

No. \_\_\_\_\_

FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

LENNARD BARTLETT, SR.  
ADMINISTRATOR OF THE ESTATE OF  
MARY SUSAN WHITE BARTLETT,  
*Plaintiff-Appellant,*

v.

ESTATE OF JEFFREY L. BURKE; AIR  
METHODS CORPORATION,  
*Defendants-Appellants,*

AIRBUS HELICOPTERS DEUTSCHLAND,  
GMBH; AIRBUS HELICOPTERS, INC.;  
SAFRAN HELICOPTER ENGINES; AND  
SAFRAN HELICOPTER ENGINES USA,  
INC.,  
*Defendants-Appellees.*

-and-

KASEY HOBSON HARRISON,  
EXECUTRIX OF THE ESTATE OF  
KRISTOPHER RAY HARRISON,  
*Plaintiff-Appellant,*

v.

ESTATE OF JEFFREY L. BURKE; AIR  
METHODS CORPORATION,  
*Defendants-Appellants,*

AIRBUS HELICOPTERS DEUTSCHLAND,  
GMBH; AIRBUS HELICOPTERS, INC.;  
SAFRAN HELICOPTER ENGINES; AND

FROM DURHAM COUNTY

No. COA22-95

SAFRAN HELICOPTER ENGINES USA,  
INC.,  
*Defendants-Appellees.*

\*\*\*\*\*

PLAINTIFFS-APPELLANTS' NOTICE OF APPEAL  
(Constitutional Question)

AND

PETITION FOR DISCRETIONARY REVIEW

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(Constitutional Question)

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PETITION FOR DISCRETIONARY REVIEW

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The plaintiffs-appellants, Lennard Bartlett and Kasey Hobson Harrison, hereby appeal to this Court from the 6 September 2022 decision of the Court of Appeals under N.C. Gen. Stat. § 7A-30 and, in the alternative, respectfully petition this Court to certify the Court of Appeals' decision for discretionary review under N.C. Gen. Stat. § 7A-31(c)(1), (c)(2), and (c)(3).

**INTRODUCTION**

This appeal presents weighty, recurring questions under the Fourteenth Amendment's Due Process Clause. In conflict with precedents of the U.S. Supreme Court, this Court, and the Court of Appeals itself, the decision below held that North Carolina courts may not exercise personal jurisdiction over (1) foreign manufacturers who deliver products to American distributors with the knowledge and expectation

that those products will be sold in North Carolina; and (2) component-product manufacturers who do not serve a so-called “standalone” market for individual parts in North Carolina. The Court of Appeals’ decision creates a blueprint for foreign manufacturers to evade North Carolina courts merely by using an intermediary distributor to sell their products in this state. Nothing in due-process jurisprudence demands that arbitrary outcome. To ensure fairness and consistency in basic jurisdictional ground rules, this Court’s review is urgently needed.

The case arises from a medevac helicopter crash in North Carolina that tragically killed four North Carolinians. After a federal investigation revealed that the crash was related to defects in the helicopter’s engine, the estates of those killed in the crash filed this wrongful-death action against Airbus Helicopters Deutschland GmbH and Safran Helicopter Engines, the German and French companies that manufactured the helicopter and its engines. Airbus and Safran moved to dismiss, arguing that due process precluded North Carolina courts from exercising jurisdiction over them.

As the trial court recognized, that argument defies the U.S. Supreme Court’s personal-jurisdiction precedent. Just last year, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, the Court articulated a simple rule: “When a company . . . serves a market for a product in a State and that product causes injury in the State to one of its residents, the State’s courts may entertain the resulting suit.” 141 S. Ct.

1017, 1022 (2021). And here, as the trial court found, the record shows that Airbus and Safran have “continuously and deliberately served the North Carolina market.” (R pp 589, 604) After all, North Carolina is a critical market for the manufacturers: Up to ten percent of Airbus’s U.S. sales of this specific helicopter model were to North Carolina customers, and both companies have targeted the state through marketing and other business activities. Several years after helping build a North Carolina manufacturing plant for engine-component parts, Safran even sent its top executives to Charlotte to promote the specific class of engines at issue here. And both manufacturers continue to serve North Carolina customers after the helicopters are delivered: They provide operators with ongoing maintenance support and spare parts through an interactive web portal, issue vital information bulletins and service updates, and even continuously track helicopter movements in the state to predict future sales and repairs.

Yet the Court of Appeals nevertheless concluded that due process precluded jurisdiction over both Airbus and Safran. The decision below held that neither manufacturer had “purposefully availed” itself of the privilege of conducting business in North Carolina, because both relied on American distributors to sell their products, instead of directly delivering the products to the state. App. ¶¶ 60, 62. But that holding is irreconcilable with the U.S. Supreme Court’s and this Court’s precedent, which has long recognized that a forum state may exercise “personal

jurisdiction over a [defendant] that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980); *see also Mucha v. Wagner*, 378 N.C. 167, 2021-NCSC-82, ¶ 15. As the U.S. Supreme Court explained more than forty years ago, purposeful availment turns on whether a manufacturer “serve[s], directly or *indirectly*, the market for its product” in the forum state. *World-Wide Volkswagen*, 44 U.S. at 297 (emphasis added). Contrary to this binding precedent, the Court of Appeals failed to consider the manufacturers’ indirect contacts with North Carolina when conducting its jurisdictional analysis.

This conflict is reason enough for this Court to allow review. But the Court of Appeals compounded the problem by adopting a severely restrictive test for component manufacturers. The court held that North Carolina may not exercise jurisdiction over Safran because the company had “never sought nor served a market in North Carolina for standalone helicopter engines,” and had “never advertised, sold, or distributed any engines for sale to individual users or consumers in North Carolina.” App. ¶ 61. Under this reasoning, nearly all component manufacturers would escape North Carolina’s jurisdiction—even if thousands or millions of their products were delivered to the state—because there rarely would exist a “standalone” market in the state for the component product. This holding conflicts not only with other states’ decisions finding jurisdiction over foreign component

manufacturers; it also deepens a split within the Court of Appeals' *own* case law, including a recent case involving aircraft parts. *See Cohen v. Cont'l Motors, Inc.*, 279 N.C. App. 123, 2021-NCCOA-449, ¶ 29, *review denied*, 868 S.E.2d 859. That additional conflict likewise warrants review.

This Court's intervention is necessary to resolve these conflicts, which unsettle North Carolina's law of personal jurisdiction and will engender confusion among the lower courts and litigants alike. And this appeal offers the Court a golden opportunity to clarify how personal jurisdiction works in the product-liability context—a topic that this Court has not addressed for more than half a century.

Resolution of the issues presented will have significant practical consequences for North Carolina residents and businesses. If left to stand, the decision below would allow any out-of-state manufacturer to evade North Carolina's jurisdiction merely by choosing to sell its products in the state through an American distributor—a commonplace occurrence in the modern global economy. And it would place nearly *all* component manufacturers beyond the reach of this state's courts. This would leave local small businesses holding the bag for the large multinational corporations actually responsible for designing or manufacturing a defective product, and it would bar North Carolinians from accessing state courts for the purpose of redressing injuries that they suffered *in* North Carolina. This Court should allow review.

## **BACKGROUND**

### **A. Four North Carolinians die in a helicopter accident in North Carolina.**

On a clear morning in September 2017, a Duke Life Flight medevac helicopter took off from Sentara Albemarle Regional Medical Center in Elizabeth City, North Carolina. On board was Mary Susan White Bartlett, a patient who needed emergency medical care at Duke University Hospital, as well as pilot Jeffrey Burke and flight nurses Kristopher Harrison and Crystal Sollinger. All four were residents of North Carolina. App. ¶¶ 2-4.

The helicopter never made it to Durham. Less than ten minutes into the flight, it began to turn and lose altitude. Witnesses on the ground observed “dark” and “heavy” smoke trailing behind the helicopter, and reported that the aircraft appeared to be hovering instead of moving forward. Minutes later, the helicopter fell to the earth and slammed into a wind turbine farm in Hertford, after which it collapsed and caught on fire. Everyone on board died in the crash. App. ¶¶ 2-4.

The National Transportation Safety Board sent a team of investigators to the crash site. They discovered that that the helicopter’s “rear bearing”—a component of the gas-generator shaft in one of the helicopter’s two engines—was damaged in a manner that suggested that the engine had overheated and lacked sufficient lubrication. App. ¶ 5. The investigators also found debris partially obstructing the engine-oil drainage system. Based on these findings, the investigation concluded that

the engine's rear bearing had failed during the helicopter flight. *See id.*; *see also* Nat'l Trans. Safety Bd., Aviation Accident Final Rpt. (No. ERA17MA31), <https://perma.cc/GQ2E-Y8S8>.

This was not the first accident of the same kind involving this same model of helicopter—the Airbus MBB-BK117 C2. Earlier in 2017, a South Dakota helicopter operator had experienced an in-flight engine fire, forcing an emergency landing. (R pp 452–53) Later investigation found that the fire in that case, as in this one, resulted from blockages of the engine oil-drainage system. (*See id.*)

The similarity of the crashes—both of which involved critical design defects—prompted the Federal Aviation Administration to issue a “Special Airworthiness Information Bulletin” in November 2017 alerting all owners, operators, maintainers, and certified repair facilities of Airbus BK117 helicopters of this serious “airworthiness concern.” (*Id.*) The bulletin noted that the manufacturers had not recommended inspections of the engine drainage system “to check for blockage.” (*Id.*) And it further cautioned that “[a] blocked drain line may, under certain circumstances, present a risk for an engine fire and/or inflight shutdown of the affected engine.” (*Id.*)

**B. Airbus and Safran have extensive direct and indirect contacts with North Carolina.**

The helicopter at issue here was manufactured by Airbus Helicopters Deutschland GmbH and was powered by two Arriel 1 E2 turboshaft engines

manufactured by Safran Helicopter Engines. Both companies have long cultivated and served the North Carolina helicopter market.<sup>1</sup>

**1. Airbus.** Airbus is a leading German helicopter manufacturer (formerly known as Eurocopter Deutschland GmbH). The company boasts that its “range of civil and military helicopters is the world’s largest,” and that its 12,000 “aircraft account for one third of the worldwide civil and parapublic fleet.” (R S p 2568) The helicopter at issue here, the BK117, was specifically designed by Airbus “for use as an emergency medical services helicopter.” (R S p 950)

As many as seventy Airbus BK117’s have been delivered to North Carolina operators—approximately ten percent of Airbus’s U.S. sales of this model. (R S pp 940, 943–44) The importance of the North Carolina market for BK117’s is clear not only from the volume of sales in the state but from the company’s own promotional efforts as well. In 2015, for example, Airbus touted at an industry conference that a North Carolina medevac company, Dare County MedFlight, was the “U.S. launch customer” for an updated version of its BK117 helicopter. (R S p 2568)

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<sup>1</sup> For ease of reference and readability, unless otherwise indicated, this brief refers to Airbus Helicopters Deutschland GmbH as “Airbus”; its exclusive American distributor Airbus Helicopters, Inc. as “Airbus USA”; Safran Helicopter Engines, the French company, as “Safran”; and its exclusive American distributor Safran Helicopter Engines USA, Inc., as “Safran USA.”

Even after its BK117 helicopters are sold in North Carolina, Airbus remains engaged in an ongoing, continuous relationship with its customers in the state. That is necessary because helicopters are sophisticated and complicated machines composed of thousands of proprietary parts that require constant maintenance, repair, and support.

One way that Airbus maintains contact with its customers in North Carolina, for example, is through tracking. Airbus tracks all of its helicopters operating in North Carolina, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Airbus also remains intimately involved in providing maintenance and support for its helicopters operating in North Carolina. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Customers can do this through Airbus’s online tool, Keycopter, which provides operators with critical information— [REDACTED]

[REDACTED]

[REDACTED] Keycopter also includes an “eRequest” service, “a quick and efficient way” for customers “to get answers from Airbus Helicopters experts on support and services questions.” (*Id.*)

In addition, Airbus issues service reports, service bulletins, and information notices directly to operators through Keycopter. (R S pp 1039–40, 1260, 1262–68) These notices are vital to helicopter operations—they are effectively equivalent to recall or repair notices by automobile manufacturers, and federal law requires that operators and servicers of helicopters maintain compliance with manufacturers’ alerts and notices. *See, e.g.*, 14 C.F.R. § 43.13(a) (“Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the

current manufacturer’s maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer.”).<sup>2</sup>

[REDACTED]

[REDACTED]

[REDACTED] So, for example, Airbus USA must routinely communicate with and receive Airbus’s approval to provide repair services.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For nearly two

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<sup>2</sup> As the FAA explains, “[m]anufacturers issue aircraft Service Bulletins in response to identified maintenance and manufacturing defect issues to give owners and operators critical and useful information about aircraft safety, maintenance, or product improvement.” FAA, *Service Bulletins and the Aircraft Owner* (Jan. 2022), <https://perma.cc/H52S-FG6D>.

<sup>3</sup> [REDACTED]

decades, Airbus has sold its helicopters to United States customers only through its exclusive distributor Airbus USA, a Texas corporation. As the trial court observed, Airbus USA “is not going to fly any helicopters . . . [or] use any helicopters. They’re not the end consumer. . . . [T]hey exist in order to distribute [and] sell these things, in the United States of America.” (Apr. 30, 2021 T p 22:13–18)

Airbus’s corporate representative acknowledged at his deposition that, “given the number of helicopters that [ ] are being sold in the U.S., there is always a risk for whatever reason of a helicopter crashing and injuring people for whatever reason.” (R S pp 1032–34) And, in light of the company’s extensive state contacts, he testified that Airbus “would expect to be ha[le]d into any court in the U.S. if such a claim or allegation potentially occurred.” (R S pp 1034–35)

**2. Safran.** Safran, previously known as Turbomeca, is the world’s leading supplier of gas-turbine helicopter engines and the exclusive engine supplier for the BK177 helicopter. (R S pp 2744, 3441–43)

For more than a decade, Safran has actively marketed its products in North Carolina. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



distributes these notices through the portal that it is distributing information to operators in North Carolina. (R S pp 2762–64, 2797, 2800)

Safran’s activities in North Carolina in connection with its Arriel helicopter engines extend beyond sales and marketing—they also include manufacturing in the state. In 2007, two years before the Charlotte symposium, a subsidiary company in the Safran family, Turbomeca Manufacturing, opened a factory in Monroe, North Carolina. Safran considered Turbomeca Monroe as one of its “providers in the U.S.” (R S p 2685), [REDACTED]

Several of Safran’s executives were directly involved in creating the factory in North Carolina. [REDACTED]

The Monroe plant received over \$5 million in tax and other incentives from state and local governments. (R S p 3571) A 2008 newsletter by Turbomeca (the French company that was later rebranded Safran) announced that it was “expand[ing] in the USA with a new site in Monroe, North Carolina” that would

allow it to “better meet the growing market demands and better serve [its] customers.” (R S p 3575)

### **C. Procedural history**

1. The estates of Mrs. Bartlett, the patient, and Mr. Harrison, one of the flight nurses, filed this negligence and breach-of-warranty action for wrongful-death damages in December 2017. Along with Airbus and Safran, the plaintiffs named as defendants the two companies’ U.S. distributors (Airbus USA and Safran USA), the helicopter operator (Air Methods), and the deceased pilot’s estate. The foreign manufacturers moved to dismiss for lack of personal jurisdiction in June 2018, after which the trial court authorized jurisdictional discovery.<sup>4</sup>

Nearly three years of discovery ensued. Airbus and Safran produced almost 15,000 documents, the plaintiffs took depositions of both companies’ corporate designees, and the trial court held seven hearings relating to jurisdictional discovery. The parties extensively briefed the jurisdictional issues and the trial court held a three-hour hearing in April 2021 on the motions to dismiss.

2. After all this, the trial court issued orders concluding that Airbus and Safran are both subject to jurisdiction in North Carolina. Based on the evidence produced in discovery, the trial court made detailed factual findings that both manufacturers

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<sup>4</sup> The estate of the other flight nurse killed in the crash, Crystal Sollinger, was permitted to intervene in this action in November 2018.

had delivered their products into the stream of commerce with the deliberate “expectation” that they would be “purchased and operated” in North Carolina. (R pp 589, 604) For example, the court found that Airbus:

- “tracked the Subject Helicopter from the date of purchase through its operation in North Carolina and until the date of the crash” and “knew that [it] was operated as a medical rescue craft in North Carolina”;
- “regularly and continuously monitored the sales, location, operators and hours logged of all its helicopters sold in the United States, including North Carolina”;
- “tracked owner and operator information in part to predict spare parts needs and to insure that parts and materials be made available for the future needs of owners and operators”;
- “knew and intended that the craft would be sold and used in . . . the United States and potentially North Carolina”; and
- “expressly contracted” with Airbus USA “to provide sales and marketing for [Airbus] in the United States, to include the Subject Helicopter model, and in which North Carolina was an important market.”

(R pp 582–85) Similarly, the trial court found that Safran:

- knew that its “helicopter engines operate throughout the United States by virtue of its exclusive contracts with [Airbus]” and its American distributor;
- “monitor[ed] and record[ed] the total operating hours of its engines operating in the United States, including North Carolina”;
- “created a website portal through which U.S. operators of its engines may order parts, obtain repairs, receive service updates and obtain maintenance information for [Safran’s] engines”;

- “participated in the organization and creation of a manufacturing plant for turbine-powered helicopter engine parts in Monroe, North Carolina under the name Turbomeca Manufacturing Monroe”; and
- sent officers and employees to the 2009 event in Charlotte promoting Arriel engines to engine operators.

(R pp 596–600)

Applying well-established personal-jurisdiction principles to these findings, the trial court determined that Airbus and Safran had “continuously and deliberately served the North Carolina market,” thereby purposefully availing themselves of the privilege of conducting business in North Carolina. (R pp 589, 604) In light of North Carolina’s “significant interests” in “providing North Carolina residents with a convenient forum for redressing injuries allegedly caused to them . . . while in North Carolina,” the trial court held that the exercise of jurisdiction here would be reasonable. (R pp 589, 606)

**3.** The Court of Appeals reversed. In an opinion by Judge Tyson, the court held that the foreign manufacturers were not subject to personal jurisdiction because they did not purposefully avail themselves of North Carolina’s market.

First, as to Airbus, the Court of Appeals determined that “[n]o evidence tends to show [Airbus] marketed, sold, or delivered its products to North Carolina.” App. ¶ 60. The court did not acknowledge the trial court’s express findings that Airbus delivered its helicopters with the expectation and intent to sell them in North Carolina. Instead, it simply contrasted the facts here with those in *Ford*, noting that

unlike Ford, Airbus “does not import nor operate a dealer network within the United States, and only sells and delivers the units in Germany directly to” Airbus USA. *Id.* ¶ 55. The court also minimized the Keycopter portal as a “passive” informational website—without grappling with the evidence showing that North Carolina customers could request parts and support through the portal and that Airbus also uses it to send information to users located in North Carolina. *Id.* ¶ 59. And the court did not mention the trial court’s findings that Airbus continuously monitored and tracked its helicopters in North Carolina, including the helicopter that crashed here.

Next, the Court of Appeals held that it did not have jurisdiction over Safran. App. ¶ 62. The opinion highlighted that the company’s “engine is not a consumer product” but is instead “manufactured, marketed, distributed, and sold solely as a component product for helicopters.” *Id.* ¶ 61. And it stressed that Safran “has never sought nor served a market in North Carolina for standalone helicopter engines,” and “never advertised, sold, or distributed any engines for sale to individual users or consumers in North Carolina.” *Id.* The court was silent on the trial court’s findings that Safran played a role in building the Monroe factory, and that its top executives had traveled to North Carolina to promote the company’s helicopter engines. And its analysis of Safran’s contacts did not mention the Court of Appeals’ recent decision in *Cohen v. Continental Motors, Inc.*, which held jurisdiction was proper over a foreign

airplane-part manufacturer—even though it “did not sell components to individual aircraft owners” in North Carolina. 2021-NCCOA-449, ¶ 29.

### **NOTICE OF APPEAL OF A CONSTITUTIONAL QUESTION**

This Court should allow this appeal as of right because it presents a substantial constitutional question involving the due-process requirements for exercising personal jurisdiction over foreign product manufacturers.

Under North Carolina law, state courts may exercise jurisdiction over non-resident defendants to the fullest extent allowed by the Fourteenth Amendment’s Due Process Clause. *See Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 2022-NCSC-19, ¶ 37.<sup>5</sup> For a state court to constitutionally exercise jurisdiction over a defendant who is not subject to the state’s general jurisdiction, the defendant must “have certain minimum contacts with [the forum state] such that the 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); *see Mucha*, 2021-NCSC-82, ¶ 9.<sup>6</sup> This requirement ensures that defendants have “fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

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<sup>5</sup> Neither Airbus nor Safran disputed below that the requirements of North Carolina’s long-arm statute have been satisfied here.

<sup>6</sup> Unless otherwise indicated, all internal citations, quotation marks, and alterations are omitted.

But the Due Process Clause is not a “territorial shield” for companies “to avoid interstate obligations that have been voluntarily assumed.” *Id.* at 474; *see Skinner v. Preferred Credit*, 361 N.C. 114, 134, 638 S.E.2d 203, 217 (2006). And States have a “manifest interest in providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Burger King*, 471 U.S. at 473. Thus, as the U.S. Supreme Court recently held, “[w]hen a company . . . serves a market for a product in a State and that product causes injury in the State to one of its residents, the State’s courts may entertain the resulting suit.” *Ford*, 141 S. Ct. at 1022.

The Court of Appeals violated these fundamental due-process principles. It held that North Carolina courts lack jurisdiction over Airbus and Safran—even though these companies have continuously and deliberately cultivated a market in North Carolina for the very helicopter and engines involved in the fatal crash at issue here. As we explain below, the Court of Appeals’ erroneous decision cannot be reconciled with the U.S. Supreme Court’s and this Court’s personal-jurisdiction precedents. The Court of Appeals’ constitutional errors bar the plaintiffs from seeking relief from Airbus and Safran in North Carolina, and the plaintiffs timely raised these constitutional issues in both the trial court and the Court of Appeals.

For these reasons, this Court should allow this appeal as a matter of right under N.C. Gen. Stat. § 7A-30. In the alternative, however, this Court should certify this appeal for discretionary review because it satisfies N.C. Gen. Stat. § 7A-31(c)’s

requirements. Either way, this Court should reverse the Court of Appeals' decision and ensure that North Carolina law comports with the Due Process Clause.

## **REASONS WHY CERTIFICATION SHOULD ISSUE**

### **I. The Court of Appeals' decision conflicts with precedent.**

In holding that North Carolina courts cannot exercise personal jurisdiction over the foreign manufacturers in this case, the decision below departed from prior decisions of this Court, the U.S. Supreme Court, and even the Court of Appeals itself. This Court should allow review to resolve these conflicts and ensure the uniformity of this State's personal-jurisdiction precedent. *See* N.C. Gen. Stat. § 7A-31(c)(3); *In re R.T.W.*, 359 N.C. 539, 542, 614 S.E.2d 489, 491 (2005) (allowing discretionary review to resolve conflict between decisions of the Court of Appeals).

### **A. The decision below is at odds with the U.S. Supreme Court's and this Court's personal-jurisdiction jurisprudence.**

The decision below turned on what is typically described as the "first" due-process requirement for exercising specific jurisdiction: purposeful availment. *See Mucha*, 2021-NCSC-82, ¶ 10. For a state to exercise jurisdiction, the defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The defendants' contacts with the state must not be "random, isolated, or fortuitous," but instead "show that the defendant deliberately 'reached out beyond' its home." *Ford*, 141 S. Ct. at 1024-25

(quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984), and *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

The Court of Appeals held that foreign manufacturers who deliberately and knowingly delivered products to their exclusive American distributors with the expectation that the distributors would in turn sell the products to North Carolina customers did not purposefully avail themselves of the North Carolina market. That holding conflicts with the U.S. Supreme Court’s and this Court’s precedent in multiple respects and therefore warrants review.

1. The decision below first conflicts with *Ford*, the U.S. Supreme Court’s most recent personal-jurisdiction precedent. In *Ford*, the Court definitively held that “specific jurisdiction attaches in cases . . . when a [manufacturer] serves a market for a product in the forum State and the product malfunctions there.” *Ford*, 141 S. Ct. at 1027. This well-established rule serves the doctrine’s twin interests in fairness and federalism. *See id.* at 1025. It ensures that the manufacturer “has ‘clear notice’ that it will be subject to jurisdiction in the State’s courts when the product malfunctions there (regardless where it was first sold).” *Id.* at 1030 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). And the rule respects the state’s “significant interests at stake—providing their residents with a convenient forum for redressing injuries inflicted by out-of-state actors, as well as enforcing their own safety regulations.” *Id.* Thus, as the Court put it in *Ford*, “[w]hen a company . . . serves a market for a product in a State

and that product causes injury in the State to one of its residents, the State’s courts may entertain the resulting suit.” *Id.* at 1022.

This case involves the “paradigm” fact pattern that *Ford* identified for finding specific jurisdiction: “[A] resident-plaintiff sues a global [vehicle] company, extensively serving the state market in a vehicle, for an in-state accident.” *See id.* at 1028. Yet the Court of Appeals overlooked this aspect of *Ford*. It did not try to evaluate whether Airbus “served” the North Carolina helicopter market. Instead, it rested its decision entirely on its view that “[n]o evidence tends to show [Airbus] marketed, sold, or delivered its products to North Carolina”—in other words, its view that Airbus did not *directly* sell or market in North Carolina. App. ¶ 60. But, as we explain below, the U.S. Supreme Court and this Court have never understood “serving” a state market to be limited to these kinds of direct contacts.<sup>7</sup>

Rather than applying *Ford*’s test for specific jurisdiction in the product-liability context, the Court of Appeals simply compared the facts of this case with those in *Ford*. While “Ford Motor Company sold the various vehicles involved in each accident directly to the public through an elaborate local dealer network,” the court

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<sup>7</sup> To be clear, the Court of Appeals’ analysis does not reflect the actual evidence in the record. As the trial court found, the manufacturers here specifically and directly targeted the state with marketing, maintenance support through an interactive web portal, and continuous and ongoing tracking of their helicopters and engines—Safran even sent its executives to Charlotte “to promote the sale and operation” of the class of engines involved in the crash. (R pp 583–85, 598–600)

reasoned, Airbus “does not import nor operate a dealer network within the United States, and only sells and delivers the units in Germany directly to Airbus [USA], an exclusive importer.” App. ¶ 55. But nothing in *Ford* suggested that the precise *way* in which Ford distributed its vehicles established a baseline for finding purposeful availment. Rather, *Ford* pronounced the general rule that jurisdiction is proper over a company that “systematically served a market in [a state] for the very vehicles that the plaintiffs allege malfunctioned and injured them in” that state. 141 S. Ct. at 1028. The Court of Appeals failed to adhere to that rule.

**2.** But the decision below does not only conflict with the U.S. Supreme Court’s most recent personal-jurisdiction case. It also presents a deeper conflict with decades of precedent—dating back to the Court’s seminal decision in *World-Wide Volkswagen*.

The U.S. Supreme Court has long held that the purposeful-availment inquiry considers whether a company “serve[s], directly or *indirectly*, the market for its product” in the forum state. *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). The record here shows, at the very least, that Airbus and Safran “indirectly” served the North Carolina market. In fact, nearly ten percent of Airbus’s U.S. sales of the Arriel-equipped BK117 were to North Carolina customers. *See, e.g., Ainsworth v. Moffett Eng’g, Ltd.*, 716 F.3d 174, 179 (5th Cir. 2013) (holding jurisdiction proper in Mississippi over manufacturer that sold forklifts through a distributor, when 1.55% of the manufacturer’s U.S. sales went to Mississippi). This consistent and substantial

volume of sales is not the kind of “isolated occurrence” that weighs against finding purposeful availment. *See World-Wide Volkswagen*, 444 U.S. at 297; *cf. Keeton*, 465 U.S. at 773–74 (the purposeful-availment requirement ensures that defendants will not be haled into a jurisdiction solely as a result of “random,” “fortuitous,” or “attenuated” contacts).

But the Court of Appeals did not consider the manufacturers’ indirect contacts when analyzing purposeful availment. Instead, as explained, it focused solely on its (erroneous) view that the record did not show that the manufacturers conducted *direct* sales and marketing in North Carolina. Even if that were correct, the Court of Appeals failed to follow binding precedent requiring that it evaluate a wider range of contacts for purposeful availment. In so holding, the Court of Appeals effectively barred state courts from exercising jurisdiction over foreign manufacturers who decide to sell to North Carolina through an intermediary distributor.

The decision below appears to have been motivated by the concern that “the mere manufacture and introduction of a product into the world’s ‘stream of commerce’ ”—without anything more—is insufficient to establish purposeful availment. App. ¶¶ 60, 62. But the court failed to appreciate the key language in *World-Wide Volkswagen*: “The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with *the expectation* that they will be purchased

by consumers in the forum State.” 444 U.S. at 297–98 (emphasis added). Indeed, this Court has held that even a “one-time” contact is sufficient to exercise jurisdiction so long as “the defendant *knew or reasonably should have known* that by undertaking some action, the defendant was establishing a connection with the State of North Carolina”—and that this “awareness” can be “actual or *imputed*.” *Mucha*, 2021-NCSC-82, ¶ 11 (emphasis added); *see, e.g., Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986) (defendant’s “aware[ness] that the contract was going to be substantially performed in this State” was sufficient to establish minimum contacts).

Yet the Court of Appeals did not assess whether the record shows—as the trial court found—that Airbus and Safran expected and were aware that their products are purchased by North Carolina consumers. That analysis cannot be reconciled with this Court’s and the U.S. Supreme Court’s precedent. And it is contrary to an array of state and federal decisions holding that purposeful availment exists when a manufacturer delivers products to a distributor with the knowledge and expectation that they will be sold in the forum state.<sup>8</sup>

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<sup>8</sup> *See, e.g., Griffin v. Ste. Michelle Wine Ests. LTD.*, 169 Idaho 57, 75, 491 P.3d 619, 637 (2021) (jurisdiction proper where manufacturer sent, via a distributor, “43 million bottles” to the United States because, “[g]iven the extensive network into which [the defendant] sent its bottles, it cannot credibly maintain it was unforeseeable that its bottles would end up in . . . Idaho,” and thousands did); *Ainsworth*, 716 F.3d at 179 (jurisdiction proper in Mississippi when manufacturer sold thousands of forklifts to distributor, knowing it would sell them in the U.S., made “no attempt to limit the

3. Finally, the decision below also creates a conflict over a frequently recurring question that has bedeviled courts in this state and nationwide: how to apply personal-jurisdiction principles to activity that occurs over the internet.

In *Havey v. Valentine*, 172 N.C. App. 812, 817, 616 S.E.2d 642, 648 (2005), the Court of Appeals held that whether a nonresident's operation of a website constitutes purposeful availment depends on the degree of interaction posed by the website. A purely passive website, one that "simply places information on the Internet," will not support jurisdiction. *Id.* But the more interactive a website and the more it "manifest[s] intent of engaging business or other interactions in the State," the more it warrants the exercise of personal jurisdiction. *Id.* (emphasis added).

In analyzing Airbus's online portal, however, the decision below did not faithfully apply that precedent. It recognized that Keycopter is an "interactive informational website," through which Airbus "provides answers to technical questions regarding the ongoing care and maintenance of their helicopters." App. ¶¶ 56, 59. Yet the Court of Appeals held that Airbus's operation of this admittedly

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territory in which [the distributor sold] its products," and 1.55<sup>0</sup>% of its U.S. sales went to Mississippi); *Willemssen v. Invacare Corp.*, 352 Or. 191, 203, 282 P.3d 867, 874 (2012) (jurisdiction proper even where manufacturer did not specifically direct distributor to target Oregon because sales of "1,100 CTE battery chargers within Oregon over a two-year period shows a regular flow or regular course of sales in Oregon").

interactive website did not factor into the purposeful-availment inquiry *at all* because the company did not “charge[ ] a subscription for access.” *Id.*, ¶ 59.

In holding that the jurisdictional relevance of a website turns entirely on whether it requires paid access, the decision below departs from *Havey*—and from other courts’ decisions as well. *See, e.g., Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890–91 (6th Cir. 2002) (holding that providing customers “with passwords to access their test results on the [defendant’s] website” was relevant to purposeful availment); *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007) (contrasting the defendant’s passive website, which did not support jurisdiction, with one that provides “direct means” for “purchasing parts *or* requesting services” (emphasis added)). And it also is in tension with the U.S. Supreme Court’s recognition that a company’s decision to “establish[ ] channels for providing regular advice to customers in the forum State” supports a finding of purposeful availment. *Asahi Metal Indus. Co., Ltd. v. Super. Ct.*, 480 U.S. 102, 112 (1987) (O’Connor, J., plurality op.); *see Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 944 (4th Cir. 1994). This appeal presents an opportunity to resolve this tension and provide guidance to lower courts about how to analyze personal jurisdiction in the modern, digital economy.

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In sum, the Court of Appeals’ analysis here conflicts with governing precedent in multiple, critical respects—each of which implicates important principles of

personal jurisdiction. This Court should allow review to clarify how these principles operate in the product-liability context, thereby providing guidance to courts and litigants alike.

**B. The decision below deepens a conflict over how to analyze jurisdiction over component manufacturers.**

The Court of Appeals' departures from the U.S. Supreme Court's and this Court's personal-jurisdiction precedent warrant discretionary review. But the decision below also deepened a more specific conflict over how purposeful-availing should be analyzed with respect to component manufacturers. That conflict similarly calls out for this Court's intervention.

The Court of Appeals spent only two paragraphs analyzing Safran's contacts with North Carolina. It admitted that Safran's "engine is not a consumer product," but "manufactured, marketed, distributed, and sold solely as a component product for helicopters." App. ¶ 61. Yet, in the next sentence, the court stressed that Safran "never sought nor served a market in North Carolina for standalone helicopter engines," and "never advertised, sold, or distributed any engines for sale to individual users or consumers in North Carolina." *Id.* Based on just these facts, the court concluded that Safran had not purposefully availed itself of the North Carolina market.<sup>9</sup>

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<sup>9</sup> The Court of Appeals did not confront the evidence showing that Safran had in fact deliberately targeted North Carolina. As detailed above, its executives had

This was not the first time that the Court of Appeals found that component-product manufacturers lie outside this State’s jurisdiction. Earlier this year, in *Miller v. LG Chem, Ltd.*, it held that LG Chem, a foreign battery manufacturer, did not purposefully avail itself of North Carolina’s market because it “never advertised, sold, or distributed any lithium-ion cells to anyone for sale to individual consumers for use as standalone, removable batteries.” 281 N.C. App. 531, 2022-NCCOA-55, ¶ 36 (Tyson, J.). Critical to *Miller’s* holding, as with the decision below, was the fact that the batteries at issue are “not consumer products; they are manufactured, marketed, distributed, and sold solely as industrial component products.” *Id.*, ¶ 35.<sup>10</sup>

The Court of Appeals’ reasoning in the decision below and in *Miller* effectively creates a categorical immunity for component manufacturers—because in nearly all cases, there will be *no* “standalone” market for “individual consumers” to buy the product. Component products are necessarily products that are sold to downstream manufacturers to integrate into a finished product. So, under the decision below,

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traveled to Charlotte specifically to promote the Arriel family of engines; it had been involved in setting up a manufacturing plant in Monroe for engine component parts; and it continuously monitored its engines operating in the state for purposes of maintenance and support.

<sup>10</sup> The plaintiffs in *Miller* have appealed as a matter of right based on the dissent in that case. *See Miller v LG Chem, Ltd.*, Case No. 69A22 (notice of appeal filed March 7, 2022).

specific jurisdiction cannot attach over a component manufacturer unless the ultimate downstream manufacturer is based in North Carolina.

That result is not only untenable as a matter of logic and fairness—it conflicts with the decisions of numerous other states. As these decisions make clear, state courts routinely exercise personal jurisdiction over component manufacturers whose products typically reach a state only after being assembled into a final product. *See Ex parte DBI, Inc.*, 23 So. 3d 635, 655–56 (Ala. 2009) (“In selling seat belts compliant with the FMVSS to Kia Motors, DBI should have foreseen that a certain percentage of the automobiles manufactured by Kia Motors would be distributed to . . . Alabama. Therefore, we hold that it would have been reasonable for DBI to anticipate being haled into court in Alabama.”); *see also, e.g., State v. LG Elecs., Inc.*, 186 Wash. 2d 169, 174, 182, 375 P.3d 1035, 1038, 1042 (2016); *Willemssen*, 352 Or. at 203; *Ruckstuhl v. Owens Corning Fiberglas Corp.*, 731 So. 2d 881, 891 (La. 1999); *Gray v. Am. Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

And the decision below also deepens an *internal* conflict within the Court of Appeals’ own case law. Just last year, in *Cohen v. Continental Motors, Inc.*, the Court of Appeals considered claims arising from a fatal airplane crash against CMI, an aircraft-parts manufacturer that “did not sell components to individual aircraft owners” but instead “actively maintained a business model that operated through independent distributors.” 2021-NCCOA-449, ¶ 29. CMI had no direct contacts with

North Carolina consumers, but its distributors sold significant quantities of its parts in the state, and CMI also allowed customers to access its online database (containing technical information and maintenance manuals) for a fee. *See id.*, ¶¶ 29–31. Finding this “fact pattern” to be “analogous” to those in *Ford* and *World-Wide Volkswagen*, the Court of Appeals concluded that “CMI served a market for a product in the forum state of North Carolina,” and that exercising jurisdiction accordingly satisfied due process. *Id.*, ¶ 29. The fact that CMI “serv[ed] the North Carolina market *indirectly* by operating” through independent distributors did not change the jurisdictional analysis. *See id.*, ¶ 30 (emphasis added).<sup>11</sup>

On its face, *Cohen* is highly analogous to this case. Yet the Court of Appeals did not try to square its decision here (or in *Miller*) with *Cohen*. In fact, the court did not mention *Cohen* at all when analyzing Safran’s contacts with North Carolina—even though Safran and CMI are similarly situated in that they are both *foreign aircraft-engine manufacturers*. And in its discussion of Airbus’s contacts, the court mentioned *Cohen* only to contrast the fact that the record did not show whether there was a fee to use Airbus’s online web portal, as there was for CMI’s online library. *See*

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<sup>11</sup> Judge Tyson authored a separate opinion in *Cohen*, concurring in part and in the result, in which he argued that many of CMI’s contacts that the majority relied on were not actually contacts with North Carolina. *See* 2021-NCCOA-449, ¶¶ 42–46. Nevertheless, he concluded that the fact that North Carolinians subscribed to CMI’s interactive online library in addition to CMI’s “other contacts related to North Carolina” supported the exercise of specific jurisdiction. *Id.* ¶¶ 53–54.

App. ¶ 59. The court thus deepened a conflict within its own case law. Absent this Court's review, that conflict will persist—leaving the lower courts with contradictory guidance as to how to analyze jurisdiction over component manufacturers.

**II. The issues presented by this appeal are important and of practical significance to North Carolina businesses and residents.**

Discretionary review is also warranted because this appeal raises important legal issues that have serious and practical consequences for this State's legal system and its residents. *See* N.C. Gen. Stat. § 7A-31(c)(1), (c)(2).

*First*, the decision below, if left to stand, is sure to engender confusion among all litigants—consumers and businesses alike. As explained, the Court of Appeals' opinion here is directly at odds with its prior decision in *Cohen*, depriving component manufacturers (and persons they injure) of clarity about whether and under what circumstances they are properly subject to jurisdiction in this State. More broadly, the Court of Appeals' departure from U.S. Supreme Court purposeful-availment precedent dating back to *World-Wide Volkswagen* leaves manufacturers, distributors, and consumers with deep confusion about how personal-jurisdiction principles operate in the product-liability context. Notably, this Court has not decided a product-liability personal-jurisdiction case in more than 50 years, *see Shepard v. Rheem Mfg. Co.*, 249 N.C. 454, 459, 106 S.E.2d 704, 708 (1959), and it has *never* considered the “stream of commerce” theory of personal jurisdiction. This case presents the Court

with an opportunity to weigh in and clarify how personal-jurisdiction principles apply in product-liability actions.

*Second*, the decision below would leave local North Carolina businesses and employers holding the bag for large multinational corporations who are primarily responsible for the alleged misconduct. This case is illustrative: The plaintiffs have alleged that Airbus and Safran negligently designed and constructed the helicopter and engines involved in the crash. But if the manufacturers are dismissed from the action for lack of personal jurisdiction, Air Methods (the operator of the helicopter in North Carolina) will potentially face disproportionate liability—not just for its own employees’ negligence in operating the helicopter, but also for manufacturing and design decisions over which it had no control. The effect of the decision below is that local, typically smaller businesses will have to shoulder the entire brunt of a product-liability suit that should have been defended by the manufacturer that designed, made, and marketed the product. Nothing about that result promotes the Due Process Clause’s interests in fairness and federalism. *Cf. Richmar Dev., Inc. v. Midland Doherty Servs., Ltd.*, 717 F. Supp. 1107, 1120 (W.D.N.C. 1989) (noting that “North Carolina . . . ha[s] strong interests in protecting the corporate entities that are contributing to the economic well-being of the area.”).

*Third*, and finally, the decision below seriously deprives North Carolinians of the ability to seek redress for injuries that they suffer in this state. “It is generally

conceded that [North Carolina] has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Tom Togs, Inc.*, 318 N.C. at 367; *see also Watson v. Emps. Liab. Assurance Corp.*, 348 U.S. 66, 73 (1954) (noting the states’ “legitimate interest in safeguarding the rights of persons injured there”). Indeed, “[f]ew matters could be deemed more appropriately the concern of the state in which [an] injury occurs” than “the bodily safety” of residents, and few things are “more completely within its power.” *Pacific Emps. Ins. Co. v. Indus. Accident Comm’n of State of Cal.*, 306 U.S. 493, 503 (1939). Yet the Court of Appeals failed to even acknowledge, let alone grapple with, North Carolina’s sovereign interest in protecting its citizens. This Court’s review is necessary to ensure that North Carolinians’ access to justice in this state’s courts is not unduly curtailed.

### **ISSUES TO BE BRIEFED**

If the Court allows this appeal or petition for discretionary review, the plaintiffs intend to brief the following issues:

- I. Whether and to what extent North Carolina courts may exercise personal jurisdiction over foreign companies who deliver their products to American distributors with the knowledge and expectation that those products will be sold in North Carolina.
- II. Whether and to what extent personal jurisdiction in North Carolina courts may be limited to manufacturers who serve a market for “standalone” products in North Carolina, such that personal jurisdiction is unavailable over any manufacturer of component parts.

## CONCLUSION

The plaintiffs respectfully request that this Court allow this appeal, or, in the alternative, certify the Court of Appeals' decision for discretionary review.

Respectfully submitted, this 11th day of October 2022.

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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-588

No. COA22-95

Filed 6 September 2022

Durham County, No. 17-CVS-004551

LENNARD BARTLETT, SR. ADMINISTRATOR OF THE ESTATE OF MARY  
SUSAN WHITE BARTLETT, Plaintiff,

v.

ESTATE OF JEFFREY L. BURKE; AIR METHODS CORPORATION; AIRBUS  
HELICOPTERS DEUTSCHLAND, GMBH; AIRBUS HELICOPTERS, INC.;  
SAFRAN HELICOPTER ENGINES; AND SAFRAN HELICOPTER ENGINES USA,  
INC., Defendants.

KASEY HOBSON HARRISON, EXECUTRIX OF THE ESTATE OF KRISTOPHER  
RAY HARRISON, Plaintiff

v.

ESTATE OF JEFFREY L. BURKE; AIR METHODS CORPORATION; AIRBUS  
HELICOPTERS DEUTSCHLAND, GMBH; AIRBUS HELICOPTERS, INC.;  
SAFRAN HELICOPTER ENGINES; AND SAFRAN HELICOPTER ENGINES USA,  
INC., Defendants.

Appeal by defendants from orders entered 13 September 2021 by Judge David

L. Hall in Durham County Superior Court. Heard in the Court of Appeals 9 August  
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TYSON, Judge.

¶ 1 Safran Helicopter Engines (“SHE”) and Airbus Helicopters Deutschland GmbH (“AHD”) appeal from orders entered denying their motions to dismiss for lack of specific personal jurisdiction. We reverse and remand.

### **I. Background**

¶ 2 At approximately 11:08 a.m. on 8 September 2017, a Eurocopter Deutschland GmbH model MBB-BK117 C2 helicopter (“Helicopter”) took off from the helipad at

Sentara Albemarle Regional Medical Center in Elizabeth City with a flight plan bound for the helipad located at Duke University Hospital in Durham. The Helicopter's manufacturer designated the unit as serial number 9474, and it was assigned a Federal Aviation Administration ("FAA") registration number of N146DU. Air Methods Corporation operated the Helicopter for the owner, Duke University Health Systems, Inc., specifically as a medevac flight for Duke Life Flight.

¶ 3 The Helicopter pilot commenced a turn to the south at approximately 11:16 a.m. A minute later, the Helicopter's computer transmitted flight data stating the aircraft was flying at an altitude of 1,200 feet above mean sea level with a ground speed of 75 knots or 86.3 miles per hour. Witnesses on the ground later reported they observed smoke trailing from behind the Helicopter while in flight. Witnesses also reported the Helicopter appeared to be hovering and not traveling forward. The Helicopter quickly descended and impacted a shallow turf drainage pathway about 30 feet wide and 2,000 feet long located between two fields of eight-foot-tall grass on a wind turbine farm in Hertford. The Helicopter landed upright, but the cabin collapsed downward upon impact and was partially consumed by post-impact fire.

¶ 4 Onboard the Helicopter was pilot-in-charge, Jeffrey L. Burke; two flight nurses: Kristopher R. Harrison and Crystal Sollinger; and patient, Mary Susan White Bartlett. All individuals aboard perished in the crash. Burke was employed by Air Methods Corporation and Harrison and Sollinger were employed by Duke University

Health Systems, Inc.

¶ 5           The National Transportation Safety Board (“NTSB”) investigated the crash. Examination of the Helicopter’s wreckage revealed the second engine’s rear turbine shaft bearing exhibited dislocation consistent with overheating and lack of lubrication, and the bearing roller pins were worn down to the surface of the bearing race. The FAA issued a Special Airworthiness Information Bulletin (“SAIB”) SW-18-04 alerting owners, operators, maintainers, and certified repair facilities of the MBB-BK117 C2 helicopters of possible blockages of the engine oil drainage system. The SAIB SW-18-04 bulletin references an emergency landing by a MBB-BK117 C2 helicopter in Sioux Falls, South Dakota on 26 January 2017 resulting in no fatalities and the 8 September 2017 crash of this Helicopter. The SAIB noted “block drain line may, under certain circumstances, present a risk for an engine fire and/or inflight shutdown of the affected engine.” SAIB SW-18-04 recommended operators of MBB-BK117 C2 helicopters perform inspections of the bearing lines and drain collector at a maximum of 100 hours of time-in-service.

¶ 6           The Helicopter at issue was equipped with two Arriel 1E2 jet turbine engines (the “Engines”) manufactured by Turbomeca S.A.S, which company was purchased by Safran SA in 2005 and rebranded as SHE in 2016. SHE is a wholly-owned subsidiary of Safran SA, a French public limited company, which is not a party to this action. SHE’s principal place of business is located in Paris, France, and it maintains

a place of business in Bordes, France, where it manufactured the Engines at issue. SHE sold and delivered the Engines to Eurocopter Deutschland GmbH located in Germany in December 2010. SHE sells and delivers Arriel engines to AHD in both France and Germany.

¶ 7 Safran Helicopter Engines USA is a Delaware corporation with its principal place of business located in Grand Marie, Texas. Safran Helicopter Engines USA is a wholly-owned subsidiary of Safran USA, a Delaware corporation with its principal place of business located in Irving, Texas. Safran USA is also a wholly owned subsidiary of Safran S.A. Safran USA fulfills orders for engines, provides technical support to customers, and markets these services and products within the United States.

¶ 8 Safran S.A. and Safran USA chartered Turbomeca Manufacturing, a Delaware Corporation, in July 2007. Turbomeca Manufacturing, Inc. was later renamed Turbomeca Manufacturing LLC. Turbomeca Manufacturing, Inc. manufactured helicopter engine components. Turbomeca Manufacturing, Inc. opened a manufacturing facility in Monroe. Safran purchases engine components from Turbomeca Manufacturing LLC for use in engines it manufactured in France.

¶ 9 AHD is formerly known as Eurocopter Deutschland GmbH. Eurocopter Deutschland GmbH was renamed AHD in 2014. AHD is a company engaged in the design, manufacture, testing, inspection, assembly, labeling, advertising, sale,

promotion, and distribution of helicopters, with its principal place of business located in Germany. AHD sourced two helicopter components from companies located in North Carolina.

¶ 10 Airbus Helicopters, Inc. is a Delaware corporation with its principal place of business in Texas. Airbus Helicopters, Inc. is the successor to American Eurocopter Corporation. In 2009, Eurocopter entered a Distribution and Service Center Agreement with American Eurocopter Corporation, which was assigned to successor entity Airbus Helicopters, Inc.

¶ 11 The Distribution and Service Center Agreement defines their relationship and granted American Eurocopter Corporation the exclusive right to sell new Eurocopter helicopters within the United States. American Eurocopter Corporation obligated itself to promote, market, and support products it purchased from Eurocopter for resale within the United States.

¶ 12 In 2011, Eurocopter sold and delivered the Helicopter at issue to American Eurocopter Corporation. This transaction occurred in Germany. The purchase agreement is governed by German law. American Eurocopter Corporation was responsible for importing the Helicopter into the United States. The Helicopter was delivered in a standard configuration.

¶ 13 American Eurocopter Corporation imported and sold the Helicopter to Duke University Health System, Inc. in Texas also in a standard configuration. American

Eurocopter Corporation agreed to provide Duke University Health System, Inc. as the Helicopter's owner with technical publications, pilot training, and maintenance training.

¶ 14 AHD was made aware Air Methods was operating the Helicopter as an EMS medevac Duke Life Flight on behalf of Duke University Health System, Inc. AHD was also made aware of approximately two dozen other similar helicopter operators in North Carolina. In 2017, Air Methods asked Airbus Helicopters, Inc. a technical question about the Helicopter that required Airbus Helicopters, Inc. to obtain information from AHD, which then responded to Air Methods. The subject of this inquiry is not at issue in the accident involving the Helicopter.

¶ 15 Lennard Bartlett, Sr., in his capacity as administrator of the estate of Mary Susan White Bartlett, and Kasey Hobson Harrison, in her capacity as executrix of the estate of Kristopher Ray Harrison, each filed negligence and breach of warranty actions for wrongful death damages against the Estate of Jeffrey L. Burke; Air Methods Corporation; AHD; Airbus Helicopters, Inc.; SHE; and, Safran Helicopter Engines USA, Inc. on 11 December 2017.

¶ 16 Dina Burke, as administrator of the Estate of Jeffrey L. Burke, filed crossclaims against SHE and AHD.

¶ 17 Lennard Bartlett, Sr., in his capacity as administrator of the estate of Mary Susan White Bartlett ("Bartlett Action"), and Kasey Hobson Harrison, in her capacity

as executrix of the estate of Kristopher Ray Harrison (“Harrison Action”), each filed amended complaints. The Estate of Jeffrey L. Burke and Air Methods Corporation answered, asserted affirmative defenses, and cross-claimed for indemnity against SHE and AHD.

¶ 18 SHE moved to dismiss the Bartlett and Harrison Actions on 15 June 2018. SHE also moved to dismiss the indemnity claims filed by the Estate of Jeffrey L. Burke and Air Methods Corporation. Both the Bartlett and Harrison Actions were consolidated by order on 14 August 2018.

¶ 19 AHD moved to dismiss the Bartlett and Harrison Actions for lack of personal jurisdiction on 21 August 2018 and 11 September 2018, respectively. AHD moved to dismiss the crossclaim of the Estate of Jeffrey L. Burke on 6 May 2019.

¶ 20 On 1 October 2018, Robert Sollinger, in his capacity as executor of the estate of Crystal Sollinger, moved to intervene and file a complaint, which was granted by order entered on 13 November 2018. SHE and AHD moved to dismiss the Sollinger action for lack of personal jurisdiction on 6 May 2019. The trial court entered orders denying SHE’s and AHD’s motions to dismiss under Rule 12(b)(2) of the North Carolina Rules of Civil Procedure and holding North Carolina had personal jurisdiction over SHE and AHD by orders entered 13 September 2021. SHE and AHD appeal.

## **II. Jurisdiction**

¶ 21 SHE and AHD correctly concede this appeal is interlocutory but assert their substantial rights will be impacted without immediate review. *See* N.C. Gen. Stat. § 7A-27(b)(3)(a) (2021).

¶ 22 “Generally, there is no right of immediate appeal from interlocutory orders and judgments.” *Goldston v. American Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990).

¶ 23 Our Supreme Court has held:

A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court. An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.

*Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (internal citations omitted).

¶ 24 “This general prohibition against immediate [interlocutory] appeal exists because [t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders.” *Harris v. Matthews*, 361 N.C. 265, 269, 643 S.E.2d 566, 568 (2007) (citation and internal quotations omitted).

¶ 25 Our General Statutes recognize a limited right to an immediate appeal from

an interlocutory order denying a motion to dismiss for lack of personal jurisdiction. See N.C. Gen. Stat. § 1-277(b) (2021) (“Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant[.]”). The denial of a “motion[] to dismiss for lack of personal jurisdiction affect[s] a substantial right and [is] immediately appealable.” *A.R. Haire, Inc. v. St. Denis*, 176 N.C. App. 255, 257-58, 625 S.E.2d 894, 898 (2006) (citations omitted).

¶ 26 This exception is narrow: “the right of immediate appeal of an adverse ruling as to jurisdiction over the person, under [N.C. Gen. Stat. § 1-277(b)], is limited to rulings on ‘minimum contacts’ questions, the subject matter of Rule 12(b)(2).” *Love v. Moore*, 305 N.C. 575, 581, 291 S.E.2d 141, 146 (1982). This appeal is properly before this Court.

### III. Issue

¶ 27 SHE and AHD argue the trial court erred in asserting and holding it had acquired personal jurisdiction over them.

### IV. Personal Jurisdiction

¶ 28 North Carolina applies a two-step analysis to determine whether a non-resident defendant is subject to *in personam* jurisdiction. See *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 364, 348 S.E.2d 782, 785 (1986) (citation omitted). “First, jurisdiction must be authorized by our ‘long-arm’ statute, N.C. Gen. Stat. § 1-

75.4. Second, if the long-arm statute permits consideration of the action, exercise of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.” *Cambridge Homes of N.C. Ltd. P’ship v. Hyundai Constr., Inc.*, 194 N.C. App. 407, 411, 670 S.E.2d 290, 295 (2008) (internal citations and quotation marks omitted).

¶ 29 The Fourteenth Amendment’s Due Process Clause limits a state court’s power to exercise jurisdiction over a non-resident defendant. *See International Shoe Co. v. Washington*, 326 U.S. 310, 315 90 L. Ed. 95, 101 (1945). The Supreme Court of the United States recognizes “two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 592 U.S. \_\_, \_\_, 209 L. Ed. 2d 225, 233 (2021) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 180 L. Ed. 2d 796, (2011)).

¶ 30 “The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of” the forum state’s laws. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75, 85 L. Ed. 2d 528, 542 (1985) (internal citation omitted). This “purposefully avails’ requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’

‘fortuitous,’ or ‘attenuated’ contacts[.]” *Id.* (citation omitted).

¶ 31 The basis of the suit must “arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 582 U.S. \_\_\_, \_\_\_, 198 L. Ed. 2d 395, 403 (2017) (citation omitted); *see Ford Motor Co.*, 592 U.S. at \_\_\_, 209 L. Ed. 2d at 234 (citations omitted); *Burger King*, 471 U.S. at 472, 85 L. Ed. 2d at 541 (citation omitted); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 80 L. Ed. 2d 404, 411 (1984) (citations omitted); *International Shoe*, 326 U.S. at 319, 90 L. Ed. at 104.

#### **A. Standard of Review**

¶ 32 “When jurisdiction is challenged, plaintiff has the burden of proving that jurisdiction exists.” *Stetser v. TAP Pharm. Prods., Inc.*, 162 N.C. App. 518, 520, 591 S.E.2d 572, 574 (2004) (citation omitted). As noted above, “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Burger King Corp.*, 471 U.S. at 475, 85 L. Ed. 2d at 542 (citation omitted).

¶ 33 “The standard of review [on appeal] of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence in the record[.]” *Bell v. Mozley*, 216 N.C. App. 540, 543, 716 S.E.2d 868, 871 (2011) (citation and quotation marks omitted). “We review *de novo* the issue

of whether the trial court’s findings of fact support its conclusion of law that the court has personal jurisdiction over a defendant.” *Id.* (citation omitted).

### **B. Minimum Contacts**

¶ 34 North Carolina’s Long Arm Statute, N.C. Gen. Stat. § 1-75.4 (2021), grants North Carolina’s courts specific personal jurisdiction “over defendant[s] to the extent allowed by due process.” *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676, 231 S.E.2d 629, 631 (1977). The two-step inquiry from *Tom Togs* “collapses into the question of whether” the defendant moving to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(2) “has the minimum contacts with North Carolina necessary to meet the requirements of due process.” *Sherlock v. Sherlock*, 143 N.C. App. 300, 303, 545 S.E.2d 757, 760 (2001) (citations and quotation marks omitted).

#### **1. *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.***

¶ 35 The Supreme Court of the United States recently addressed the issue of a state court’s authority under the Due Process Clause of the Fourteenth Amendment to exercise personal jurisdiction over an out-of-state defendant in *Ford Motor Co.*, 592 U.S. at \_\_\_, 209 L. Ed. 2d at 232. In *Ford*, the action arose out of two separate automobile accidents occurring in Montana and Minnesota involving vehicles manufactured by Ford Motor Company. *Id.* Ford Motor Company is incorporated in Delaware and headquartered in Michigan. *Id.* at \_\_\_, 209 L. Ed. 2d at 231.

¶ 36 Ford Motor Company conceded “it does substantial business in” both states,

“that it actively seeks to serve the market for automobiles and related products” in both states, and “it ha[d] purposefully avail[ed] itself of the privilege of conducting activities in both places.” *Id.* at \_\_\_, 209 L. Ed. 2d at 235 (citation and quotation marks omitted). Ford Motor Company maintained and argued a strict causal relationship was required to be shown between the injury and conduct.

¶ 37 Ford Motor Company asserted the required link had to “be causal in nature” and “jurisdiction attaches only if the defendant’s forum conduct *gave rise* to the plaintiff’s claims.” *Id.* (quotation marks omitted).

¶ 38 The Supreme Court of the United States held:

None of our precedents ha[ve] suggested that only a strict causal relationship between the defendant’s in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit “arise out of *or relate to* the defendant’s contacts with the forum.” The first half of that standard asks about causation; but the back half, after the “or,” contemplates that some relationships will support jurisdiction without a causal showing. *That 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.* But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff’s claim came about because of the defendant’s in-state conduct.

*Id.* at \_\_\_, 209 L. Ed. 2d at 235-36 (last emphasis supplied, citations omitted).

¶ 39 The Supreme Court’s majority opinion drew the following example analyzing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 297, 62 L. ed. 2d 490 (1980):

[I]ndeed, this Court has stated that specific jurisdiction attaches in cases . . . when a company like Ford serves a market for a product in the forum State and the product malfunctions there. In *World-Wide Volkswagen*, the Court held that an Oklahoma court could not assert jurisdiction over a New York car dealer just because a car it sold later caught fire in Oklahoma. But in so doing, we contrasted the dealer’s position to that of two other defendants—Audi, the car’s manufacturer, and Volkswagen, the car’s nationwide importer (neither of which contested jurisdiction):

“[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in [several or all] other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.”

Or said another way, if Audi and Volkswagen’s business deliberately extended into Oklahoma (among other States), then Oklahoma’s courts could hold the companies accountable for a car’s catching fire there—even though the vehicle had been designed and made overseas and sold in New York. For, the Court explained, a company thus “purposefully avail[ing] itself” of the Oklahoma auto market “has clear notice” of its exposure in that State to suits arising from local accidents involving its cars. And the company could do something about that exposure: It could “act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are [still] too great, severing its connection with the State.”

*Id.* at \_\_\_, 209 L. Ed. 2d at 236-37 (citations omitted).

Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.” *Id.* at \_\_\_, 209 L. Ed. 2d at 238 (citation omitted).

¶ 41 The majority’s opinion in *Ford*, does not explain how a large national, ubiquitous company could not be subject to jurisdiction in all courts, however, it cites with approval and does not overrule its decision in *Goodyear*. In *Goodyear*, the Supreme Court of the United States found North Carolina could not hale Goodyear Dunlop Tires Operations, S.A. into a North Carolina court, when the allegedly defective tire was manufactured in Turkey and purportedly malfunctioned in France. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 918, 180 L. Ed. 2d at 802.

¶ 42 The majority’s opinion’s “assortment of nouns” in *Ford* does not establish outer limits for lower courts to follow when evaluating whether due process protections prohibit a court from establishing specific personal jurisdiction over a non-forum defendant. *Ford Motor Co.*, 592 U.S. at \_\_\_, 209 L. Ed. 2d at 245 (Gorsuch, J., concurring). Justice Gorsuch’s concurrence asserts the majority opinion’s holding may affect lower court’s evaluation of specific personal jurisdiction after *Ford*:

Where this leaves us is far from clear. For a case to “relate to” the defendant’s forum contacts, the majority says, it is enough if an “affiliation” or “relationship” or “connection” exists between them. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are

left to guess. The majority promises that its new test “does not mean anything goes,” but that hardly tells us what does. In some cases, the new test may prove more forgiving than the old causation rule. But it’s hard not to wonder whether it may also sometimes turn out to be more demanding. Unclear too is whether, in some cases like that, the majority would treat causation and “affiliation” as alternative routes to specific jurisdiction or whether it would deny jurisdiction outright.

*Id.* (internal citations omitted).

¶ 43 This Court’s post-*Ford* opinions in *Cohen v. Cont’l Motors, Inc.*, 2021-NCCOA-449, 279 N.C. App. 123, 864 S.E.2d 816 (2021) and *Miller v. L.G. Chem, Ltd.*, 2022-NCCOA-55, 281 N.C. App. 531, 868 S.E.2d 896 (2022) analyze prior specific personal jurisdiction precedents. *Cohen* and *Miller* are instructive and set precedential goalposts and boundary lines to determine whether sufficient or insufficient jurisdictional contacts are shown and proven.

**1. *Cohen v. Cont’l Motors, Inc.***

¶ 44 In *Cohen*, the plaintiffs’ aircraft starter adapter failed, causing a loss of oil pressure and ultimate failure of the aircraft’s engine. *Cohen*, 2021-NCCOA-449 at ¶ 2, 279 N.C. App. at 125, 864 S.E.2d at 818. The plane crashed and both owners/pilots perished. *Id.* Continental Motors, Inc., the engine’s manufacturer, is domiciled in Delaware, made nearly 3,000 sales, earning almost \$4 million from North Carolina-based consumers. *Id.* at ¶¶ 3-4, 279 N.C. App. at 125, 864 S.E.2d at 819. Continental Motors worked closely with fourteen paid North Carolina maintenance providers and

paid subscribers from its electronic subscription account for manuals and technical support. *Id.* at ¶ 6, 279 N.C. App. at 126, 864 S.E.2d at 819.

## **2. *Miller v. L.G. Chem, Ltd.***

¶ 45 “LG Chem manufactures and sells lithium-ion batteries which are designed and sold solely to corporate and industrial businesses for inclusion in battery packs used for specified products” not for use in the vape devices for which they were inserted in the underlying action. *Miller*, 2022-NCCOA-55 at ¶ 23, 281 N.C. App. at 537, 868 S.E.2d at 901. LG Chem never sold battery or battery components to North Carolina-based companies. *Id.* at ¶ 26, 281 N.C. App. at 538, 868 S.E.2d at 902. This Court held the defendants in *Cohen* could be haled into North Carolina’s courts, but the defendants in *Miller* could not.

## **C. Analysis**

¶ 46 This Court has held: “The mere fact that [a defendant] was ‘connected’ to the manufacture and distribution of [a product] is not sufficient to support a conclusion that [the defendant] purposefully availed itself of North Carolina jurisdiction by injecting its products into the stream of commerce.” *Id.* at ¶ 19, 281 N.C. App. at 536, 868 S.E.2d at 901 (citation omitted).

¶ 47 Our Supreme Court recently summarized the Supreme Court of the United States’ prerequisites for a forum to exercise personal jurisdiction under a stream of commerce theory in *Mucha v. Wagner*, 2021-NCSC-82, 378 N.C. 167, 861 S.E.2d 501

(2021):

These cases have drawn a distinction between conduct targeted at states generally and conduct targeted at the specific forum state seeking to exercise jurisdiction over the defendant. Thus, the Court has held that a forum state may exercise personal jurisdiction over a defendant who delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State, but not over a defendant who directed marketing and sales efforts at the United States without engaging in conduct purposefully directed at the forum state.

*Id.* at ¶ 15, 378 N.C. at 173, 861 S.E.2d at 507-08 (citations, alterations, and internal quotation marks omitted).

¶ 48 Neither Bartlett, Harrison, nor any of the plaintiffs make any arguments to “pierce the corporate veil” of AHD or SHE or assert either entity is an “alter ego” of the United States- based defendants to AHD and SHE. SHE has no relationship with Safran Helicopter Engines USA. AHD has no ownership interest in Airbus Helicopters, Inc. The parties’ relationship is governed by the distributor agreement. Neither Airbus SE nor Safran S.A., the corporate parents, of AHD and SHE are parties in this action. *Glenn v. Wagner*, 313 N.C. 450, 455, 329 S.E.2d 326, 330-31 (1985) (lays out elements and factors for a court to consider whether to pierce the corporate veil). *See Acceptance Corp. v. Spencer*, 268 N.C. 1, 8, 149 S.E.2d 570, 575 (1966) (“[A] corporation which exercises actual control over another, operating the latter as a mere instrumentality or tool, is liable for the torts of the corporation thus

controlled. In such instances, the separate identities of parent and subsidiary or affiliated corporations may be disregarded.”) (citation omitted).

¶ 49 A federal trial court has held the North Carolina court “would adopt the internal affairs doctrine and apply the law of the state of incorporation” in piercing the corporate veil. *Dassault Falcon Jet Corp. v. Oberflex, Inc.*, 909 F. Supp. 345, 349 (M.D.N.C. 1995). However, while not explaining why it used North Carolina law, this Court applied North Carolina law to pierce the corporate veil of a Florida corporation doing business in North Carolina to uphold personal jurisdiction in North Carolina. *See Copley Triangle Assoc. v. Apparel America, Inc.*, 96 N.C. App. 263, 265, 385 S.E2d 201, 203 (1989). The structural and governance integrity of the foreign corporate entities is unchallenged.

### ***1. AHD***

¶ 50 AHD argues the trial court erred by finding it “availed itself of the privilege of conducting business in North Carolina through its continuous and deliberate efforts to serve the market here, individually[,]” and that “AHD has continuously and deliberately served the North Carolina market with regard to the Subject Helicopter and similar models.”

¶ 51 AHD challenges the following finding of fact:

11. The sales and marketing services AHD *sought and obtained* for the North Carolina market *are contacts* with North Carolina for purposes of this Motion;

(emphasis supplied).

¶ 52 “The labels ‘findings of fact’ and ‘conclusions of law’ employed by the trial court in a written order do not determine the nature of our review.” *Westmoreland v. High Point Healthcare Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citation omitted). “As a general rule, however, any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law. Any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.” *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal citations and quotation marks omitted). This “findings of fact” is properly characterized and reviewed as a conclusion of law.

¶ 53 AHD also challenges the following conclusions of law:

3. Discovery taken in this action fairly demonstrates that at the time AHD manufactured the Subject Helicopter, it knew and intended that the craft would be sold and used in an international market, including the United States and *potentially* North Carolina;

17. The facts found above demonstrate that AHD delivered the Subject Helicopter *into the stream of commerce* with the expectation it would be purchased and operated anywhere in the United States, specifically to include North Carolina;

19. In applying controlling law, this Court makes its Conclusions based, without limitation, the facts found that AHD at all times relevant to this action had

a) an international scope of operations;

b) chose to sell the Subject Helicopter (and similar models) via a nation-wide (sic) exclusive distributor agreement with A[irbus] H[elicopters] I[nc.] that included North Carolina;

c) made no attempt to limit sales to North Carolina;

d) had actual knowledge that the Subject Helicopter was being used as a medical services helicopter in North Carolina for more than seven (7) years prior to the loss complained of;

e) tracked ownership, operation, purpose and hours flown relating to the Subject Helicopter in part to derive benefit from future part sales and repairs;

f) participated in sufficient marketing and sales activity within North Carolina;

21. AHD had actual notice of potential exposure in the North Carolina courts arising from the sale and operation of the Subject Helicopter (and similar models) in North Carolina, and by providing ongoing guidance, instruction, and replacement parts for the continued operation of the Subject Helicopter in North Carolina, both individually and through its exclusive distributor A[irbus] H[elicopters] I[nc.];

(emphasis supplied). We will review these conclusions in our analysis of the underlying motion to dismiss.

¶ 54 The product at issue is a MB-BK117 C2 helicopter and its engines. AHD sells and delivers the helicopter in Germany to Airbus Helicopters Inc., who in turn imports the helicopters into the United States. Once imported into the United States, the helicopters are sold and delivered in Texas to the new owner or end user by Airbus

Helicopters, Inc., a wholly separate entity, and is not a party to this appeal.

¶ 55 Ford Motor Company sold the various vehicles involved in each accident directly to the public through an elaborate local dealer network. Ford Motor Company “advertised, sold, and serviced those two car models in both [forum] States for many years.” *Ford Motor Co.*, 592 U.S. at \_\_\_, 209 L. Ed. 2d at 238. Unlike in *Ford*, AHD does not import nor operate a dealer network within the United States, and only sells and delivers the units in Germany directly to Airbus Helicopters Inc., an exclusive importer.

¶ 56 AHD does provide operator access to a website portal, Keycopter. The data and technical support provided by AHD includes technical publications, maintenance manuals, and technical instructions. AHD provides answers to technical questions regarding the ongoing care and maintenance of their helicopters through Keycopter.

¶ 57 In *Havey v. Valentine*, 172 N.C. App. 812, 816-17, 616 S.E.2d 642, 647-48 (2005), our Court adopted the United States Court of Appeals for the Fourth Circuit’s rule for determining whether an internet website can become the basis for the exercise of personal jurisdiction in the forum. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002). *ALS Scan, Inc.* adopted the analysis from *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp 1119 (W.D.Pa. 1997).

¶ 58 In *Havey*, this Court held:

A State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts. *Under this standard, a person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received.* Such passive Internet activity does not generally include directing electronic activity into the State with the manifested intent of engaging business or other interactions in the State thus creating in a person within the State a potential cause of action cognizable in courts located in the State. *When a website is neither merely passive nor highly interactive, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs.*

*Havey*, 172 N.C. App. at 816-17, 616 S.E.2d at 647-48 (emphasis supplied) (internal citations, quotation marks, and alterations omitted).

¶ 59 AHD's website, Keycopter, is an interactive informational website. The website provides a technical library where subscribers can access instructions. Unlike the technical website present, in *Cohen*, the record does not disclose whether AHD charged a subscription for access or generated any revenue from any North Carolina customers' access. At oral argument counsel for AHD stated the aircraft owner's warranty card provided their access to Keycopter. Unlike the paid subscription service shown in *Cohen*, this Keycopter portal is not shown to contain a

commercial nature from paid subscriptions. “A passive [w]eb site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction.” *ALS Scan, Inc.*, 293 F.3d at 714.

¶ 60 When considering whether AHD’s alleged contacts “related to” North Carolina, beyond mere “stream of commerce,” AHD has not “purposefully availed” itself of our forum, and these contacts are not sufficient to support the trial court’s assertion of specific personal jurisdiction. *Havey*, 172 N.C. App. at 817, 616 S.E.2d 648; N.C. Gen. Stat. § 1-75.4. No evidence tends to show AHD marketed, sold, or delivered its products to North Carolina. Even if true, as the trial court’s “stream of commerce” “findings of fact” #2 and #3 assert, the mere manufacture and introduction of a product into the world’s “stream of commerce” without “purposeful availment” is insufficient to establish personal jurisdiction in North Carolina. *Burger King Corp.*, 471 U.S. at 474-75, 85 L. Ed. 2d at 542; *Mucha*, 2021-NCSC-82 at ¶ 15, 378 N.C. at 173, 861 S.E.2d at 507-08. The order of the trial court finding and concluding personal jurisdiction exists in North Carolina over AHD is reversed.

## **2. SHE**

¶ 61 Here, the product at issue is SHE’s Arriel 1E2 engines, which powered the Helicopter. The engine is not a consumer product. It is manufactured, marketed, distributed, and sold solely as a component product for helicopters. Like in *Miller*, SHE has never sought nor served a market in North Carolina for standalone

helicopter engines. *Miller*, 2022-NCCOA-55 at ¶ 36, 281 N.C. App. at 540, 868 S.E.2d at 903. SHE never advertised, sold, or distributed any engines for sale to individual users or consumers in North Carolina.

¶ 62 Beyond worldwide “stream of commerce” SHE also has not “purposefully availed” itself of our forum. *Havey*, 172 N.C. App. at 817, 616 S.E.2d at 648; see N.C. Gen. Stat. § 1-75.4. These contacts are not sufficient to support the trial court’s assertion of specific personal jurisdiction in North Carolina. *Id.* The mere introduction of a product into the “stream of commerce” without “purposeful availment” is insufficient to establish jurisdiction. *Burger King Corp.*, 471 U.S. at 474-75, 85 L. Ed. 2d at 542; *Mucha*, 2021-NCSC-82 at ¶ 15, 378 N.C. at 173, 861 S.E.2d at 507-08; *Miller*, 2022-NCCOA-55 at ¶ 19, 281 N.C. App. at 536, 868 S.E.2d at 901 (citation omitted). The order of the trial court concluding personal jurisdiction exists over SHE in North Carolina is reversed.

## V. Conclusion

¶ 63 Plaintiffs bear the burden of proving jurisdiction. Plaintiffs have failed to show any of these activities by AHD or SHE sufficiently “arise out of *or relate to* the defendant’s contacts with the forum.” “In the sphere of specific jurisdiction, the phrase ‘relate to’ incorporates real limits, as it must to adequately protect defendants foreign to a forum.” *Ford Motor Co.*, 592 U.S. at \_\_\_, 209 L. Ed. 2d at 236.

¶ 64 As in *Goodyear*, a foreign entity cannot be haled into North Carolina’s courts

because of the presence of even an affiliated American company present in or doing business in the forum. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 918, 180 L.Ed.2d at 802.

¶ 65 This holding is limited to the foreign entity appellants, SHE and AHD, the only entities who appealed. Plaintiff has failed to prove a “causal connection,” “purposeful availment,” or activities in the forum “related to” the Defendants before us in order to establish personal jurisdiction between North Carolina and AHD and North Carolina and SHE.

¶ 66 The trial court’s orders denying AHD’s and SHE’s Rule12(b)(2) motions are reversed and this cause remanded for entry of dismissal of AHD and SHE. *It is so ordered.*

REVERSED AND REMANDED.

Judges COLLINS and GORE concur.

FILED 8 SEP 2021

LENNARD BARTLETT, SR.  
ADMINISTRATOR OF THE ESTATE  
OF MARY SUSAN WHITE BARTLETT,  
PLAINTIFF,

v.  
ESTATE OF JEFFREY L. BURKE; AIR  
METHODS CORPORATION; AIRBUS  
HELICOPTERS DEUTSCHLAND, GmbH;  
AIRBUS HELICOPTERS, INC.; SAFRAN  
HELICOPTER ENGINES;

and

SAFRAN HELICOPTER ENGINES USA,  
INC.,  
DEFENDANTS.

KASEY HOBSON HARRISON,  
EXECUTRIX OF THE ESTATE OF  
KRISTOPHER RAY HARRISON,  
PLAINTIFF,

v.  
ESTATE OF JEFFREY L. BURKE; AIR  
METHODS CORPORATION; AIRBUS  
HELICOPTERS DEUTSCHLAND GmbH;  
AIRBUS HELICOPTERS, INC.; SAFRAN  
HELICOPTER ENGINES; and  
SAFRAN HELICOPTER ENGINES USA,  
INC.,  
DEFENDANTS.

FILED  
2021 SEP -8 A M  
DURHAM CO., N.C.  
BY 

**ORDER DENYING AIRBUS  
HELICOPTERS DUETSCHLAND GmbH'S  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION**  
(Including Cross-Claim of Estate of Jeffrey  
L. Burke and Plaintiff-Intervenor Robert  
Sollinge)

COMES NOW the undersigned, presiding at the April 30, 2021 Session of the Durham County Superior Court pursuant to Rule 2.1 Designation, by agreement of all parties, and pursuant to the January 30, 2019 Order of the North Carolina Supreme Court, upon defendant Airbus Helicopters Deutschland, GmbH's (hereinafter "AHD") Motion to Dismiss all claims (to include cross-claims) in this Consolidated Action for lack of Personal Jurisdiction, pursuant to Rule 12(b)2 of the North Carolina Rules of Civil Procedure, and all parties appearing via WebEx Meetings by and through their respective counsel of record (as reflected below), pursuant to agreement during the ongoing global COVID-19 pandemic, and pursuant to Emergency

Directive Number Three of the North Carolina Supreme Court, and the Court, having heard from attorneys designated by the parties to argue their respective positions, and having reviewed the Briefs (and Exhibits thereto) as provided by the parties, including excerpts of depositions and other discovery materials collected pursuant to this Court's Order for limited jurisdictional discovery, and the Court having reviewed all controlling State and Federal statutory and common law authority, makes the following

**FINDINGS OF FACT:**

1. Defendant AHD manufactured a turbine-powered commercial helicopter designated the Airbus BK-117, N146DU (hereinafter the Subject Helicopter) in calendar year 2011;
2. Defendant AHD contracted with Safran Helicopter Engines (France) (hereinafter "SHE") to provide twin Arriel 1E2 turbine-powered helicopter engines (hereinafter "the ENGINES"). AHD incorporated the ENGINES into the manufacture of the Subject Helicopter. SHE designed, manufactured, and sold the Engines that were on the Subject Helicopter at the time of the loss that is the subject of this action.
3. Discovery taken in this action fairly demonstrates that at the time AHD manufactured the Subject Helicopter, it knew and intended that the craft would be sold and used in an international market, including the United States and potentially North Carolina;
4. At the time of the loss complained of AHD had in place an exclusive distributing contract with Airbus Helicopters Inc. (hereinafter "AHI"). AHI is a corporation organized under the laws of Texas and with its principal place of business in Texas;
5. The distributor agreement between AHD and AHI designated ASI as the exclusive distributor for AHD's products (including the Subject Helicopter) within the United States. The distributor agreement mandated that AHI would market, promote and assist with the service of all AHD helicopters sold in the United States, to include North Carolina;
6. Discovery fairly reflects that the exclusive distributor agreement mandated that AHI distribute AHD's helicopters in the U.S. AHD has not entered into any distributor

- agreement for distribution of its helicopters within the U.S. with any other entity other than AHI for the past 15 years;
7. Discovery fairly reflects that the distributing agreement mandates that AHI agree to exclusively be AHD's new helicopters distributor within the U.S. and maintain a Customer Support and Service Center for AHD's helicopters (including a maintenance, repair, and training center);
  8. Discovery fairly reflects that the agreement requires all maintenance, repair, overhaul and training services provided by AHI to customers be performed in accordance with the corresponding regulations, safe practices, and local airworthiness requirements required by United States law as well as regulations of each state where the helicopter is operated;
  9. The distributor agreement does not exclude any state from the sale, delivery, operation, or usage of an AHD designed helicopter;
  10. AHD expressly contracted with defendant AHI for AHI to provide sales and marketing sales and marketing for ADH in the United States, to include the Subject Helicopter model, and in which North Carolina was an important market. AHD expressly contracted with AHI for AHI to:
    - a) Monitor AHD's marketing position in the United States, including North Carolina;
    - b) Develop sales prospects for AHD's products in the United States, including North Carolina;
    - c) Conduct promotion activities for AHD's products in the United States, including North Carolina;
    - d) Track "lost and won deals" for the sale of AHD's products in the United States, including North Carolina;
    - e) Identify AHD's competitors in the United States, including North Carolina, and

- f) Provide sales forecasts for AHD's products in the United States, including North Carolina;
11. The sales and marketing services AHD sought and obtained for the North Carolina market are contacts with North Carolina for purposes of this Motion;
  12. The discovery fairly reflects that the distributor agreement requires that AHI forward technical questions asked by US customers to AHD, and specifically reserves AHD's right to contact and provide service to AHD helicopter owners and operators directly, and stipulates that if any U.S. customer demand to order parts or materials directly from AHD instead of AHI, the latter agrees not to oppose the orders;
  13. Discovery responses fairly reflect that AHD offered repair and maintenance information specifically for the Subject Helicopter to defendant Air Methods through AHI on at least one occasion;
  14. That AHD sold or conveyed the Subject Helicopter to its exclusive U.S. distributor, AHI, in the ordinary and usual course of its business, for sale and distribution in the United States, without limiting North Carolina from its scope of sales and distribution;
  15. That AHI sold the Subject Helicopter to its first and sole registered owner, defendant Duke University. Duke contracted with defendant Air Methods Corporation to operate the Subject Helicopter as an emergency rescue craft under the name Duke Life Flight;
  16. AHD tracked the Subject Helicopter pursuant to its ordinary and usual course of business, and knew that the Subject Helicopter was operated as a medical rescue craft in North Carolina;
  17. AHD at all times relevant to this action regularly and continuously monitored the sales, location, operators and hours logged of all its helicopters sold in the United States, including North Carolina;
  18. Discovery fairly reflects that from 2010-2018 there were at least 21 AHD helicopters operating in the state of North Carolina. AHD documented 97,893 air-hours in North

Carolina during this relevant time. AHD, through its designated 30(b)6 representative fairly stated that during the above time period "every hour of every day [there] would be an AHD helicopter operating around the clock in North Carolina";

19. During times relevant to this action approximately one thousand (1,000) AHD helicopters of similar design and construction as the Subject Helicopter were operating in the United States, with approximately thirty (30) such craft in use and operation in North Carolina;
20. AHD tracked the Subject Helicopter from the date of purchase through its operation in North Carolina and until the date of the crash that is the subject of this action. Discovery fairly reflects that AHD tracked:
  - a. Identity of the Operator – Air Methods, Inc.
  - b. Operating Country -USA
  - c. Operating State - North Carolina
  - d. Mission - Emergency Medical Service
  - e. Total Time Since New (TTSN)
  - f. Flight Hours
  - g. Status - In service, Out of Service, or Destroyed
21. The Subject Helicopter (and similar AHD products) was a mechanically and technologically sophisticated turbine-powered aircraft composed of proprietary parts available ultimately only from AHD;
22. Discovery responses fairly reflect AHD tracked owner and operator information in part to predict spare parts needs and to insure that parts and materials be made available for the future needs of owners and operators;
23. At all times relevant to this action AHD knew that the Subject Helicopter would be used as an EMS Rescue craft by the ultimate purchaser, and thus knew that its product would be used to carry one or more persons through the air at speed, and that one or more lives would at all times be dependent upon the Subject Helicopter's operation while in use;

24. The Subject Helicopter product is a conveyance that by its very nature is designed, manufactured and distributed for purposes of human travel, safety and emergency operations;
25. On September 8, 2018 the Subject Helicopter was involved in a fatal crash in Hertford North Carolina. Plaintiffs' decedents include the pilot, medical personnel and a patient on the Subject Helicopter;
26. Plaintiffs' decedents were residents of North Carolina;
27. Plaintiffs are residents of North Carolina. Therefore,

Based upon the foregoing Findings of Fact, the Court makes the following

#### CONCLUSIONS OF LAW

1. For this Court to exercise personal jurisdiction over a non-resident defendant, two qualifications must be met: "First, jurisdiction over the action must be authorized by N.C.G.S. § 1-75.4, our state's long-arm statute. Second, if the long-arm statute permits consideration of the action, exercise of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution." *Skinner*, 361 N.C. at 119, 638 S.E.2d at 208 (citations omitted);
2. The facts set forth above comport with North Carolina's "long arm" statute for purposes of exercising personal jurisdiction over a foreign defendant. N.C.G.S. §1-75.4;
3. Consequently, to obtain personal jurisdiction over AHD, this Court must analyze whether the exercise of its jurisdiction also comports with due process under federal law, as defined by the United States Supreme Court and as applied by the Supreme Court of this State. *Skinner v. Preferred Credit*, 361 N.C. 119 (2006);
4. The legal cornerstone for examining whether a foreign defendant is subject to personal jurisdiction in a forum is to determine whether the foreign defendant has had sufficient

minimum contacts with the forum. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945);

5. Minimum contacts sufficient for a forum court to properly exercise personal jurisdiction over a foreign defendant are those which demonstrate the defendant “purposefully availed” itself of the laws and benefits of the forum. For a court to find purposeful availment, the court must find that a foreign defendant “take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State.” *Ford Motor Co.*, 141 S. Ct. at 1025, quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958);
6. The United States Supreme Court has previously held that due process is satisfied and sufficient minimum contacts exist where a foreign defendant places its product in the “stream of commerce” with the expectation that the product be used or consumed in the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industries v. California*, 480 U.S. 102 (1987) (plurality decision).
7. The United States Supreme Court’s most recent articulation of procedural due process in the exercise of specific personal jurisdiction over a foreign defendant is *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017 (2021). Ford holds in relevant part that a foreign defendant “purposefully avails itself” of the privilege of conducting activities within a forum where it “continuously and deliberately” serves the forum’s market. *Id.* at 1027-28;
8. Following courts must read *Ford* together with, and appreciate as modifying where the facts require, the Supreme Court’s previous majority and plurality decisions regarding specific personal jurisdiction over a foreign defendant who manufactures a product that allegedly causes injury to a forum resident within the forum state;

9. Controlling law, as clarified by *Ford*, makes clear that due process interests of fair play and substantial justice do not require that there be an immediate “causal connection” (as previously suggested by the Court’s opinions in *Walden v. Fiore*, 571 U.S. 277 (2014) and *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1772 (2017), among others), between a foreign defendant’s design, manufacturing, or sale of its product and the forum state in order that the forum state exercise personal jurisdiction over the defendant. *Ford* at 1022-23;
10. As applied to the present facts, taking *Ford* together with prior undisturbed decisions of the Supreme Court, and read critically with an interest in consistency, controlling law dictates that where a globally present foreign defendant manufactures and sells a product outside the forum state, but continues to deliberately serve the market for the product in the forum, and the product allegedly causes injury to a resident of the forum while in use in the forum state, the forum may entertain the resulting suit. *Id.* at 1022.
11. *Ford*, when read together with consistent threads of the Court’s prior undisturbed majority and plurality decisions, holds that Due Process requirements of fair play and substantial justice, as applied to foreign manufacturers such as AHD, are satisfied under these circumstances when balanced with the compelling need for “Interstate Federalism;” recognizing each State’s interest in providing a convenient forum for injuries allegedly sustained by residents in the forum, as well as the rights of residents allegedly injured under these express circumstances to a convenient forum. See also, *Burger King v. Rudzewicz*, 471 U.S. 462 (1985); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984).
12. Following these decisions, North Carolina courts have held that North Carolina has a strong interest in protecting its citizens from local injury caused by the tortious conduct of foreign citizens.” See, e.g., *Mucha v. Wagner*, 845 S.E.2d 443, 447 (N.C. App. 2020), quoting *Cooper v. Shealy*, 140 N.C. App. 729, 735 (N.C. App. 2000); *Saxon v. Smith*, 125 N.C. App. 163, 173 (N.C. App 1997) (“In light of the powerful public interest of a forum state in protecting its citizens against out-of-state tortfeasors, the court has more readily found assertions of jurisdiction constitutional in tort cases”);

13. The exercise of personal jurisdiction over a particular foreign defendant must also be reasonable under the circumstances. The exercise of personal jurisdiction is reasonable where the foreign defendant “has clear notice of its exposure in that State to suits arising from local accidents involving its [product]” and can thus “do something about that exposure.” *Ford* at 1027, quoting *World-Wide Volkswagen*, 444 U.S. at 297 ;
14. Reasonableness may also be found *under appropriate circumstances* (this Court’s emphasis added) where a defendant introduces a product into the stream of commerce without limitation to the forum state. In appropriate circumstances, “due process is satisfied, the defendant has purposefully availed itself, and has a reasonable expectation of being haled into a court in the Forum State.” *World-Wide Volkswagen*, 444 U.S. at 298-99; *Goodyear Tires Operations v. Brown*, 564 U.S. 915, 922 (2011).
15. Under the facts this Court found as stated herein, defendant AHD had express knowledge that its sophisticated, turbine-powered helicopter had been and was being used as a medical services rescue conveyance in North Carolina at the time of the loss alleged;
16. The facts found above demonstrate that AHD has continuously and deliberately served the North Carolina market with regard to the Subject Helicopter and similar models;
17. The facts found above demonstrate that AHD delivered the Subject Helicopter into the stream of commerce with the expectation it would be purchased and operated anywhere in the United States, to specifically include North Carolina;
18. Based upon the facts found above, defendant AHD availed itself of the privilege of conducting business in North Carolina through its continuous and deliberate efforts to serve the market here, individually and through its exclusive distributor AHI;
19. In applying controlling law, this Court makes its Conclusions based, without limitation, upon the facts found that AHD at all times relevant to this action had

- a) an international scope of operations;
  - b) chose to sell the Subject Helicopter (and similar models) via a nation-wide exclusive distributor agreement with AHI that included North Carolina;
  - c) made no attempt to limit sales to North Carolina;
  - d) had actual knowledge that the Subject Helicopter was being used as a medical services helicopter in North Carolina for more than seven (7) years prior to the loss complained of;
  - e) tracked ownership, operation, purpose and hours flown relating to the Subject Helicopter in part to derive benefit from future part sales and repairs;
  - f) participated in sufficient marketing and sales activity related to the Subject Helicopter's model and designated purpose within North Carolina;
20. North Carolina has significant interests at stake, including providing North Carolina residents with a convenient forum for redressing injuries allegedly caused to them by the Subject Helicopter while in North Carolina;
21. AHD had actual notice of potential exposure in the North Carolina courts arising from the sale and operation of the Subject Helicopter (and similar models) in North Carolina, and by providing ongoing guidance, instruction, and replacement parts for the continued operation of the Subject Helicopter in North Carolina, both individually and through its exclusive distributor AHI;
22. Thus, after an exhaustive review and application of the law to the facts found above, this Court concludes that defendant AHD's contacts satisfy the requirements of due process such that this this Court's exercise of personal jurisdiction over AHD under the circumstances of this action is reasonable and proper. Therefore

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Airbus Helicopters Deutschland GmbH's Motion to Dismiss for Lack of Personal Jurisdiction as to all claims against it be and hereby is DENIED.

28<sup>th</sup> ~~day~~  
THIS 9<sup>th</sup> DAY OF AUGUST, 2021.



HONORABLE DAVID L. HALL  
SUPERIOR COURT JUDGE, PRESIDING  
(*SITTING BY RULE 2.1 DESIGNATION  
BY AGREEMENT OF ALL PARTIES  
AS PER THE JANUARY 30, 2019 ORDER  
OF THE NORTH CAROLINA SUPREME  
COURT*)

Copies to:

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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

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Hon. David Hall

Vicky Rogers

Forsyth County Courthouse

Superior Court Judges' Chambers

Post Office Box 20099

Winston Salem, North Carolina 27120

*2.1 Superior Court Judge and Judicial Assistant II*

This the \_\_\_\_ day of \_\_\_\_\_, 2021

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ASSISTANT CLERK OF COURT  
DURHAM COUNTY

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 17-CVS-004551

FILED 13 SEP 2021

<p>LENNARD BARTLETT, SR. ADMINISTRATOR OF THE ESTATE OF MARY SUSAN WHITE BARTLETT, PLAINTIFF,</p> <p>v.</p> <p>ESTATE OF JEFFREY L. BURKE; AIR METHODS CORPORATION; AIRBUS HELICOPTERS DEUTSCHLAND, GmbH; AIRBUS HELICOPTERS, INC.; SAFRAN HELICOPTER ENGINES;</p> <p style="text-align: center;">and</p> <p>SAFRAN HELICOPTER ENGINES USA, INC., DEFENDANTS. KASEY HOBSON HARRISON, EXECUTRIX OF THE ESTATE OF KRISTOPHER RAY HARRISON, PLAINTIFF,</p> <p>v.</p> <p>ESTATE OF JEFFREY L. BURKE; AIR METHODS CORPORATION; AIRBUS HELICOPTERS DEUTSCHLAND GmbH; AIRBUS HELICOPTERS, INC.; SAFRAN HELICOPTER ENGINES; and SAFRAN HELICOPTER ENGINES USA, INC., DEFENDANTS.</p>	<p style="text-align: center;"><b>ORDER DENYING SAFRAN HELICOPTER ENGINES' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION</b></p> <p style="text-align: center;">(Includes Cross-Claim of Estate of Jeffrey L. Burke and Plaintiff-Intervenor Robert Sollinge</p> <div style="text-align: right; margin-top: 100px;"> <p>2021 SEP 13 P 12:56</p> <p>CLERK OF COURT</p> <p>C.S.C.</p> <p>BY </p> </div>
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COMES NOW the undersigned Superior Court Judge, presiding pursuant to Rule 2.1 Designation, by agreement of all parties, as per the January 30, 2019 Order of the North Carolina Supreme Court, at the April 30, 2021 Session of the Durham County Superior Court, upon defendant Safran Helicopter Engines (France) Motion to Dismiss all claims (to include cross-

claims) in this Consolidated Action for lack of Personal Jurisdiction, pursuant to Rule 12(b)2 of the North Carolina Rules of Civil Procedure, and all parties appearing via WebEx Meetings by and through their respective counsel of record (as reflected below) pursuant to agreement during the ongoing global COVID-19 pandemic, and pursuant to Emergency Directive Number Three of the North Carolina Supreme Court, and the Court, having heard from attorneys designated by the parties to argue their respective positions regarding this Motion, and the Court having reviewed the Briefs and Exhibits thereto as provided by the parties, to included excerpts of depositions and other discovery materials collected pursuant to this Court's Order for limited jurisdictional discovery, and further upon review of all controlling State and Federal statutory and common law authority, makes the following

**FINDINGS OF FACT:**

1. Plaintiffs' decedents died in a helicopter crash in Hertford, North Carolina on September 8, 2017;
2. The helicopter involved in the crash was an Airbus BK-117 (N146DU) turbine-powered craft (hereinafter "the Subject Helicopter") owned by defendant Duke University and operated as an air rescue helicopter by defendant Air Methods Corporation under the name Duke Life Flight;
3. Defendant Airbus Helicopters Deutschland, GmbH (hereinafter "AHD") manufactured the Subject Helicopter in Germany during calendar year 2011;
4. Defendant AHD contracted with defendant Safran Helicopter Engines (France) (hereinafter "SHE") to provide twin Arriel 1E2 turbine-powered helicopter engines (hereinafter "the Engines") as component parts for the Subject Helicopter;
5. SHE is the exclusive engine provider for the Engines;
6. SHE France contracted with Defendant AHD to be the exclusive engine provider for the Subject Helicopter model;

7. SHE designed, manufactured, and sold the Engines;
8. SHE's contracts with AHD for provision of engines are specific to aircraft type and purpose;
9. Discovery taken in this action fairly demonstrates that at the time SHE manufactured the Engines it knew that the Subject Helicopter was the primary model helicopter manufactured by AHD;
10. Discovery fairly demonstrates that at the time SIIE manufactured and sold the Engines to AHD it knew the Subject Helicopter is often used for medical transport and equipped with the Engines;
11. At all times relevant to this action SHE knew that the Engines would be used to power an aircraft by the ultimate purchaser, and thus knew that its product would be used to carry one or more persons through the air at speed, and that one or more lives would at all times be dependent upon the Engines operation while in use;
12. The Engines constitute a product that by its very nature is designed, manufactured and distributed for purposes of human travel and safety;
13. SHE is a global corporation and is the world-wide leader in the manufacture of turbine-powered helicopter engines. SHE maintains exclusive sales, marketing and service contracts that result in its engines being operated internationally and throughout the world;
14. SHE has an exclusive contract with defendant Safran Helicopter Engines USA (hereinafter "SHE USA") to market and service its turbine powered helicopter engines, including the Engines, in the United States;
15. SHE has exclusive contracts with 13 companies globally, including SIIE USA, to manage the distribution, service and repair of its engines;

16. Discovery fairly reflects that during calendar year 2009, for example, there were more than 18,000 SHE turbine engines powering helicopters throughout the world;
17. SHE's turbine-powered helicopter engines operate throughout the United States by virtue of its exclusive contracts with AHD and SHE USA;
18. SHE monitors the owners and operators of its engines being used within the United States;
19. SHE monitors and records the total operating hours of its engines operating in the United States, including North Carolina;
20. At all relevant times to this action there were approximately 3,500 SIIE turbine-powered engines operating in United States;
21. The contracts between SHE, AHD and SHE USA for the sale, distribution, service and repair of its engines did not exclude sale, use or operation in the state of North Carolina;
22. The Engines are a mechanically and technologically sophisticated turbine aircraft powerplant composed of proprietary parts available ultimately only from SHE;
23. The SHE engines operating in the U.S. require ongoing engine maintenance that is exclusively prescribed by SHE;
24. SHE owns the Type Certificate of the Engines, and dictates all maintenance and repair for the Engines for all operators world-wide, including the U.S. and North Carolina;
25. Defendant SHE USA implements the maintenance and repair instructions created and approved by SHE;
26. All replacement parts for SHE's engines, including the Engines, must be provided by SHE;

27. SHE maintains a technical customer support department in Bordes, France for U.S owners and operators of the Engines;
28. In order to comply with Unites States law, and thus permit distribution and use of its engines in the U.S. market, SHE created a website portal through which U.S. operators of its engines may order parts, obtain repairs, receive service updates and obtain maintenance information for SHE's engines, including the Engines;
29. Creation and operation of the portal pursuant to U.S. law is not, in and of itself, a meaningful contact with North Carolina;
30. SHE tracked, monitored and provided service for its helicopter engines operated in the United States beyond what is required by federal law;
31. Discovery fairly demonstrates that SHE participated in the organization and creation of a manufacturing plant for turbine-powered helicopter engine parts in Monroe, North Carolina under the name Turbomeca Manufacturing Monroe. (TMM) in 2006;
32. SHE (formerly organized under the name Turbomeca in France) received monetary incentives and benefits from North Carolina municipalities for locating a manufacturing plant in Monroe, North Carolina;
33. TMM operated in North Carolina from 2007 to 2014;
34. SIIE France contracted with TMM to supply component parts to SHE for the manufacture of its turbine helicopter engines, including the model of the Engines;
35. SHE France supplied parts to TMM, who in turn provided parts to SHE, for the manufacture of turbine engines, including the Engines;

36. At times relevant for purposes of this Motion, SHE contracted with a small number of North Carolina suppliers to purchase (incidental) parts for its turbine-powered helicopter engines;
37. SHE officers and employees attended a 2009 Symposium in Charlotte, North Carolina for operators of SHE engines;
38. The North Carolina symposium's purpose was to promote the sale and operation of SHE engines in the region, including North Carolina;
39. The North Carolina Symposium was tailored for operators of the Engines' model, and SHE provided instructional materials pertaining to the Engines' model for distribution to attendees;
40. SHE France provided program materials for the 2009 North Carolina Symposium;
41. At the 2009 North Carolina Symposium, SHE officers announced its projection for manufacturing 2,500 engines specifically for the North America market over 10 years;
42. Plaintiffs' deceased were all residents of North Carolina;
43. Plaintiffs bringing the legal action are all residents of North Carolina;
44. The injuries and deaths occurred in North Carolina;
45. SHE France prepared the Accident Investigation Findings & Analyses of the Subject Crash for the National Transportation Safety Board. The Subject Engines were sent to SHE in Bordes, France;

Based upon the foregoing Findings of Fact, the Court makes the following

### CONCLUSIONS OF LAW

1. For this Court to exercise personal jurisdiction over a non-resident defendant, two qualifications must be met: “First, jurisdiction over the action must be authorized by N.C.G.S. § 1-75.4, our state’s long-arm statute. Second, if the long-arm statute permits consideration of the action, exercise of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.” *Skinner*, 361 N.C. at 119, 638 S.E.2d at 208 (citations omitted);
2. The facts set forth above comport with North Carolina’s “long arm” statute for purposes of exercising personal jurisdiction over a foreign defendant. N.C.G.S. §1-75.4;
3. Consequently, to obtain personal jurisdiction over SHE, this Court must analyze whether the exercise of its jurisdiction also comports with due process under federal law, as defined by the United States Supreme Court and as applied by the Supreme Court of this State. *Skinner v. Preferred Credit*, 361 N.C. 119 (2006);
4. The legal cornerstone for examining whether a foreign defendant is subject to personal jurisdiction in a forum is to determine whether the foreign defendant has had sufficient minimum contacts with the forum. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945);
5. Minimum contacts sufficient for a forum court to properly exercise personal jurisdiction over a foreign defendant are those which demonstrate the defendant “purposefully availed” itself of the laws and benefits of the forum. For a court to find purposeful availment, the court must find that a foreign defendant “take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State.” *Ford Motor Co.*, 141 S. Ct. at 1025, quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958);
6. The United States Supreme Court has previously held that due process is satisfied and sufficient minimum contacts exist where a foreign defendant places its product in the

“stream of commerce” with the expectation that the product be used or consumed in the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industries v. California*, 480 U.S. 102 (1987) (plurality decision);

7. The United States Supreme Court’s most recent articulation of procedural due process in the exercise of specific personal jurisdiction over a foreign defendant is *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017 (2021). *Ford* holds in relevant part that a foreign defendant “purposefully avails itself” of the privilege of conducting activities within a forum where it “continuously and deliberately” serves the forum’s market. *Id.* at 1027-28;
8. Following courts must read *Ford* together with, and appreciate as modifying where the facts require, the Supreme Court’s previous majority and plurality decisions regarding specific personal jurisdiction over a foreign defendant who manufactures a product that allegedly causes injury to a forum resident within the forum state;
9. Controlling law, as clarified by *Ford*, makes clear that due process interests of fair play and substantial justice do not require that there be an immediate “causal connection” (as previously suggested by the Court’s opinions in *Walden v. Fiore*, 571 U.S. 277 (2014) and *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1772 (2017), among others), between a foreign defendant’s design, manufacturing, or sale of its product and the forum state in order that the forum state exercise personal jurisdiction over the defendant. *Ford* at 1022-23;
10. As applied to the present facts, taking *Ford* together with prior undisturbed decisions of the Supreme Court, and read critically with an interest in consistency, controlling law dictates that where a globally present foreign defendant manufactures and sells a product outside the forum state, but continues to deliberately serve the market for the product in the forum, and the product allegedly causes injury to a resident of the forum while in use in the forum state, the forum may entertain the resulting suit. *Id.* at 1022;

11. *Ford*, when read together with consistent threads of the Court’s prior undisturbed majority and plurality decisions, holds that Due Process requirements of fair play and substantial justice, as applied to foreign manufacturers such as SHE, are satisfied under these circumstances when balanced with the compelling need for “Interstate Federalism;” recognizing each State’s interest in providing a convenient forum for injuries allegedly sustained by residents in the forum, as well as the rights of residents allegedly injured under these express circumstances to a convenient forum. See also, *Burger King v. Rudzewicz*, 471 U.S. 462 (1985); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984);
12. Following these decisions, North Carolina courts have held that North Carolina has a manifest interest in protecting its citizens from local injury caused by the tortious conduct of foreign citizens.” See, e.g., *Mucha v. Wagner*, 845 S.E.2d 443, 447 (N.C. App. 2020), quoting *Cooper v. Shealy*, 140 N.C. App. 729, 735 (N.C. App. 2000); *Saxon v. Smith*, 125 N.C. App. 163, 173 (N.C. App 1997) (“In light of the powerful public interest of a forum state in protecting its citizens against out-of-state tortfeasors, the court has more readily found assertions of jurisdiction constitutional in tort cases”);
13. The exercise of personal jurisdiction over a particular foreign defendant must also be reasonable under the circumstances. The exercise of personal jurisdiction is reasonable where the foreign defendant “has clear notice of its exposure in that State to suits arising from local accidents involving its [product]” and can thus “do something about that exposure.” *Ford* at 1027, quoting *World-Wide Volkswagen*, 444 U.S. at 297 ;
14. Reasonableness may also be found *under appropriate circumstances* (this Court’s emphasis added) where a defendant introduces a product into the stream of commerce without limitation to the forum state. In appropriate circumstances, “due process is satisfied, the defendant has purposefully availed itself, and has a reasonable expectation of being haled into a court in the Forum State.” *World-Wide Volkswagen*, 444 U.S. at 298-99; *Goodyear Tires Operations v. Brown*, 564 U.S. 915, 922 (2011);
15. Under the facts this Court found as stated herein, defendant SHE had express knowledge that its sophisticated turbine helicopter engines had been and were being used to power a

medical services rescue conveyance in North Carolina at the time of the crash complained of;

16. The facts found above demonstrate that SHE has continuously and deliberately served the North Carolina market;
17. SHE delivered the Engines into the stream of commerce with the expectation they would be purchased and operated anywhere in world, including the United States, to specifically include North Carolina;
18. SHE availed itself of the privilege of conducting business in North Carolina through its continuous and deliberate efforts to serve the market here, individually and through its international helicopter manufacturing clients, including AHD;
19. SHE availed itself of the privilege of conducting business in North Carolina by providing ongoing guidance, instruction, and replacement parts for the continued operation of its engines in North Carolina, both individually and through its exclusive contract with SHE USA;
20. SHE availed itself of the privilege of conducting business in North Carolina by receiving monetary incentives for, and by assisting with the organization and establishment of, a manufacturing plant in North Carolina related directly to the manufacture of turbine helicopter engine parts;
21. A component-part manufacturer cannot escape liability by claiming it did not control where the end-product was distributed when it (1) manufactures the product at issue and (2) places it into the stream of commerce, (3) foreseeing that it would reach the Forum. *See, e.g., Russell v. SNFA*, 987 N.E.2d 778 (Ill. 2013), cert. denied, 571 U.S. 886 (2013); *Ainsworth v. Moffett Eng'g*, 716 F.3d 174, 179 (5th Cir. 2013); *Pettway v. Asian Tire Factory*, 2021 WL 518337, at \*1 (S.D. Miss. 2021); *Holliday v. Nissan Motor Co.*, 2019 WL 2612771, at \*4 (D.S.C. 2019); *LLOG Expl. Co., L.L.C. v. Fed. Flange, Inc.*, 2019

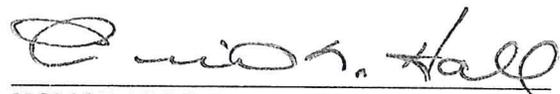
WL 4038599, at \*1 (E.D. La. 2019); *Rockwell Intern. Corp. v. Costruzioni Aeronautiche*, 553 F. Supp. 328, 333 (E.D. Pa. 1982); *Hydraulic Servocontrols Corp. v. Dale*, 657 P.2d 211, 215 (Ore. 1982);

22. *Ford* is consistent with those courts that found personal jurisdiction where component-part manufacturers could plausibly foresee its product would reach the Forum, had an international scope of operations, chose to participate in a nation-wide marketing chain, did not limit the territory in which its products would be sold, operated and maintained, monitored the market for its product, or specifically designed the component part for the end product used in the forum. These circumstances demonstrate that the defendant had a stake in, and expected to derive definite benefit from, sales and replacement parts in the United States. *Russell*, 987 N.E.2d at 795.
23. In applying controlling law, this Court makes its Conclusions based, without limitation, upon the facts found that SHE at all times relevant to this action had
- a) an international scope of operations;
  - b) chose to sell its engines, and specifically the Engines, via nation-wide exclusive distributor agreements with AHD and SHE USA that included North Carolina;
  - c) made no attempt to restrict North Carolina from its market;
  - d) had actual knowledge that its engines, including the Engines, were being used to power medical services helicopters in the United States, specifically including North Carolina;
  - e) tracked ownership, operation, purpose and hours that its engines, including the Engines, in part to derive benefit from future part sales and repairs;
  - f) participated in sufficient marketing and sales activity related to the Engines and within North Carolina;
  - g) continuously and deliberately served its engines in North Carolina by providing exclusive maintenance, repair and parts information and service;

24. North Carolina has a significant interest at stake, including providing North Carolina residents with a convenient forum for redressing injuries allegedly caused to them by the Engines operated in North Carolina;
25. SHE had actual notice of its exposure in North Carolina to suits arising from local incidents involving its turbine-powered helicopter engines by providing for the sale and operation of its turbine-powered helicopter engines in North Carolina, and by providing ongoing guidance, instruction, and replacement parts for their maintenance and continued operation in North Carolina through its exclusive contract with SHE USA;
26. Thus, after an exhaustive review and application of the law to the facts found above, this Court concludes that defendant SHE's contacts satisfy the requirements of due process such that this this Court's exercise of personal jurisdiction over SHE under the circumstances of this action is reasonable and proper. Therefore

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Safran Helicopter Engines (France) Motion to Dismiss for Lack of Personal Jurisdiction as to all claims against it be and hereby is DENIED.

**THIS 31st DAY OF AUGUST, 2021.**



HONORABLE DAVID L. HALL  
SUPERIOR COURT JUDGE, PRESIDING  
(*SITTING BY RULE 2.1 DESIGNATION  
BY AGREEMENT OF ALL PARTIES  
AS PER THE JANUARY 30, 2019 ORDER  
OF THE NORTH CAROLINA SUPREME  
COURT*)

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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

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*2.1 Superior Court Judge and Judicial Assistant II*

This the 13<sup>th</sup> day of Sept, 2021

Sima maek  
ASSISTANT CLERK OF COURT  
DURHAM COUNTY