Supreme Court of New Jersey

Docket No. 090537

ERWIN CAMPOVERDE, *Plaintiff-Appellant Petitioner,* vs. NY-NJ LINK DEVELOPER, LLC, MACQUARIE GROUP LIMITED i/s/h/a Macquarie Group Limited, KIEWIT DEVELOPMENT COMPANY, and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, *Defendants-Respondents,* - and - KS ENGINEERS, PC, *Defendant.*	:	CIVIL ACTION ON PETITION FOR CERTIFICATION FROM A FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001174-23 Sat Below: HON. HANY MAWLA, J.A.D., HON. ARNOLD NATALI, J.A.D. HON. ROBERT M. VINCI J.A.D.

BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION

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COUNTER STATEMENT OF QUESTIONS PRESENTED

Did the Appellate Division correctly hold that the Defendants were entitled to dismissal of Plaintiff's claims as there was an insufficient connection with New York to apply New York law and the Defendants did not violate any duty of care owed to Plaintiff under New Jersey law?

PRELIMINARY STATEMENT

This Respondent Brief is submitted on behalf of the Defendants-Respondents the Port Authority of New York and New Jersey ("the Port Authority"), NY-NJ Link Developer, LLC ("NY-NJ Link"), Macquarie Group Limited ("Macquarie") and Kiewit Development Company (collectively, "Defendants") in opposition to Plaintiff's Petition for Certification. This litigation arises from injuries allegedly sustained by Plaintiff-Appellant, Edwin Campoverde (hereinafter "Plaintiff"), on October 26, 2017, while working on the Goethals Bridge Replacement project for his employer, joint-venture Kiewit-Weeks-Massman (hereinafter "KWM"). The joint venture included Kiewit Infrastructure Co. (a subsidiary of Kiewit Development Company), Weeks Marine, Inc., and Massman Construction Co.

The Port Authority decided to replace the Goethals Bridge and contracted with NY-NJ Link. Macquarie and Kiewit Development Company had ownership interests in NY-NJ link of 90 percent and 10 percent respectively. Macquarie

was not involved in the project besides this ownership interest. NY-NJ Link hired KWM for the design and construction of the new bridge.

Plaintiff was working on the New Jersey side of the Bridge when the accident occurred. Plaintiff alleges that a co-worker improperly operated an excavator while moving a wooden crane mat, causing Plaintiff to be hit in the back with the wooden crane mat. Both before and at the time of his accident, Plaintiff's and his co-workers' work was supervised and controlled solely by employer KWM. KWM alone was responsible for the safety of its workers.

In the Trial Court, Defendants moved for summary judgment, arguing that Defendants were not responsible for the actions of Plaintiff's coworker which caused the accident, and Defendants did not owe Plaintiff a duty of care. Further, NY-NJ Link was not responsible for the actions of their subcontractor. As such, dismissal of Plaintiff's complaint was warranted. Plaintiff opposed this motion, arguing that New York not New Jersey law applies to this case. This was incorrect under a simple conflict-of-law analysis. Plaintiff's injury and the conduct causing the injury both occurred in New Jersey; Plaintiff is a New Jersey resident; Plaintiff was a member of a New Jersey union through which he was hired and provided his orientation. Ultimately, the Trial Court granted summary judgment in favor of Defendants which the Plaintiff appealed. However, the Appellate Division correctly upheld the Trial Court's well-reasoned decision.

This Brief is submitted in opposition to Plaintiff's Petition for Certification following the Appellate Division's denial of Plaintiff's appeal and refusal to overturn the Trial Court's order granting Defendants' Motion for Summary Judgment. On appeal and again in his Petition, Plaintiff argues that New York law should apply, even though there are much stronger New Jersey ties to Plaintiff's accident. Plaintiff also makes an alternative argument that even if New Jersey law applies, Defendants breached a duty owed to Plaintiff. As was correctly decided by the Trial Court and Appellate Division, no such duty exists.

This Court should deny Plaintiff's Petition and uphold the Appellate Division's ruling, as it correctly dismissed all claims against Defendants. New York law should not apply to this case. Likewise, there was no breach of a duty owed to Plaintiff. Plaintiff's Petition simply rehashes arguments that were correctly rejected by the Appellate Division. The Petition fails to point out any error on the part of the Appellate Division that would warrant the reinstatement of Plaintiff's action against Defendants. Thus, for the reasons stated herein, Defendants request that this Court deny Plaintiff's Petition for Certification.

PROCEDURAL HISTORY

This case arises from an alleged accident that occurred on October 26, 2017, on the New Jersey side of the Goethals Bridge. The Second Amended Complaint alleged that, due to Defendants' negligence, Plaintiff was injured on

October 26, 2017, while he was employed as a laborer at the Goethals Bridge rebuilding project. Specifically, Plaintiff alleged that Defendants were "negligent in failing to hire adequate subcontractors to perform construction work at the job site." A37 ¶17. For a full recitation of the factual background, Defendants direct this Court to their Respondent's Brief pgs. 4-15.

All Defendants moved for summary judgment. While Plaintiff ostensibly opposed Defendants' motion, Plaintiff in fact abandoned his claims against all Defendants except NY-NY Link. Defendants filed a reply and noted Plaintiff's abandonment for all claims except the NY-NJ Link claims. Oral argument on the motion was held, and the Trial Court issued an Order on the same day granting dismissal to Defendants. A983. In a well-reasoned decision, the Trial Court held that all Defendants, including NY-NJ Link, were entitled to dismissal of Plaintiff's claims because KWM exclusively supervised and controlled site safety and the work of Plaintiff, as well as his co-workers. IT 35. The Trial Court correctly stated that the basic facts of this case are not in dispute, but rather the question is whether Defendants owed a duty to Plaintiff. The Trial Court correctly held that Defendants did not owe any such duty under New Jersey law, as Defendants were not suitably involved to be held liable in this case. Specifically, the Court noted that Defendants had absolutely no involvement with construction work. In fact, two Defendants (Macquarie and Kiewit) were

simply investors, and the Port Authority neither contracted with KWM, nor did it control or supervise KWM's work. Moreover, Defendant NY-NJ Link did not retain control over the means or methods of the work. See 1T 39-40, 51-54.

The Trial Court also properly held that New York law does not apply to this case, as "there are no facts based on this Court's reading that establish New York as the most significant relationship to plaintiff's accident. This was a New Jersey accident and it involves a New Jersey resident." 1T 41. The Trial Court cited to the Second Restatement of Conflict § 145 and explained how each of the four factors weigh in favor of applying New Jersey law in this case.

On appeal, the Appellate Division agreed. Defendants successfully showed that New York Law did not apply, but instead New Jersey law did under the most-significant-relationship test. The Appellate Division also upheld the dismissal of Plaintiff's claims under New Jersey law, holding that Defendants did not owe Plaintiff a duty of care and none of the three exceptions to the general rule protecting general contractors applied to the case at hand. Defendants also argued in their brief in Point II(A) on pages 23-26 that Plaintiff abandoned his claims except those directed to NY-NJ Link.

As detailed in the Appellate Division's well-reasoned 20-page decision, the proper choice of law in this case is New Jersey law, under which no Defendants are liable. The Appellate Division correctly held that New Jersey

utilizes the most-significant-relationship test, which requires the application of New Jersey law. PA012-015. Under this test, there is a presumption that the law of the state where the accident occurred is the governing law. PA012. Next, the Appellate Division analyzed all four factors from the Second Restatement of Conflict § 145, which weighed in favor of applying New Jersey law. Moreover, the Appellate Division held that Plaintiff did not show a dispute of material fact as to whether any of the Defendants owed Plaintiff a duty. PA021. The Court noted that the only connection between Plaintiff and Defendants is the fact that NY-NJ Link executed a contract with Plaintiff's employer, KWM, which is insufficient to hold any of the Defendants liable. There is no question that both courts below were correct, and Plaintiff's claims were properly dismissed.

LEGAL ARGUMENT
POINT I

NEW JERSEY LAW APPLIES TO THE CASE AT HAND

As shown, the argument that New York law should apply is meritless. Plaintiff failed, and continues to fail, to cite any factual or applicable legal authority for applying New York law. Instead, Plaintiff simply asserts (Petition pgs. 7 and 13) that since "New York law provides greater protection for an injured construction worker like plaintiff" New York law should be applied and "[a] worker injured in the course of working on a massive project spanning both

New Jersey and New York should be protected by whichever state's law is more protective of the injured worker."[1] The Appellate Division correctly rejected this argument (PA010) as it fails to take into consideration the actual doctrinal test (discussed at Petition pgs. 14-15) to determine which state law applies when there is a conflict. During oral argument in the Trial Court, Plaintiff acknowledged that "Under the most significant relationship standard, the law of the state of the injury is applicable unless another state has a more significant relationship to the parties and issues." 1T 40. Plaintiff now asks this Court to "clarify" that New York law should apply despite failing to present any facts that show New York has the most significant relationship to Plaintiff's accident.

On appeal and in his Petition to this Court, Plaintiff conflates the legal concept of "choice of law" provisions in contracts with "choice of law" analysis. Plaintiff argues that the choice-of-law provisions in the contracts governing the project are the controlling factor in determining which law should apply in the

[1]Plaintiff argues in legally unsupportable fashion at Petition pg. 7 that "New York law should apply [simply] because project…spanned both New Jersey and New York." There is no explanation of why under this "analysis" New York law prevails over New Jersey law. At Petition pgs. 10-12 it is similarly insinuated without legal explanation that because the project involved both New York and New Jersey, New York law must necessarily apply to the plaintiff's accident.

case at hand.[2] *See* Appellant Brief pgs. 18-23, Petition pgs. 8-10.[3] However, Plaintiff's argument is unavailing, and it should be disregarded by this Court. The choice-of-law language in the contract is clearly irrelevant and does not require the application of New York law to this case. To clarify, the choice-of-law language in the contract is irrelevant as this case does not involve a contract dispute. Indeed, Plaintiff was not a party to the project contract, or an intended beneficiary. As such, Plaintiff cannot enforce any provision of the contract. A third party has no standing and is only an incidental beneficiary when there is no intent to recognize a third party's right to contract performance. *See* Labega v. Joshi, 470 N.J. Super. 472, 487 (App. Div. 2022). Plaintiff's citation to contract § 16.9 does not change this analysis.

In support of his argument, Plaintiff cites to Instructional Systems, Inc., v. Computer Curriculum Corp., 130 N.Y. 324 (1992). *See* Appellant Brief pg. 18, Petition pg. 8. However, what Plaintiff fails to mention is that Instructional Systems involves a contractual dispute about which states' law applied.

Moreover, the contract dictates that the parties submit to the exclusive

[2] For example, at page 8 of his Petition the plaintiff notes that "[f]orum selection clauses [in contracts] are generally enforceable unless the clause is unreasonable or contravenes a strong public policy of the forum where the suit is brought."
[3] The Plaintiff also notes that his work permit required that he be able to work in both states and that he applied for Workers' Comp. benefits in New York. *See* Petition pgs. 7-8.

jurisdiction of any New York Court or the U.S. District Court for the Southern District of New York, and that each party waive any right to a jury trial. Thus, if this Court were to follow Plaintiff's logic, it would be compelled to dismiss this action for lack of jurisdiction. However, again, Plaintiff is not a contract party nor an intended beneficiary and cannot rely on any part of this agreement.

In his Petition (pg. 10-13), Plaintiff notes that the Bridge project spanned both sides of the bridge and thus both states were involved and both states required permits. Yet, these facts do not establish that New York had the most significant relationship to Plaintiff and his accident. Indeed, these examples of how the project was interconnected with both New York and New Jersey only places more importance on where the injury occurred and the residency of Plaintiff.

Plaintiff claims that "there are very few contacts that this matter has with New Jersey as opposed to New York" (Petition pg. 13); however, this is simply incorrect. Again, Plaintiff's injury occurred in New Jersey as did the conduct allegedly causing the injury. Plaintiff is a resident of New Jersey and a member of a local New Jersey laborers' union. Plaintiff was hired by KWM through his local New Jersey union, Local 472. This local New Jersey union provided the orientation. Plaintiff's Petition (pg. 13) notes that post-accident "IME" examinations were conducted in New York and his Worker's Compensation

claim was filed in New York. Yet, these comments fail to show a strong connection between Plaintiff's accident and New York; especially compared to the significant New Jersey connections. The fact that Plaintiff was authorized to work or that he sought his Workers' Compensation benefits in New York does not change the analysis under the significant-relationship standard for this particular incident and injury. Moreover, Plaintiff cites no case law to show these post-accident events are relevant to the choice-of-law analysis.

Plaintiff asserts, in legally unsupported fashion, that this case should be governed by whichever state's law is more protective of an injured worker. *See* Petition pg. 13. As discussed in the Second Restatement of Conflicts of Law § 145, the most-significant relationship presumes that where the accident occurred is the governing law. Plaintiff does not dispute that both the injury and incident occurred in New Jersey. In order to preclude application of New Jersey law, Plaintiff must show that another state has "a demonstrably dominant interest" and that no policy of New Jersey is frustrated by application of the other state's policy. Plaintiff utterly failed to meet this burden.

In his Petition on pg. 14, Plaintiff notes that Section 145 of the Second Restatement specifically identifies contacts that are most germane to the governmental-interest test. Plaintiff does not articulate how the contacts in this case weigh in favor of applying New York law. When applying the proper

significant-relationship test, an analysis of all four factors shows that New Jersey, not New York, law should apply to the case at hand. First, the injury occurred in New Jersey. Second, the conduct causing the injury also occurred in New Jersey. In this respect, the facts of this case are unlike those of Dolan v. Sea Transfer Corp., 398 N.J. Super. 313 (App. Div. 2008), cited by Plaintiff. In Dolan, the conduct that caused the accident occurred in New York as did the injury producing conduct. Dolan at 318. Here, there is no allegation of prior conduct involving the excavator operator in New York that caused the accident. Thus, the first two factors strongly favor the application of New Jersey law.

With respect to the third factor, Plaintiff is a resident of New Jersey and a member of a local New Jersey laborers' union. Similarly, regarding the fourth factor, the relationship between the parties does not favor New York over New Jersey. Indeed, Plaintiff was hired by KWM through his local New Jersey union, Local 472. His local union provided the orientation. Thus, weighing all of these factors, this Court should determine, just as the Appellate Division did, that New Jersey law applies. *See, e.g.*, Arias v. Figueroa, 395 N.J. Super. 623 (App. Div. 2007) (applying New Jersey law where motor vehicle accident occurred in New Jersey and plaintiff was resident of New Jersey); *see also*, Lebegern v. Forman, 471 F.3d 424 (Third Cir. 2006) (applying New Jersey law where the injury and the conduct causing the injury occurred in New Jersey).

Furthermore, the cases cited by the Petition pgs. 15-16 are distinguishable from the one at hand. In Erny v. Estate of Merola, 171 N.J. 86 (2002) there were factually demonstrated connections to New York – unlike here. In Butkera v. Hudson River Sloop Clearwater, Inc., 300 N.J. Super. 550 (App. Div. 1997) specific connections to New York were demonstrated – unlike here. In Fairfax Financial Holding Limited v. S.A.C. Capital management, L.L.C., 450 N.J. Super. 1 (App. Div. 2017) New York connections were demonstrated (unlike here), which led to the conclusion that New York law applied.

In his Petition (pgs. 16-17), Plaintiff argues in conclusory fashion that "New York has the more significant interest in this matter given that the legislative intent of both its Labor Laws and its Industrial Code was to protect workers and to promote overall safety on construction sites." While it's true that the intent of New York law was to protect workers, Plaintiff fails to establish that these laws should apply to accidents involving New Jersey residents that occur in New Jersey. Plaintiff makes no factual connection between New York's public policy and this accident.

As such, this Court should uphold the Appellate Division's ruling that New Jersey law applies in this case. Further, this Court should hold that summary judgment should be granted in Defendants' favor under New Jersey law and affirm that all of Plaintiff's claims were correctly dismissed.

POINT II

THERE WAS NO DUTY OWED TO PLAINTIFF

In the Petition pg. 17-19, Plaintiff addresses Defendants' purported liability under New Jersey law. Plaintiff fails to address the liability of each Defendant separately. Instead, Plaintiff lumps the Defendants together and argues for their purported liability in a superficial and conclusory fashion. Noticeably absent from Plaintiff's discussion of the Defendants' purported liability is any factual citation or any discussion of how any of the facts in this case translate into liability with respect to the Defendants. The Petition clearly fails to demonstrate that the Appellate Division was incorrect in affirming the dismissal of Plaintiff's claims. As discussed below, neither NY-NJ Link nor any other Defendant owed any duty of care to Plaintiff.

A. Defendants are Not Responsible For The Acts Or Omissions Of KWM

As the developer, NY-NJ Link does not bear any liability for the acts or omissions of its independent contractor, KWM. It is well-settled law that one who hires an independent contractor is not liable for the wrongful conduct of such contractor in the performance of its duties and services. Bahrle v. Exxon Corp., 145 N.J. 144, 156 (1996). The public policy reason for this rule is that unlike an employee, an independent contractor controls the manner in which the work is to be done and therefore should be the one charged with the damages

that result from its acts. Mavrikidis v. Petullo, 153 N.J. 117, 132 (1998).

There are three exceptions to the general rule of no liability: (i)where the principal retains control over the means and methods of the independent contractor's work, (ii) where he engages an incompetent contractor, or (iii) where the activity contracted for constitutes nuisance per se. Mavrikidis v. Petullo, 153 N.J. 117, 132 (1998); Majestic Realty Associates, Inc. v. Toti Contracting Co., 30 NJ 425 (1959). None of these exceptions apply here.

First, none of the Defendants retained control over the means and methods of KWM's work, as outlined in the Defendants' Respondent's Brief pg. 27. (See IT 35-36, 39-40, 52 and 53; PA019-PA020). See Majestic, *supra*. Any inspections NY-NJ Link performed were limited to seeing that the work was done in accordance with the contract and specifications.

Second, KWM was not an incompetent contractor as shown in the Respondent's Brief pg. 28. (See IT 54-57 and 60; PA020). Nothing in how the accident happened suggests incompetence on the part of KWM. Moreover, this exception requires not just that the contractor was incompetent or unskilled to perform the job for which he was hired but also that the principal knew or had reason to know of the contractor's incompetence. Mavrikidis v. Petrullo, 153 NJ 117, 137 (1998).

Plaintiff's reference to 51 OSHA violations does not change this analysis

(Petition pg. 18). Plaintiff fails to show if this was a large amount of violations compared to other work sites. He also does not show the nature of the violations. It should also be mentioned that the unauthenticated/uncertified OSHA History (A961-A969) constitutes inadmissible hearsay evidence which cannot be used in opposition. *See generally* State v. Swed, 255 N.J. Super. 228, 235-240 (App. Div. 1992); *see also* Millison v. E.I. du Pont de Nemoursand and Co., 226 N.J. Super. 572, 593 (App Div. 1988). Even if the OSHA violations were admissible evidence, they do not help Plaintiff. The argument that NY-NJ Link had prior knowledge of the alleged dangerous circumstances of the 51 OSHA violations is baseless. The violations do not establish anyone's negligence or even raise an issue of fact, nor do they provide notice that Plaintiff's employer was an incompetent employer. Further, as shown in the Respondent's Brief on pg. 30, these OSHA violations are immaterial to the accident at hand. (See PA020-021).

In his Petition pgs. 17-18, Plaintiff cites four "pieces of evidence" that were allegedly disregarded in the decision dismissing Plaintiff's claims. None of these are applicable or relevant. First, the OSHA violations do not show that there was any sort of "dangerous condition". Second, the fact that there may be a corporate relationship between the parties is irrelevant and nonsensical. Third, Plaintiff does not explain how risks associated with the work being performed conferred a duty onto NY-NJ Link as opposed to or in addition to their contractor

KWM. Finally, Defendants having an opportunity to prevent the accident by mandating the use of a signalman is misleading. Only Plaintiff's employer, KWM, bore any responsibility for supervising the work of Plaintiff or his co-workers.

Finally, with regard to the third exception, the activity taking place at the time of the accident did not constitute a nuisance per se. See Majestic Realty Associates v. Toti Contracting Co., 30 NJ 425 (1959). There is no "peculiar risk", and only ordinary caution is warranted. Mavrikidis, *supra*, at 144, PA021.

Further, in Alloway v. Bradlees, 157 N.J. 221 (1999), the Court adopted a "general negligence" approach to determining whether an owner or prime contractor owes a duty to an employee of an independent contractor. *Id.* at 230. In Alloway, the court considered "the foreseeability of harm, the relationship between the parties, and the opportunity and capacity to take corrective action" in determining that the prime contractor owed a duty of reasonable care to plaintiff. *Id.* at 233. Here, applying that same approach, this Court should find that Defendants did not owe a duty to Plaintiff. For a full description of how Alloway and Carvalho v. Toll Brother & Developers, 143 N.J. 565 (1996) establish that Defendants were not negligent, see Defendants' Respondent's Brief, pgs. 33-35. See also Tarabokia v. Structure Tone, 429 N.J. Super. 103 (2012) and the discussion of the same in Defendants' Respondent's Brief, pgs.

35-36.

Here, like the above cited cases, Plaintiff's employer, KWM, was expected to monitor and ensure its own workers' safety. NY-NJ Link did not discuss with KWM how they performed their work and had no authority to direct the manner and means of the performance of KWM's work. NY-NJ Link had no actual knowledge of a particular risk to Plaintiff. Therefore, there is no basis for imposing a duty of care upon NY-NJ Link or any of the Defendants. Accordingly, the Appellate Division correctly affirmed the Trial Court's dismissal of the claims against NY-NJ Link.

B. <u>The Defendants Did Not Breach Any Duty Of Care To Plaintiff</u>

The Appellate Division correctly affirmed summary judgment because the evidence shows Defendants did not owe Plaintiff a duty of care. The Appellate Division appropriately held there was no basis for finding that NY-NJ Link or any of the Defendants breached a duty of care to Plaintiff. In truth, this is a straightforward Workers' Compensation case, because Plaintiff was injured due to a negligent co-worker who exercised poor judgment in operating the excavator. As discussed in the Respondents' Brief, pgs. 37-44, this incident was not foreseeable, as NY-NJ Link had no knowledge of any issues that would have made this incident likely to occur. Likewise, hte accident was not foreseeable because neither NY-NJ Link nor any of the Defendants had any connection to

the injury-producing work. The Defendants were "strangers" to the accident. Indeed, there was no act or omission on the part of NY-NJ Link or any of the Defendants that can be said to have caused Plaintiff's accident. *See*, Hernandez v. Bloomfield Belleville Associates Urban Renewal, LLC, 2022 WL 17985847 (App. Div. Dec. 29, 2022).

Defendants owed no duty of care to Plaintiff, including to prevent the type of accident that occurred. As noted by the Appellate Division, the undisputed facts show that none of the Defendants retained control over the manner and means of the work. (See PA019). It is undisputed the employer, KWM, hired Plaintiff and the excavator operator, trained the employees, provided protective equipment, and managed the jobsite. It is further undisputed that Defendants, particularly with respect to Macquarie and Kiewit Development, were merely investors who provided funding and board oversight (see PA019-020), and the Port Authority was similarly disconnected from the project except for hiring NY-NJ Link. (See PA020). Further, as the Appellate Division correctly noted, the contract between NY-NJ Link and KWM required NY-NJ Link to conduct certain inspections to ensure compliance with the contract and applicable law, not control the manner and means of the work. As stated in deposition testimony, NY-NJ Link's intermittent presence at the project was to observe progress, not control any aspect of construction. (See PA020).

The factors that influence the recognition of a duty of care include the knowledge of circumstances that may cause harm to another, the relationship of the parties, the nature of the risk, and the opportunity to exercise care. Considering these factors, there is no basis for finding that NY-NJ Link or any other Defendant owed Plaintiff a duty of care. Defendants had no knowledge of circumstances that would cause harm to Plaintiff, they had no direct relationship with Plaintiff, the risk of Plaintiff's co-worker operating the excavator improperly was unpredictable, and Defendants had no opportunity to exercise care to prevent the accident. The evidence establishes that Defendants did not have any connection to the injury-producing work, i.e., the movement of the crane mat that struck Plaintiff.

Plaintiff alleges that he was injured when a fellow KWM employee, Jeff Warren, improperly used the excavator, causing a wooden crane mat to hit him on the back and push him across the trench. It is undisputed that Plaintiff and Warren received their instructions and work assignments from KWM and not from NY-NJ Link. (See It52). KWM hired plaintiff through his union, trained him and provided him with personal protective equipment. Also, as the witness affidavits demonstrated, none of the defendants that moved for summary judgment in the lower court, including NY-NJ Link, had the authority to direct the means and methods of KWM's work. Under these undisputed facts, there is

no basis for holding Defendants liable, and Plaintiff's complaint was properly dismissed in its entirety. See Sutuj v. Louis Gargiulo, 2021 WL 48228 (App. Div. Jan. 6, 2021) (affirming summary judgment for the defendant owners and contractors). As shown above, NY-NJ Link did not breach any duty of care to plaintiff. Thus, the Trial Court properly granted summary judgment dismissing Plaintiff's claims, and the Petition for Certification should be denied.

REASONS TO DENY CERTIFICATION

As shown above, the Court should deny certification. There is no confusion about the application of foreign state laws in personal injury claims in this State. There were ample connections to New Jersey with this Plaintiff and his accident. This was a clear application of the most-significant-relationship test that New Jersey follows. Further, there is no confusion about the legal principles governing the liability of an owner or general contractor when an independent contractor causes an injury to a New Jersey worker. It is well-settled law that one who hires independent contractors is not liable for the wrongful conduct of those contractors in the performance of their duties. As such, Defendants owed no duty to Plaintiff. Accordingly, this Court should deny Plaintiff's Petition for Certification.

Dated: July 10, 2025

Respectfully Submitted,

By: */S/ Frank Thompson*
FRANK THOMPSON, ESQ.

By: */S/ Colleen Ready*
COLLEEN READY, ESQ.