

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

FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

LEONARD BARTLETT, SR., ADMINISTRATOR OF )  
 THE ESTATE OF MARY SUSAN WHITE )  
 BARTLETT, ) **REDACTED**  
 Plaintiff-Appellant, )

v. )  
 )

AIRBUS HELICOPTERS DEUTSCHLAND GMBH; )  
 AIRBUS HELICOPTERS, INC.; SAFRAN ) From Durham County  
 HELICOPTER ENGINES; SAFRAN HELICOPTER )  
 ENGINES USA, INC., ) No. 17-CVS-004551  
 Defendants-Appellees, ) No. COA22-95  
 )

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

-and- )  
 )

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

v. )  
 )

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

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

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**REDACTED**

PETITION FOR DISCRETIONARY REVIEW PURSUANT  
TO N.C. GEN. STAT. § 7A-31 AND N.C. R. APP. P. 15

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Contemporaneously with filing their Notice, as a matter of right, pursuant to N.C. Gen. Stat. § 7A-30(1) and N.C. R. App. P. 14, Defendants-Appellants, Estate of Jeffrey L. Burke and Air Methods Corporation, respectfully petition this Honorable Court to certify for discretionary review the judgment of the North Carolina Court of Appeals filed on 6 September 2022 on the grounds that the Opinion of the North Carolina Court of Appeals runs in direct contrast to controlling precedent issued by the Supreme Court of the United States and courts in this State pertaining to personal jurisdiction over foreign manufacturers conducting business through continuous and deliberate efforts to serve the market in the State of North Carolina where those efforts are directly connected to the underlying action.

INTRODUCTION

Discretionary review should be granted in this case as the North Carolina Court of Appeals' Opinion effectually eliminates responsibility of foreign manufacturers whose bad acts cause injury to North Carolina



residents within the State of North Carolina. Further, discretionary review should be granted in this case as the North Carolina Court of Appeals' Opinion leaves localized actors, who rely on foreign manufacturers, solely responsible for foreign manufacturers' said bad acts. Compounding the need for review herein is the plain, clear fact that these foreign manufactures—Airbus Helicopters Deutschland GmbH (“AHD”) and Safran Helicopter Engines (“SHE”)—availed themselves of the privilege of conducting business in the State of North Carolina by the placement of products in the stream of commerce and their contacts within the State of North Carolina.

The underlying action arises from a 2017 helicopter accident in North Carolina which caused the deaths of four North Carolina residents. Plaintiffs-Appellants allege that AHD designed, manufactured, assembled, supplied, distributed, maintained, and/or sold an unsafe and un-airworthy helicopter, that it selected and supplied unsafe engines, and that it failed to warn or provide adequate maintenance instructions and warnings related to the helicopter or its engines. As to SHE, Plaintiffs-Appellants allege that SHE negligently designed, manufactured, assembled, distributed, and/or sold the Turbomeca Arriel

1E2 helicopter engine, as well as the engine oil drainage system and various component parts.

Defendants-Appellants, Air Methods Corporation and pilot Jeffrey L. Burke, operated the subject helicopter for Duke Life Flight and filed Cross-Claims for indemnification in the underlying action against AHD and SHE.

AHD and SHE moved to dismiss, arguing that the Trial Court did not have personal jurisdiction over them. A two-year period of jurisdictional discovery followed; numerous depositions were taken and thousands of pages of discovery exchanged. Following complete briefing and lengthy oral argument, the Court denied the Motions of AHD and SHE.

The Trial Court, in properly concluding that it had personal jurisdiction under controlling precedent, found the following with respect to AHD's presence in North Carolina:

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

(R p 585).

Moreover, with respect to SHE, the Trial Court found:

... 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;

(R p 605).

In clear conflict with Supreme Court precedent in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), and the decisions post-*Ford* in North Carolina, the North Carolina Court of Appeals erroneously reversed the Trial Court. The North Carolina Court of Appeals concluded that because AHD and SHE relied on exclusive American distributors to sell their products, instead of directly delivering the products to this State, the exercise of personal jurisdiction over them was improper.

Based on this reversal, and within the backdrop of recent guidance from the United States Supreme Court, granting this Petition is necessary to reconcile the state of personal jurisdiction over foreign manufacturers in North Carolina. The issue is of significant import—it not only affects persons injured by foreign companies in their home state, but also, businesses and people who work with foreign companies in their home state and use products manufactured by foreign entities in their home state. Discretionary review is necessary.

#### STATEMENT OF RELEVANT PROCEDURAL HISTORY

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. Dina Burke, as Administrator of the Estate of Jeffrey L. Burke, filed Cross-Claims against AHD and SHE.

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 filed an Answer and Cross-Claims for indemnification against AHD and SHE.

Asserting lack of personal jurisdiction, SHE moved to dismiss the Bartlett and Harrison Actions on 15 June 2018 and also moved to dismiss the indemnification 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. 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 Cross-Claim of the Estate of Jeffrey L. Burke on 6 May 2019.

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. AHD and SHE moved to dismiss the Sollinger Action for lack of personal jurisdiction on 6 May 2019.

Prompted by the motions to dismiss and oppositions thereto, the Superior Court for Durham County permitted a two-year period of jurisdictional discovery. A hearing on the motions was held on 30 April 2021 before the Honorable David L. Hall. On 13 September 2021, the Superior Court for Durham County issued a detailed Opinion containing findings of fact and conclusions of law, denying AHD's and SHE's motions to dismiss under Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, and holding North Carolina courts had personal jurisdiction over AHD and SHE.

AHD and SHE timely filed interlocutory appeals from the 13 September 2021 Opinion of the Durham County Superior Court. On appeal, in the North Carolina Court of Appeals, the Parties filed briefs

and the Court of Appeals held oral argument on 9 August 2022. On 6 September 2022, the North Carolina Court of Appeals issued its Opinion reversing the Superior Court for Durham County and concluding that North Carolina courts do not have personal jurisdiction over AHD and SHE in this action.

### STATEMENT OF FACTS

On 8 September 2017, a helicopter manufactured by AHD and equipped with an engine manufactured by SHE (the “Subject Helicopter”) crashed in Hertford, North Carolina. (R pp 582, 586, 596). At the time of the crash, the Subject Helicopter was being operated by Air Methods Corporation for Duke University, specifically, Duke Life Flight. (R p 596). AHD was aware that the Subject Helicopter would be used as an emergency services rescue craft and knew it 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. (R p 585). SHE was aware that the Subject Helicopter would be used for medical transport and would be equipped with its engine. (R p 597). SHE was the exclusive provider of these engines. (R p 596).

The pilot, Jeffrey L. Burke; two nurses, Kristopher R. Harrison and Crystal Sollinger; and a patient, Mary Susan White Bartlett, all suffered fatal injuries in the crash. (R S p 654). All decedent passengers were residents of North Carolina at the time of their deaths. (R p 600). The personal representatives of the decedent passengers (collectively, “Plaintiffs”) filed wrongful death claims alleging negligence and breach of warranty. (R pp 3-37, 57-90). Defendants-Appellants, Air Methods Corporation and pilot Jeffrey L. Burke, filed Cross-Claims in the underlying action for indemnification against AHD and SHE.

Plaintiffs-Appellants allege that AHD designed, manufactured, assembled, supplied, distributed, maintained, and/or sold an unsafe and un-airworthy helicopter, that it selected and supplied unsafe engines, and that it failed to warn or provide adequate maintenance instructions and warnings related to the Subject Helicopter or its engines. (R pp 20-22, 73-76). Plaintiffs-Appellants allege that SHE negligently designed, manufactured, assembled, distributed, and/or sold the Turbomeca Arriel 1E2 helicopter engine, as well as the engine oil drainage system and various component parts. (R pp 26-28, 79-81). Plaintiffs-Appellants also



allege that SHE failed to provide adequate maintenance instruction and warnings. (R pp 28, 81).

I. AHD'S PRESENCE IN NORTH CAROLINA

During the jurisdictional phase of discovery, Axel Christian Humpert, AHD's Corporate Representative, was deposed. (R S pp 905-1084). Throughout the course of his deposition, Mr. Humpert discussed AHD's contacts with North Carolina. Mr. Humpert testified that the Subject Helicopter is one of many AHD manufactured helicopters delivered to North Carolina. (Doc. Ex. 68 pp 18:21-19:3). According to Mr. Humpert, between 30 and 70 AHD manufactured helicopters have been delivered to North Carolina. (Doc. Ex. 68 pp 36:17-37:8). Of these helicopters, approximately 15 to 35 of them are currently operating in North Carolina. (Doc. Ex. 68 pp 37:9-17).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Subject

Helicopter was a mechanically and technologically sophisticated turbine-

powered aircraft composed of proprietary parts available ultimately only from AHD. (R p 585).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AHD has not entered into any distributor agreement for distribution of its helicopters within the United States with any other entity other than AHI for the past 15 years. (R pp 582-583). The agreement does not exclude any state from the sale, delivery, operation or usage of an AHD-designed helicopter. (R p 583).

With this agreement, AHD retains significant control over the marketing and distribution of its helicopters. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

As the Trial Court observed, North Carolina was an important market to AHD. (R p 583). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A launch customer is the first customer to receive and operate a new model helicopter. (Doc. Ex. 68 p 159:1-13).

AHD helicopters are manufactured in accordance with the airworthiness regulations of the United States. (Doc. Ex. 68 p 131:2-6). Mr. Humpert admits that, given the large presence of AHD helicopters in the United States market, he would expect AHD to be subject to personal jurisdiction in any court in the United States. (Doc. Ex. 68 pp 130:16-131:1).

## II. SHE'S PRESENCE IN NORTH CAROLINA

During the jurisdictional phase of discovery, Xavier Porcher, SHE's Corporate Representative, was deposed. (R S pp 2664-

2887). Throughout the course of his deposition, Mr. Porcher testified to SHE's contacts with North Carolina. As set forth and as the Trial Court recognized, "SHE has continuously and deliberately served the North Carolina market." (R p 604).

First, due to the large number of SHE engines operating around the world and specifically, in North Carolina, SHE's direct involvement in the maintenance of its engines is extensive. Mr. Porcher testified that there are approximately 3,500 SHE engines presently operating in the United States. (Doc. Ex. 69 p 178:9-17). [REDACTED]

[REDACTED] Each of these SHE engines, including those that operate in North Carolina, require ongoing engine maintenance. (Doc. Ex. 69 p 179:9-14). This ongoing maintenance is directed by SHE. (Doc. Ex. 69 p 179:9-14). Mr. Porcher testified that it is necessary for SHE to determine the maintenance program for its engines because SHE, as the designer and manufacturer, is most equipped to direct what maintenance must be performed, and when. (Doc. Ex. 69 pp 64:25-65:5).

In addition to controlling what maintenance needs to be done on its engines, SHE also controls the distribution of these maintenance

programs and manuals, and other technical publications, through its website portal. (Doc. Ex. 69 pp 99:18-21, 118:24-119:16). SHE's portal allows owners and operators to register their fleet of SHE engines. (Doc. Ex. 69 p 137:8-11). The portal gives end-users access to the technical documentation, manuals, and service bulletins. (Doc. Ex. 69 p 134:15-18). The SHE portal is the exclusive location for customers to access technical documentation, manuals, and service bulletins. (Doc. Ex. 69 pp 146:21-147:12). North Carolina operators are not excluded from the portal. (Doc. Ex. 69 p 33:11-14).

[REDACTED]

SHE's contacts with North Carolina are also directly tied to a company that was located in Monroe, North Carolina, Turbomeca Manufacturing, Inc. [REDACTED]

[REDACTED] Mr. Porcher testified that Turbomeca Manufacturing, Inc. was set up as a plant to assist in the manufacture of spare parts for SHE France turbine-powered helicopter engines. (Doc. Ex. 69 p 194:17-23). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is the exact address of the head office of Safran Helicopter Engines France. (Doc. Ex. 69 p 194:10-16). [REDACTED]

---

2 [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Porcher

testified that “Turbomeca Safran Group Operators” includes SHE, and is the “business name for wherever [they] are in the world.” (Doc. Ex. 69 pp 43:25-44:1).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At the time of the October symposium in Charlotte, North

Carolina, Didier Desonoyer was in charge of maintenance for SHE and

Philippe Couteax was the vice president and general manager of SHE,

specializing in new engines. (Doc. Ex. 69 pp 44:5-10, 45:7-12). The

remaining six individuals from SHE were all employees of SHE at the

time they attended the symposium. (Doc. Ex. 69 pp 45:21-48:7).

Under oath, Mr. Porcher testified that one of the intended reasons for the October 2009 symposium in North Carolina was to promote the sale of helicopter engines designed and manufactured by SHE. (Doc. Ex. 69 pp 48:3-49:7). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This

information was used in presentations made during the symposium.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REASONS WHY CERTIFICATION SHOULD ISSUE

A North Carolina court has jurisdiction over a nonresident defendant if (1) statutory authority for the exercise of jurisdiction under the State’s long arm statute, Section 1-75.4, exists; and (2) the exercise of jurisdiction comports with due process under federal law. *See Skinner v. Preferred Credit*, 361 N.C. 114, 119, 638 S.E.2d 203, 208 (2006). Case law mandates that this State’s long arm statute should be liberally construed in favor of finding that personal jurisdiction exists. *Chapman v. Janko, U.S.A., Inc.*, 120 N.C. App. 371, 374, 462 S.E.2d 534, 536 (1995). To that end, the statute confers jurisdiction “to the full extent allowed by due process.” *Golds v. Central Express, Inc.*, 142 N.C. App. 664, 666, 544 S.E.2d 23, 26 (2001).

---

3 [REDACTED]

“To satisfy the due process prong of the personal jurisdiction analysis, there must be sufficient ‘minimum contacts’ between the nonresident defendant and . . . [North Carolina] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Skinner*, 361 N.C. at 122, 638 S.E.2d at 210 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “[I]t 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. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (citation omitted). The salient inquiry is whether “the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Id.* at 474 (citation omitted).

Here, the Court of Appeals’ Opinion must be reviewed and reversed. The acts of AHD and SHE in North Carolina cannot be described as random, isolated, nor fortuitous. Rather, the entities took affirmative action to serve and foster the North Carolina market for the very thing at issue herein—helicopters and their component parts—which the Parties contend were defective and caused damage.

I. THE COURT OF APPEALS' OPINION CONFLICTS WITH UNITED STATES SUPREME COURT PRECEDENT.

The Court of Appeals' Opinion merits review and reversal because it fails to employ the principles enumerated in the United States Supreme Court case of *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021). In *Ford*, each plaintiff was injured in their home state by an allegedly defective Ford automobile. Ford did not design or manufacture the automobile in the plaintiffs' home state. Ford did not sell the automobile to a dealer in the home state; rather, each plaintiff purchased the automobile through private sale. Ford took no action to get the automobiles into the respective states.

While Ford conceded that it had sufficient contacts with Montana and Minnesota, the forums where the plaintiffs were residents and were asserting their claims, Ford asserted that its contacts with these forums did not sufficiently connect to the suits, despite the plaintiffs' allegations that the Ford automobiles at issue malfunctioned in the forum states, causing damages within the forums. *Id.* at 1026.

Specifically, Ford argued that because the subject motor vehicles were not manufactured in the forum states, personal jurisdiction was not appropriate. *Id.* "In Ford's view, the needed link must be causal in

nature: Jurisdiction attaches ‘only if the defendant’s forum conduct gave rise to the plaintiff’s claims.’” *Id.* (emphasis in original; citation omitted). Put differently, in Ford’s opinion, specific jurisdiction was only appropriate “in the state where Ford sold the car in question, or else the States where Ford designed and manufactured the vehicle.” *Id.*

In rejecting Ford’s argument, the Supreme Court held that Ford’s causation-only approach fundamentally lacked support in prior Supreme Court precedent. *Id.* Specifically, the *Ford* Court held that some in-state relationships will support jurisdiction without a causal showing. *Id.* at 1029-30. Factors critical to the Supreme Court’s finding of personal jurisdiction over Ford included the following: (1) Ford products are available for sale throughout the forum states; (2) Ford fosters ongoing connections to its products’ owners; (3) Ford permits owners to regularly maintain and repair Ford products; (4) Ford issues and distributes replacement parts; (5) Ford products caused the crash and subsequent damages; (6) Ford marketed the products in the forum; and (7) Ford systematically served the markets in the forums. *Id.* at 1028.

While the Opinion from the North Carolina Court of Appeals discusses *Ford*, the Court fails to incorporate the guidance therein, and,

in fact, appears to endorse the causation-only approach which the United States Supreme Court rejected. The Court of Appeals' analysis ignores the affirmative acts of AHD and SHE and observes that merely because AHD and SHE were "connected" to the manufacturing and distribution of the subject helicopter said acts are not sufficient to establish purposeful availment of North Carolina jurisdiction. Further, it is clear that the Court of Appeals places improper significance on AHD and SHE's state-side counterparts which presents an additional ground for review and reversal.

As to AHD, the Court of Appeals' reversal of the Trial Court ignores the facts and specifically the continuing obligations undertaken by AHD following the sale of its helicopters within the United States market, and, specifically in North Carolina. These obligations include the development and issuance of maintenance and flight manuals to be followed by mechanics and pilots. Obligations of AHD include direct contact between end-users and AHD representatives and agents with respect to tracking and maintaining flight hours, the status of helicopters, and repairs to same. These continuing obligations, among others, relate directly to the safe operation of AHD manufactured

helicopters. It is the safe operation of one AHD-manufactured helicopter in North Carolina that is the subject of the underlying action. AHD's own Corporate Designee testified that he would expect AHD to be subject to personal jurisdiction in any court in the United States.

The Court of Appeals also improperly discounted the plain fact that SHE is strongly connected to the State of North Carolina. These connections range from SHE Employees traveling to the United States for business purposes or to participate in symposiums aimed at generating sales of SHE engines to maintaining strict control over maintenance of SHE engines post-sale. SHE, following the sale of its engines, provides continual service to its end-users, including those customers in North Carolina who can directly order replacement parts from SHE. The connections between SHE and this State also are evident by a company that was located here, Turbomeca Manufacturing, Inc.; this company was created with the express permission of SHE for the specific purpose to be used as a plant to assist in the manufacture of spare parts for SHE's turbine-powered helicopter engines.

To let stand the Court of Appeals' Opinion wholly disturbs notions of fair play, substantial justice, and reasonableness. "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." *Ford*, 141 S. Ct. at 1022. Here, there is a local injury for a local act, and as the Trial Court held, there must be a convenient forum. The exercise of personal jurisdiction here is reasonable and this Court must review the Court of Appeals' holding and reverse its erroneous Opinion.

II. THE COURT OF APPEALS' OPINION IMPLICATES LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THIS STATE REGARDING PERSONAL JURISDICTION.

To leave the Court of Appeals' Opinion undisturbed further deepens the state of the law, in the product liability context, of personal jurisdiction in North Carolina; the Opinion rendered by the Court of Appeals herein is inconsistent with the Court's own holding in *Cohen v. Continental Motors, Inc.*, 279 N.C. App. 123, 864 S.E.2d 816 (2021).

In *Cohen*, Continental Motors, Inc. ("CMI"), a Delaware corporation with a principal place of business in Alabama, which designs, manufactures, and sells aircraft engines and component parts, was sued as a result of a 31 March 2013 aircraft crash killing two North Carolina residents in North Carolina. 279 N.C. App. at 124-25, 864 S.E.2d at 818-

19. Plaintiffs alleged “that the . . . Starter Adapter was subject to a design defect, and that the Service Manual upon which Air Care allegedly relied when installing the . . . Starter Adapter was defective.” *Id.* at 129, 864 S.E.2d at 820.

CMI filed a motion to dismiss on the basis of personal jurisdiction which the trial court granted. *Id.* at 129, 864 S.E.2d at 821. On appeal was the issue of whether the trial court erred by granting CMI’s motion to dismiss for lack of personal jurisdiction. *Id.* at 133, 864 S.E.2d at 823. The Court of Appeals reversed the trial court and in doing so made the following findings and conclusions:

... Here, CMI, by its employee's own admission, "markets to the flying public at large . . . [and] ha[s] an international market." In fact, "[f]rom 2010 to 2013, C[MI] sold parts in all fifty United States as well as in other countries[,]” which included the forum state, North Carolina. Although CMI did not sell components to individual aircraft owners themselves, it actively maintained a business model that operated through independent distributors—including Triad, based in North Carolina. This made it so that if aircraft owners in North Carolina needed to purchase CMI parts, they would do so through Triad. Furthermore, during the time frame of the accident, CMI made it so that individuals across its international market, including those in North Carolina, could access its online database for a fee, thus drawing a benefit to itself from the "privilege of conducting activities" with North Carolina subscribers. *See id.* at \_\_ (slip op. at \*5). One such North Carolina subscriber, Air Care, was in fact "expected to" rely on the information CMI provided through

its subscriptions to operate on any aircrafts bearing CMI parts. In fact, even presuming *arguendo* Pearson, the Air Care mechanic, did not rely on CMI instructions to install the Starter Adapter, the evidence clearly indicates Pearson did indeed rely on CMI literature to operate on other components inside the O'Neals' Aircraft. **The facts, thus, paint a clear picture: at the time of the accident, CMI "serve[d] a market for a product in the forum [s]tate" of North Carolina.** *See id.* at \_\_\_\_ (slip op. at \*9).

Consistent with CMI's business model, CMI's Starter Adapter was overhauled by Aircraft Accessories, moved to Triad (in North Carolina), then to Air Care (in North Carolina), and was finally installed in the O'Neals' Aircraft (in North Carolina). Thereafter, CMI's product allegedly malfunctioned in North Carolina, causing the accident. **Applying the reasoning of Ford to this case: "the sale of [CMI's] product . . . [wa]s not simply an isolated occurrence, but ar[is]e[] from the efforts of [CMI] to serve, directly or indirectly, the [North Carolina] market . . ."** *See id.* at \_\_ (slip op. at \*10) (emphasis added). In fact, "[f]rom May 2010 to August 2013, C[M]I engaged in 2,948 sales of component parts with a total value of \$3,933,480.65" in North Carolina, serving the North Carolina market indirectly by operating "through Triad . . . ." Thus, "it is not unreasonable to subject [CMI] to suit in [North Carolina]" since "its allegedly defective [Starter Adapter] has there been the source of injury to its owner[s][,]" the O'Neals. *See id.*

Indeed, "this exact fact pattern (a resident-plaintiff sues a global [aviation] company, extensively serving the state market . . . for an in-state accident)" also effectively functions "as an illustration—even a paradigm example—of how specific jurisdiction works." *See id.* at \_\_\_\_ (slip op. at \*2). Therefore, applying *Ford* to the particular facts of this case, exercise of personal jurisdiction in North Carolina over CMI does not offend the Due Process Clause of the Fourteenth Amendment. Consequently, in light of the *Ford* opinion issued

after the trial court's Order in this case, we must conclude the trial court erred in granting CMI's Motion to Dismiss for Lack of Personal Jurisdiction on this basis.

*Id.* at 138-40, 864 S.E.2d at 827 (emphasis added).

Despite the factual similarities between the facts herein and *Cohen*, the Court in its Opinion merely mentions *Cohen* in passing and fails to distinguish how the result in *Cohen*, finding personal jurisdiction over an engine manufacturer by a North Carolina court proper, is not the result herein. These conflicting conclusions require review by this Court such that consistency in the law on this issue be had.

### III. THE COURT OF APPEALS' OPINION IMPACTS A SIGNIFICANT PUBLIC INTEREST AS IT SHIFTS RESPONSIBILITY FROM MANUFACTURERS WHO PLACE THEIR PRODUCTS IN THE STREAM OF COMMERCE WHICH THEN CAUSE INJURY IN THIS STATE.

To leave standing the Court of Appeals' Opinion is to shift liability to local actors, who, by virtue of working with foreign manufactures based on their presence in the State, are essentially now burdened with liability for foreign manufactures' negligence. Under the ruling here and in *Miller v. LG Chem, Ltd.*, 281 N.C. App. 531, 868 S.E.2d 896 (2022), the Court of Appeals also improperly places great weight on the corporate and industrial nature (versus individual or consumer nature) of the

product in finding that personal jurisdiction does not attach. Both conclusions create a localized chilling effect to the service industry.

The Opinion, as it stands, renders a pilot and operator of an emergency medical services flight responsible for the alleged negligence of the manufacturer of the subject helicopter and manufacturer of the subject helicopter's engine. The ruling creates a chilling effect on the willingness of localized actors to serve their communities when the items necessary to serve their communities come from foreign suppliers; this is especially the case with the globally connected environment many local businesses find themselves in and competing against.

Where a foreign manufacturer has placed its products in the stream of commerce and engaged in purposeful and knowing contact with the forum state, the exercise of personal jurisdiction by a court is proper and within the bounds of due process. *See Mucha v. Wagner*, 378 N.C. 167, 861 S.E.2d 501 (2021). Accordingly, this Court must grant this Petition and reverse the Court of Appeals as both AHD and SHE placed their products in the stream of commerce and directed business activities to this State.

ISSUES TO BE BRIEFED

In the event this Honorable Court grants this Petition, Defendants-Appellants, Estate of Jeffrey L. Burke and Air Methods Corporation, intend to present for this Court's review the following issues:

1. Whether the North Carolina Court of Appeals erred in concluding that the acts of AHD did not sufficiently "arise out of or relate to . . . [AHD's] contacts with the forum" such that a North Carolina court could not exercise personal jurisdiction over AHD in a suit involving the death of North Carolina residents as a result of an accident in North Carolina involving a helicopter manufactured by AHD.

2. Whether the North Carolina Court of Appeals erred in concluding that the acts of SHE did not sufficiently "arise out of or relate to . . . [SHE's] contacts with the forum" such that a North Carolina court could not exercise personal jurisdiction over SHE in a suit involving the death of North Carolina residents as a result of an accident in North Carolina involving a helicopter equipped with engines provided by SHE.

CONCLUSION

For the reasons set out, Defendants-Appellants, Estate of Jeffrey L. Burke and Air Methods Corporation, pray that this Honorable Court

grant this Petition, and upon formal briefing, reverse the Opinion of the North Carolina Court of Appeals.

This the 17th day of October, 2022.

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N.C. R. App. P. 33(b)

Certification:

I certify that the attorneys listed below and to the right of my signature block have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

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