendants is lawful and consistent with traditional notions of fair play and substantial justice.

Establishing customer relationships with distributors regionally or nationally with regional offices within New Jersey, both Niece Defendants and the predecessor

of the product-line they continue demonstrate activities manifest to intention or purposeful availment of the privilege of conducting activities in the forum state. This is something more than predicting or foreseeing that goods will reach New Jersey. It is targeting, which is consistent with J. McIntyre Machinery, Ltd. V. Nicastro, 564 U.S. 863, 882 (2011); See, also, D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd., 566 F.3d 94, 106 (2009) ("It is by this path-from the Swiss manufacturing facility to [distributor] PiBAL to regional dealer to end purchaser [in Pennsylvania] – that Pilatus targets the American market and intends and expects its aircrafts to reach customers in the United States, including, arguably, those in Pennsylvania").

The facts herein are unlike those of the unpublished opinions, which merit no precedential support nor are binding on the Court pursuant to R. 1:36-3 but which Niece Defendants principally rely upon here to support dismissal on jurisdictional grounds. In Desmond v. Twp. Of Parsippany-Troy Hills, 2013 N.J. Super. Unpub. LEXIS 525 (App Div. Mar. 5, 2013), Sri Lankan manufacturer of alleged defective rubber tarp strap did not ship straps or any other product to New Jersey. Id. at *10. Manufacturer sold the subject strap to a Canadian company for resale to an Oregon corporation that sold the strap to a company in Alabama that sold it to plaintiff's New Jersey employer. The court found there was no indication that manufacturer "purposely sought to avail itself of the New Jersey market when it sold this particular

product to the Canadian distributor." Id. This stream aptly demonstrates the circuity which does not exist here, where the manufacturer's national distributor had New Jersey locations (Pa731) and the tower was shipped to New Jersey for auction.

Nor does Cribb v. Vapes, 2020 N.J. Super Unpub. Lexus 3527 (App Div. Sept. 8, 2020) present analogous facts, where third-parties redirected the allegedly defective rechargeable battery into a worldwide chain of distribution leading to a vape shop in New Jersey for purchase.

Respectfully, even absent sales data from predecessor Klein Products, Plaintiff has demonstrated that Klein, which did sell and ship its manufactured products directly to New Jersey suppliers based upon the produced customer list, sold and shipped this water tower to Ahern Rentals, a national equipment rental dealer with offices in New Jersey (Pa731). Upon the tower's lease end, Ahern sent the tower to an auction house in New Jersey where it remained until it was ultimately purchased by Plaintiff's New Jersey employer from a New Jersey construction equipment supplier (defendant Mike Zyndorf Equipment not the Massachusetts consigner of the subject equipment as Defendants contend) (Pb17-18). It is from this purposeful availment all taking place in New Jersey through this stream of commerce that Plaintiff was injured by this allegedly defectively designed product. It is this purposeful availment which Klein Product's product-line successor as

alleged, Niece Defendants, is imputed to as the entity facing liability as a successor in interest, as more particularly set forth in Plaintiff's Appellant Brief.

Additionally, Niece Defendants improperly rely upon the unpublished decision Am. Guarantee & Liab. Ins. Co. v. GetFPV LLC, 2025 U.S. Dist. LEXIS 70305 at *16 (D.N.J. April 14, 2025). This is a case about personal jurisdiction over a product seller or distributor when addressing the applicability of jurisdictional discovery based upon its internet website "to discern to what extent plaintiff's claims arise out of or relate to Defendant's contacts," not the successor manufacturer of an allegedly defective product distributed through the stream of commerce. Their analysis and comparison to facts concerning advertising and marketing of the product in an improperly cited Ford decision are unpersuasive for this reason.

In a products liability lawsuit, the underlying action alleges the development of a product that is harmful to end users. Thus, when a defendant manufacturer takes steps to reach end users/consumers in a forum state, it has created a relationship with the forum state that has special relevance to the litigation at issue. The stream of commerce theory contemplates that a defendant's product may go through middlemen before reaching consumers, but the point of consumer sale remains relevant to the relationship between the defendant, the forum, and the end-user injury in litigation. Niece Defendants incorrectly present the way the subject water tower reached Plaintiff's employer, the end user here. Based upon the testimony of its sales

team, the subject water tower proceeded through ordinary downstream sale and regular or anticipated flow of its products in stream of commerce. Quite simply, the water tower sold by predecessor manufacturer, whose assets were substantially purchased and the business line continued, to a national distributor with offices in New Jersey, which sold and shipped the tower coming off lease to New Jersey where it was auctioned, ultimately purchased by a New Jersey machine equipment supplier who sold it to Plaintiff's New Jersey employer for use in New Jersey. (Pb17-18). This is how the business operates and functions and enables growth in a competitive equipment sale market. See, e.g. Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 94 (3d Cir. 2004); Benitz v. JMC Recycling Systems, Ltd., 97 F. Supp.3d 576, 581 (D.N.J. 2015).

Finally, contrary to Niece Defendants' position, the length of time between the first sale of the water tower from manufacturer to distributor and the date the end user whose employee was harmed due to the product's defective design was received does not matter in product liability cases where the product continues to be manufactured or is present on the market. See, e.g. Arevalo v. Saginaw Machine Systems, Inc., 344 N.J. Super. 490, 496 (App. Div. 2001) ("It is well settled that strict liability for injuries caused by defective products placed into the stream of commerce is 'an enterprise liability', one that continues so long as the product is present on the market") (Citations omitted).

A. Niece Equipment is a Successor to Klein Products as *Alter Ego* of Purchasing Entity Klein Niece of Kansas (renamed Niece Products in the same year of the purchase)

Niece Defendants disregard the robust factual record establishing that Niece Equipment and Niece Products operate as an integrated, single enterprise. Niece Defendants' brief is silent and does not refute, among other facts, the following: 1. Niece Equipment was a distributor for/customer of Klein Products of Kansas prior to the Asset Purchase Agreement (Pa548); 2. Klein Niece (renamed Niece Products) was formed for purposes of the Asset Purchase Agreement (APA); 3. There is overlap in ownership as between the entities; 4. Niece Products has no website, and its products are sold and its manufacturing facilities address are identified without reference to it by name on Niece Equipment's website and by and through Niece Equipment's domain name; 5. Niece Product's employees' email address is @nieceequipment.com; 6. The asset purchase was advertised in trade magazines as "*Niece Equipment* [NOT Klein-Niece of Kansas] *acquires Klein Products of Kansas, expanding its product line and services*" (Pa468); 7. Trade magazine advertisements featuring water towers, which CFO Clark testified are only manufactured by Niece Products (Pa42945:7-18); 8. The companies are insured under the same insurance policy, use the same tax accountants and service of process is accepted by the same individual; 9. There are loans made and/or monies exchanged between the entities according to Niece Products ledger; and 10.

Corporate formalities are absent, such as board meeting minutes for the Niece Products (Pb10-13).

Niece Defendants cite no law which requires Niece Equipment as *alter ego* of Niece Products to be a party to the APA to assert a claim of successor jurisdiction. Indeed, New Jersey caselaw finds that jurisdiction may be predicated upon *alter ego* theory where plaintiff demonstrates that different entities have common ownership in addition to one's financial dependency, the other's domination or control, and the failure to follow corporate formalities, such as where "a subsidiary is merely the agent of a parent corporation, or if the parent corporation otherwise "controls" the subsidiary, then personal jurisdiction exists over the parent whenever personal jurisdiction (whether general or specific) exists over the subsidiary." Shuker v. Smith & Nephew, PLC, 885 F.3d 760, 781 (3rd Cir. 2018) (Citations omitted).

In fact, the Appellate Division in Star Video Entertainment, LP v. Video USA, Associates, LP, 253 N.J. Super. 216 (App. Div. 1992) was guided by the Third Circuit decisions which adopted the application of *alter ego* theory to personal jurisdiction through facts demonstrative of an integrated enterprise between companies organized by two individuals. Importantly, in Star Video, the Appellate Court recognized that plaintiff's jurisdictional allegations are intertwined with merits of its substantive claim, which, if proven at trial, simultaneously establishes personal jurisdiction. Id. at 728.

B. The Trial Court Did Not Address and Niece Defendants Fail to Demonstrate the Absence of Product Line Successor Liability

There is no dispute that Klein Products manufactured and sold the 12,000-gallon water tower at issue (Model KPT120) in this litigation. There is no dispute that Niece Defendants continued and continues to manufacture and sell 12,000-gallon water towers, and that this was equipment they did not manufacture prior to and was a reason for the APA with Klein Products according to Niece Products' CFO Renee Clark (Pb10).

As a matter of law, to be liable under the successor theory, a manufacturer "need only undertake "essentially" the same line of manufacturing; "[T]he word essentially does not mean 'identically.'" Bussell v. DeWalt Prods. Corp., 259 N.J. Super. 499, 518 (App. Div. 1992), certif. den., 133 N.J. 431 (1993). The addition of a leg to the tower does not refute the fact that the basic "patented idea" was still in use. Id. Although not addressed by the trial court, even if a factual dispute on this issue arose, its resolution must await trial and thus is not a reason to find absence of personal jurisdiction. Saez v. S&S Corrugated Paper Mach. Co., 302 N.J. Super. 545, 551 (App. Div. 1997).

II. Jurisdictional Discovery

Niece Defendants are incorrect that the Appellate Court should not consider ordering jurisdictional discovery based upon the factual record, citing no caselaw supportive of this position. The trial court recognized meritorious issue was raised concerning the inadequacy of Niece Defendants' jurisdictional disclosures, and it

did not find frivolity in Plaintiff's jurisdictional claim. They challenge or refute Plaintiff's briefing in support of jurisdictional discovery when considering appeals of dismissal based upon jurisdiction. They do not deny the trial court's finding that discovery is incomplete or deficient with respect to stream of commerce, a glaring omission.

In Rippon v. Smigel, 449 N.J. Super. 344, 362 (App. Div. 2017), a case cited by Niece Defendants, dismissal of the plaintiff's complaint was reversed by the appellate court and the matter was remanded for jurisdictional discovery because the matter was not ripe for determination when defendant moved to dismiss, without the plaintiff affirmatively seeking this relief from the trial court on appeal; "If the pleadings and certifications submitted to the trial court do not permit resolution of the jurisdictional question, the trial court must conduct a 'preliminary evidential hearing after affording the parties an appropriate opportunity for discovery.'" Id. at 359. See, also, Reliance Int'l Ins. Co. In Liquidation v. Dana Transp. Inc., 376 NJ. Super. 537, 551 (App. Div. 2005).

Reliance upon the fact that jurisdictional discovery was purportedly completed over a period of ten-months is misplaced. Two applications to the Court were required when Plaintiff's discovery responses were objected to, when Niece Product's CEO was directed not to answer questions at deposition pertaining to the company's relations with its predecessor and the terms and conditions of the APA,

and where dismissal on personal jurisdiction grounds were explicitly denied for these reasons (See Pa95, Pa97). Niece Products objected to extension of jurisdictional discovery as to Niece Equipment, added as a party defendant by court order on January 24, 2024 on motion (Pa99) as a party defendant as alleged alter ego based upon facts learned during jurisdictional discovery and which said defendant objected to extension of jurisdictional discovery on April 16, 2024 as to it beyond May 31, 2024 (Pa156). To be certain, Niece Defendants served responses to discovery emanating from depositions taken on or before May 31st which were directed toward their national distributor agreements and sales therefrom which Niece Defendant objected to and did not produce despite their specific relevance to understanding Niece Defendants' knowledge of the stream of commerce of water towers as was noted by the trial court below. (Pa578-579)

Niece Defendants modified and restricted the scope of the response to discovery sought, thereby limiting Plaintiff's access to the pertinent disclosures concerning its national distributors to Plaintiff's detriment (Pa578-579). Respectfully, whether Niece Defendants placed a product into a national stream of commerce with intention to access New Jersey's market beyond that it was foreseeable that the product reaches the forum state requires exploration through the disclosures sought.

Further Niece Defendants mistakenly rely upon Nieder v. Royal Indemn. Ins. Co., 62 N.J. 229, 234 (1973) to deny Plaintiff of jurisdictional discovery because it was not specifically requested by cross-motion. "It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." (Emphasis added). Furthermore, the trial judge affirmatively stated in his statement of reasons that absent this discovery from Niece Defendants it could not find in Plaintiff's favor on the issue of jurisdiction.

Given the burden imposed upon a plaintiff to demonstrate facts supporting personal jurisdiction at the earliest stage of a lawsuit, there is a recognized judicial obligation to assist plaintiff through allowance of jurisdictional discovery absent plaintiff asserting a frivolous claim. Toys "R" Us, Inc., v. Step Two, S.A., 318 F.3d 446, 456 (3rd Cir, 2003) ("Although the plaintiff bears the burden of demonstrating facts that support personal jurisdiction courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff's claim is clearly frivolous") (Emphasis added). Frivolity is not averred by Niece Defendants here.

The record according to the trial court was not sufficiently developed at this early stage of the proceeding, however, it concluded that Niece Defendants were not subject to personal jurisdiction: "According to plaintiff, [] Niece defendants have

refused to respond to plaintiff's demands for information identifying customer-dealers and the revenue generated from same… Without any definitive information regarding the Niece defendants' customer-dealers, it is far too speculative for the court to conclude that the Niece defendants should expect to be hauled into a New Jersey court on the basis of their sales to customers-dealers who rent and sell equipment in New Jersey" (Emphasis added; Pa645-646). Without this information, the trial court recognized plaintiff could not demonstrate that water towers found their way to New Jersey "through sales to regional and national distributors who then resell or lease Niece products to New Jersey end users" which the court found would satisfy stream of commerce analysis triggering personal jurisdiction here (Pa645). Niece Defendants do not question or address the trial court's finding in their opposition brief.

CONCLUSION

For the foregoing reasons and argument, and for those set forth in Plaintiff-Appellant's Brief, Plaintiff respectfully requests that the March 14, 2025 Order be reversed in its entirety, or, in the alternative, the Order be reversed and the matter remanded to the trial court for reconsideration following additional jurisdictional discovery.

Respectfully submitted,

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Dated: September 5, 2025