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**AMERICAN BAR
ASSOCIATION**, 21st
Century Lawyer - How Bar
Associations Can Advance
the Rule of Law

ERIE COUNTY LEGAL JOURNAL

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Anthony

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MONDAY, JULY 12, 2021

ECBA Bylaws Committee Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

TUESDAY, JULY 13, 2021

Young Lawyers Division Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

WEDNESDAY, JULY 14, 2021

Chief Justice Samuel J. Roberts Scholarship
Committee Interviews
8:30 a.m.
The William J. Schaaf & Mary B. Schaaf
Education Center live

THURSDAY, JULY 15, 2021

Senior Lawyers Division Special Event
Luncheon
Noon
Erie Yacht Club, 1 Ravine Drive

MONDAY, JULY 19, 2021

In-house Counsel Leadership Group Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

TUESDAY, JULY 20, 2021

Solo/Small Firm Section Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

WEDNESDAY, JULY 21, 2021

AKT Kid Konnection Event
5:30 - 7:00 p.m.
Location to be decided

THURSDAY, JULY 22, 2021

Red Mass Committee Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP*)
or via Zoom

MONDAY, JULY 26, 2021

ECBA Board of Directors Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

THURSDAY, JULY 29, 2021

Defense Bar Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP*)
or via Zoom

*The ECBA is open for meetings.
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SHYTAYA BARNES, Administratrix of the Estate of Charles Barnes, deceased; WAINE BYRD, Administrator of the Estate of Willie M. Byrd, deceased; and YVETTE JOHNSON, Administratrix of the Estate of Oscar R. Johnson, deceased
v.

HYUNDAI MOTOR COMPANY; HYUNDAI MOTOR AMERICA, INC.; HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC; HYUNDAI AMERICA TECHNICAL CENTER, INC.; DELPHI AUTOMOTIVE SYSTEMS, LLC; DELPHI POWERTRAIN SYSTEMS LLC; DELPHI AUTOMOTIVE, PLC; DELPHI TECHNOLOGIES, PLC; DELPHI POWERTRAIN SYSTEMS KOREA, LTD; DAVE HALLMAN CHEVROLET, INC.; and DAVE HALLMAN HYUNDAI, INC.

CONSTITUTIONAL LAW / DUE PROCESS

Elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

CONSTITUTIONAL LAW / DUE PROCESS / NOTICE

In determining whether the requirements of due process have been satisfied, courts ask whether the state acted reasonably in selecting means likely to inform persons affected, not whether each property owner actually received notice.

BANKRUPTCY / PROCEDURE / NOTICE

If a debtor reveals in bankruptcy the claims against it and provides potential claimants with notice consistent with due process of law, then the Bankruptcy Code affords vast protections, including "free and clear" sale provisions that act as liability shield, but if the debtor does not reveal claims that it is aware of, then bankruptcy law cannot protect it.

ANTITRUST AND TRADE REGULATION / STATUTES AND REGULATIONS

Federal law requires that automakers keep records of the first owners of their vehicles, so as to facilitate recalls and other consequences of the consumer-automaker relationship.

CONSTITUTIONAL LAW / DUE PROCESS

Debtor's reckless disregard of the facts is sufficient to satisfy the requirement of knowledge, that is, that debtor knew or should have known about a claim, as required for due process to entitle potential claimants to actual notice of the bankruptcy proceedings.

CORPORATIONS / MERGERS AND ACQUISITIONS / SUCCESSOR LIABILITY

General rule is that when one company sells or transfers all of its assets to a successor company, the successor does not acquire liabilities of transferor corporation merely because of its succession to transferor's assets; however, exceptions to this rule exist when the purchaser expressly or impliedly agrees to assume such obligations, when the transaction amounts to a consolidation or merger, when purchasing corporation is merely a continuation of selling corporation, when the transaction is fraudulently entered into to escape liability, or when the transfer was without adequate consideration and provisions were not made for creditors of the transferor.

CORPORATIONS / MERGERS AND ACQUISITIONS / SUCCESSOR LIABILITY / CONTINUATION

Continuation of the enterprise is defined as existing when there is continuity of the selling

corporation's enterprise (management, personnel, physical location, assets, etc.), and when, after the transaction, the selling corporation ceases its ordinary business operations, while the successor corporation continues those operations.

*CORPORATIONS / MERGERS AND ACQUISITIONS /
SUCCESSOR LIABILITY / PRODUCT LINE EXCEPTION*

A Court should consider the following three factors for determining strict liability under the product line exception: (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading rule, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being employed by the successor in the continued operation of the business.

*CORPORATIONS / MERGERS AND ACQUISITIONS /
SUCCESSOR LIABILITY / PRODUCT LINE EXCEPTION*

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

*CORPORATIONS / MERGER AND ACQUISITIONS /
SUCCESSOR LIABILITY / PRODUCT LINE EXCEPTION*

Various factors will always be pertinent for example, whether the successor corporation advertised itself as an ongoing enterprise; or whether it maintained the same product, name, personnel, property, and clients; or whether it acquired the predecessor corporation's name and good will, and required the predecessor to dissolve.

CIVIL PROCEDURE / PRETRIAL PROCEDURE / PRELIMINARY OBJECTIONS

Preliminary objections challenging personal jurisdiction should be sustained only in cases which are clear and free from doubt.

CIVIL PROCEDURE / PRETRIAL PROCEDURE / PRELIMINARY OBJECTIONS

The plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence.

CIVIL PROCEDURE / PRETRIAL PROCEDURE / PRELIMINARY OBJECTIONS

Pennsylvania courts have repeatedly opined in addressing a defendant's challenge to personal jurisdiction that the burden is first on the defendant, as the moving party, to object to jurisdiction. Once raised by a defendant, the burden of establishing personal jurisdiction under Pennsylvania's long arm statute is placed on the plaintiff asserting jurisdiction. Then in turn, defendant can respond by demonstrating that the imposition of jurisdiction would be unfair.

CONSTITUTIONAL LAW / DUE PROCESS

The due process clause limits the authority of a state to exercise in personam jurisdiction over nonresident defendants.

CONSTITUTIONAL LAW / DUE PROCESS

The extent to which the due process clause proscribes jurisdiction over a nonresident defendant depends on the nature and quality of the defendant's contacts with the forum state.

CONSTITUTIONAL LAW / DUE PROCESS

Where a defendant has established no meaningful contacts, ties or relations with the forum state, the due process clause prohibits the exercise of personal jurisdiction; however, where a defendant has purposefully directed his activities at the residents of the forum state, he is presumed to have fair warning that it may be called to suit there.

CIVIL PROCEDURE / PERSONAL JURISDICTION

A nonresident defendant's activities in the forum state may give rise to either specific or general jurisdiction. Personal jurisdiction can either be in the form of general (i.e. all-purpose) personal jurisdiction or specific (i.e. case-linked) personal jurisdiction.

CONSTITUTIONAL LAW / DUE PROCESS / JURISDICTION

Given that Pennsylvania's long-arm statute provides for jurisdiction based on most minimum contact with state allowed under United States Constitution, in determining whether personal jurisdiction exists under that statute, court asks whether, under Due Process Clause, defendant has certain minimum contacts with Pennsylvania such that maintenance of action does not offend traditional notions of fair play and substantial justice.

CONSTITUTIONAL LAW / DUE PROCESS / JURISDICTION

Requiring minimum contacts for specific personal jurisdiction satisfies due process by ensuring that the defendant may reasonably anticipate where it may be "haled" into court based upon which forums it has purposefully availed itself of the privilege of conducting activities. This requirement ensures that a defendant will not be subject to jurisdiction solely as a result of random, fortuitous, or attenuated contacts.

*CIVIL PROCEDURE / PERSONAL JURISDICTION /
SPECIFIC PERSONAL JURISDICTION*

To determine whether a court has specific personal jurisdiction over a non-resident defendant, the Court should examine the following three-part test: (1) Did the plaintiff's cause of action arise out of or relate to the out-of-state defendant's forum-related contacts? (2) Did the defendant purposely direct its activities, particularly as they relate to the plaintiff's cause of action, toward the forum state or did the defendant purposely avail itself of the privilege of conducting activities therein? (3) Would the exercise of personal jurisdiction over the nonresident defendant in the forum state satisfy the requirement that it be reasonable and fair?

*CIVIL PROCEDURE / PERSONAL JURISDICTION /
SPECIFIC PERSONAL JURISDICTION*

Specific personal jurisdiction is not as straightforward as general personal jurisdiction and requires consideration of the factual nuances of jurisdictional connections in each case.

*CIVIL PROCEDURE / PERSONAL JURISDICTION /
SPECIFIC PERSONAL JURISDICTION*

Specific jurisdiction analysis focuses on the relationship among the defendant, the forum, and the litigation.

*CIVIL PROCEDURE / PERSONAL JURISDICTION /
SPECIFIC PERSONAL JURISDICTION*

Specific jurisdiction involves a more limited form of submission to a State's authority, elaborating that when a defendant purposefully avails itself of the privilege of conducting activities within the forum state, it submits to the judicial power of an otherwise foreign

sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 11780 – 2019

Appearances: William J. Conway, Esq. and Erin W. Grewe, Esq., for Defendant Delphi Powertrain Systems, LLC
David L. Hunter, Esq., James W. Murray, Esq., and Thomas J. Murray, Esq. for Plaintiffs
Gerard Cedrone, Esq. and Brian P. Crosby, Esq. Defendants Hyundai Motor America, Inc., Hyundai America Technical Center, Inc., and Hyundai Motor Manufacturing Alabama, LLC;
Alex Lonnett, Esq. appeared on behalf of Defendants Dave Hallman Chevrolet, Inc. and Dave Hallman Hyundai, Inc.

OPINION AND ORDER

Domitrovich, J., June 23, 2021

Representatives of three deceased Pennsylvania residents filed this case following fatal injuries allegedly caused by Defendant DPS, LLC's component parts installed in the subject 2009 Hyundai Santa Fe vehicle sold and resold in Pennsylvania. Plaintiffs' counsel allege Defendant DPS, LLC "did business in Pennsylvania by designing, manufacturing, testing, marketing, distributing and selling component parts of the subject vehicle at issue in this case" and performed Failure Modes Effects Analyses (FMEA) on the Delphi labeled Electronic Throttle Control (Delphi ETC) System componentry in the subject 2009 Hyundai Santa Fe.¹ Plaintiffs' counsel allege, "the subject Powertrain Control Module (PCM) was supplied by Defendant Delphi Automotive Systems."² In December of 2017, the powertrain portion of Delphi Automotive Systems, LLC, including the PCM business, was "spun off" into Defendant DPS, LLC, a U.S. operating entity.³

Defendant Delphi Powertrain Systems, LLC's [hereinafter Defendant DPS, LLC] filed Preliminary Objections to Plaintiffs' First Amended Complaint [hereinafter Preliminary Objections]⁴ raising the threshold issue of specific personal jurisdiction and other matters.⁵

¹ Plaintiffs' First Amended Complaint at ¶ 10 on p. 7.

² *Id.* at ¶ 9 on p. 6.

³ Defendant DPS, LLC's Preliminary Objections at ¶ 60; *See also* Ex. C, Declaration of Michele Compton at ¶ 11.

⁴ Counsel for Defendant DPS, LLC raises four (4) Preliminary Objections pursuant to Pa.R.C.P. 1028(A)(3), 1028(A)(4) and 1019, as to lack of personal jurisdiction; legal insufficiency; expired statute of limitations; and request to dismiss punitive damages with prejudice.

⁵ On August 31, 2020, Defendant DPS, LLC also filed Preliminary Objections to Defendant Dave Hallman Chevrolet [hereinafter DHC], Inc.'s "New Matter Cross Claim" with Memorandum of Law in Support. Defendant DPS, LLC's counsel argue, "[Defendant DHC, Inc.]'s Cross-Claim against Moving Defendant is derivative of those claims asserted by Plaintiffs because it is conditional upon a finding that Moving Defendant is liable to Plaintiffs." *See* Preliminary Objections to Defendant DHC, Inc.'s New Matter Cross-Claim at p. 8. Defendant DPS, LLC's counsel argue, "[i]f direct liability between Plaintiffs and Moving Defendant is eliminated ... then there is no right to contribution and/or indemnity between Moving Defendant and [Defendant DHC, Inc.]. *Id.* On October 1, 2020, Defendant DHC, Inc.'s counsel filed its "Brief in Opposition to Defendant [DPS, LLC]'s Preliminary Objections to

Defendant DPS, LLC raises a challenge to the exercise of specific personal jurisdiction in Pennsylvania over Defendant DPS, LLC as a Delaware corporation with offices in the states of Michigan and Indiana.

A summary of the instant case is as follows: This case concerns a triple fatality resulting from a collision occurring in Erie, Pennsylvania on July 7, 2017. Four days earlier, on or around July 3, 2017, Plaintiff Driver Oscar R. Johnson of Erie, Pennsylvania had purchased a 2009 Hyundai Santa Fe from Hallman Defendants in Erie, Pennsylvania. His two Passengers, Plaintiff Charles Barnes and Plaintiff Willie M. Byrd, were also residents of Erie, Pennsylvania.

Plaintiffs' counsel allege a "runaway throttle" defect in the subject 2009 Hyundai Santa Fe vehicle's component called the Delphi Electronic Throttle Control (Delphi ETC) System, also known as "drive-by-wire," that operates like a hard drive for a computer. When a runaway throttle condition occurs, "the central computer believes it is being commanded to generate a wide-open throttle (WOT) acceleration."⁶ As the accelerator pedal is pressed, electronic signals respond through the Powertrain Control Module (Delphi PCM) or engine control unit commanding the vehicle's throttle to either open or close.⁷ The Delphi ETC System is the "brains" within this Hyundai vehicle working in tandem with the Delphi PCM as a partnership.⁸ The Delphi ETC System communicates with the Delphi PCM to control the acceleration of the vehicle.⁹

On July 7, 2017, Plaintiff Driver was driving his 2009 Hyundai Santa Fe with his two Plaintiff Passengers a few blocks south from his residence when they suddenly experienced a wide-open acceleration over ninety (90) miles per hour for more than thirty (30) seconds. Plaintiff Driver had "to exert significantly more force to the brake pedal to retard the vehicle's speed."¹⁰ He managed to avoid hitting stopped vehicles but then crossed into the path of a moving semi-tractor trailer going north on Cherry Street on a green light. The semi-tractor trailer tore off the roof of the 2009 Hyundai Santa Fe, which "came to rest several hundred feet from the crash site."¹¹ All three Plaintiffs sustained severe bodily injuries resulting in their demise.

I. RELEVANT PROCEDURAL BACKGROUND

Plaintiffs' counsel filed a Civil Action Complaint on July 1, 2019 in Erie County Pennsylvania. On January 27, 2020, Plaintiffs' counsel filed the First Amended Complaint.¹² On March 17, 2020, Defendant DPS, LLC filed Preliminary Objections with Memorandum of

⁵ continued Defendant [DHC, Inc.]'s New Matter Cross-Claim." Defendant DHC, Inc.'s counsel argue, "[w]hile there would be no claim for contribution or indemnification by the other Defendants if [Defendant DPS, LLC] is not found liable on the Plaintiffs' claims, dismissal of [Defendant DHC, Inc.]'s Crossclaim is currently premature because the Court has not decided [Defendant DPS, LLC]'s Preliminary Objections to the Plaintiffs' Amended Complaint." *See* Brief in Opposition to Defendant [DPS, LLC]'s Preliminary Objections to Defendant [DHC, Inc.]'s New Matter Cross-Claim at p. 4. Defendant DHC, Inc.'s counsel argue, "Indeed, if the Court overrules [Defendant DPS, LLC]'s Preliminary Objections to the Plaintiffs' Amended Complaint, then [Defendant DHC, Inc.]'s Crossclaim would be proper." *Id.* at pp. 4-5.

⁶ Plaintiffs' First Amended Complaint at ¶ 22 on p. 12.

⁷ N.T.: *Defendant DPS, LLC's Preliminary Objections*, July 9, 2020, 20:15-19; *See also* Plaintiffs' First Amended Complaint at ¶ 21-22 on p. 12.

⁸ N.T.: *Defendant DPS, LLC's Preliminary Objections*, July 9, 2020, 41:2-4.

⁹ Exhibit 6, filed under seal per this Trial Court's Protective Order.

¹⁰ Plaintiffs' First Amended Complaint at ¶ 24 on p. 11.

¹¹ *Id.* at ¶ 19 on p. 11.

¹² As a result of Preliminary Objections filed by counsel for various Defendants, Plaintiffs' counsel agreed to file an Amended Complaint.

Law. On June 3, 2020, Argument/Hearing on Defendant DPS, LLC's Preliminary Objection was scheduled for July 9, 2020. On June 26, 2020, Plaintiffs' counsel filed Plaintiffs' Answer to Preliminary Objections with Memorandum of Law. On July 2, 2020, Defendant DPS, LLC filed its Reply in Support of Their Preliminary Objections.

After extensive argument on July 9, 2020, this Trial Court agreed to continue argument on Defendant DPS, LLC's Preliminary Objections for ninety (90) days, to the new re-argument date of October 7, 2020. Plaintiffs' counsel agree to work with Defendant DPS, LLC's counsel to obtain additional discovery information to ascertain the correct identity of the manufacturer, designer, supplier, tester, and/or possible quality control party of the ETC System and PCM system. On July 15, 2020, counsel signed a Confidentiality Stipulation, and this Trial Court signed a Protective Order as to "all confidential documents" and corresponding information.

On October 7, 2020, this Trial Court heard argument. Plaintiffs' counsel requested an additional ninety (90) day discovery period to locate other necessary information to ascertain the correct identity of the manufacturer, designer, supplier, tester, and/or the entity responsible for quality control regarding the ETC System and PCM System. The agreed upon new re-argument date was December 9, 2020. Counsel for Plaintiffs and Defendant DPS, LLC agreed to file Supplemental Memoranda addressing Jurisdictional Discovery.

On November 20, 2020, Plaintiffs' counsel filed Supplemental Memorandum of Law. On December 2, 2020, Defendant DPS, LLC filed Supplemental Brief. On December 9, 2020, this Trial Court heard argument. Counsel agreed Defendant DPS, LLC is not subject to general personal jurisdiction under Pennsylvania law. Counsel agreed the issue in the instant case is specific personal jurisdiction, not general personal jurisdiction. At the request of counsel, this Trial Court continued argument to the new date of January 19, 2021.

On January 14, 2021, Defendant DPS, LLC filed its Supplemental Brief based on Lack of Personal Jurisdiction. On January 19, 2021, this Trial Court heard argument from counsel. With consent of counsel, this Trial Court held in abeyance Defendant DPS, LLC's Preliminary Objections pending decision by the U.S. Supreme Court in the consolidated appeals of *Ford Motor Co. v. Bandemer and Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. ___, 141 S. Ct. 1017 (2021). This Trial Court scheduled a Status Conference for April 12, 2021.

This Trial Court held a Status Conference on April 12, 2021, to discuss the status of the consolidated *Ford* case, which was decided on March 25, 2021. Counsel agreed to submit to this Trial Court Supplemental Briefs regarding specific personal jurisdiction. Defendant DPS, LLC's counsel agreed to submit Supplemental Brief by April 15, 2021. Plaintiffs' counsel agreed to submit Supplemental Response Brief by April 22, 2021. This Trial Court scheduled argument for April 26, 2021.

On April 15, 2021, Defendant DPS, LLC filed Second Supplemental Brief based on Lack of Specific Personal Jurisdiction. On April 22, 2021, Plaintiffs' counsel filed Second Supplemental Memorandum of Law. On April 26, 2021, this Trial Court heard argument from counsel.

II. FACTS ADDUCED IN JURISDICTIONAL DISCOVERY

On November 20, 2020, Plaintiffs' counsel filed a Supplemental Memorandum of Law in Opposition to Preliminary Objections, with an extensive Exhibits List. Plaintiffs' counsel assert, "Although the Plaintiffs submitted thorough, targeted jurisdictional discovery, the

Delphi Defendants did not produce any documents in response thereto."¹³ Plaintiffs' counsel indicate Defendant DPS, LLC "objected to most requests."¹⁴

1. Plaintiffs' counsel state:

- a. "Delphi repeatedly admits that 'Old Delphi' designed the hardware and software for the subject PCM and validated the PCM, pursuant to the specifications of Hyundai, at Old Delphi's facility in Kokomo, Indiana."¹⁵
- b. "It is undisputed that a Delphi entity, or entities, supplied and/or manufactured the [ETC System] componentry and the powertrain system for the subject vehicle."¹⁶ The photographs below of stickers in the instant case on Plaintiff Johnson's engine control unit/PCM, clearly state "Delphi" in addition to the Hyundai and Kia company logos.¹⁷



¹³ Plaintiffs' Supplemental Memorandum of Law at p. 2.

¹⁴ *Id.*

¹⁵ *Id.* at p. 5; See also Ex. 2, *Defendant DPS, LLC's Answers to Interrogatories* at No. 24 on pp. 22-25.

¹⁶ Plaintiffs' Supplemental Memorandum of Law at p. 4; See also Ex. 1, *Defendant DPS, LLC's Answers and Objections* pp. 1-2 under "Prefatory Statement"; See also Ex.5 Figure 1 and Ex. 6, both filed under seal per this Trial Court's Protective Order.

¹⁷ Plaintiffs' Supplemental Memorandum of Law at pp. 3-4.

- c. “Plaintiffs have uncovered evidence that indicates specific issues, problems, and potential defects with this ‘Delphi’ componentry.”¹⁸ As an example, Plaintiffs’ counsel indicate, “Hyundai Defendants’ Technical Service Bulletin (TSB) specifically references ETC System Malfunction.”¹⁹ “Delphi Defendants designed and produced the relevant throttle position sensor (TPS) in addition to the ECM referenced in this TSB and equipped in the subject vehicle.”²⁰
- d. “Further evidence of Delphi’s involvement in the subject ETC system regarding the identity of the manufacturer, designer, supplier, tester, [and] the entity responsible for quality control of the Electronic Control Throttle (ETC) System is found in documents provided in discovery by the Hyundai Defendants that prominently contain the ‘Delphi’ name.”²¹
- e. Defendant HMC produced documentation that Delphi: “conducted the Failure Mode Effects Analysis (FMEA) on Lambda ETC; produced the calibration guideline for the ETC integrated Cruise Control System; [and] produced and supplied numerous components for the subject Hyundai Lambda engine system. This diagram specifically highlights the [PCM], [ETC System], throttle body and throttle position sensor(s) in blue — indicating they are Delphi Components.”²²
- f. Plaintiffs provided evidence Defendant DPS, LLC, continue to have facilities at Brighton and Troy, Michigan; Rochester, Michigan; and Kokomo, Indiana at the time of the subject incident and in some circumstances until the present date.²³
- g. “The Hyundai original equipment manufacturer (OEM) and Hyundai’s tier one component supplier, the Delphi Defendants, recognize that the market for their products, including the Subject Vehicle and other vehicles like it, is global.²⁴ In its State of Nevada Tax Abatement form, Delphi Automotive Systems, LLC as a wholly-owned subsidiary of Aptiv PLC “described itself as a company that designs and manufactures products **‘worldwide’**”:

Delphi Automotive Systems, LLC is an Aptiv PLC Company. Aptiv PLC is a global technology company that develops safer, greener, and more connected solutions, which enable the future of mobility and provides leading automated driving solutions. The company designs, engineers and manufacturers a comprehensive line of high-quality and innovative connectors and connection systems for various industries and product segments. The company is headquartered in Gillingham, Kent, UK. With offices worldwide, Aptiv PLC operates manufacturing sites, 14 technical centers, and customer centers across

¹⁸ *Id.* at p. 5.
¹⁹ *Id.*; See also Ex. 3, *Hyundai Defendants’ Technical Service Bulletin (TSB 10-FL-010) related to “TPS Replacement & ECM Update” and ETC System Malfunction.* [hereinafter Hyundai Defendants’ TSB]
²⁰ Plaintiffs’ Supplemental Memorandum of Law at p. 5.
²¹ *Id.*
²² *Id.* at p. 5-6; See also Ex. 4-6, filed under seal per this Trial Court’s Protective Order.
²³ Plaintiffs’ Supplemental Memorandum of Law at p. 6.
²⁴ *Id.* at p. 9; See also Plaintiffs’ Memorandum of Law at p. 21; See also Ex. 3, *Hyundai Defendants’ TSB.*

45 countries. **Delphi Automotive Systems, LLC provides products and services worldwide.** The company designs and engineers a variety of automotive systems and components including **fuel cells, entertainment systems, sensors, powertrain systems, driver interfaces, and security devices.**²⁵

- h. “Even though [Defendant] DPS, LLC admits its predecessor ‘Old Delphi’ supplied the at issue PCM for this vehicle, and the PCM was equipped in numerous other Santa Fe vehicles sold in Pennsylvania, it nevertheless provided neither any data in response to questions concerning the number of vehicles containing this PCM that were sold in Pennsylvania nor any documentation of the same.”²⁶

III. COUNSEL’S ARGUMENTS

Defendant DPS, LLC’s counsel argue and state the following: Defendant DPS, LLC is incorporated under Delaware laws, not Pennsylvania laws, and Defendant DPS, LLC is not registered to do business within Pennsylvania. Defendant DPS, LLC does not own or lease property in Pennsylvania; does not maintain a place of business or any real property in Pennsylvania; does not maintain a mailing address or phone number in Pennsylvania; and has never held a bank account in Pennsylvania.²⁷ Defendant DPS, LLC does not advertise or sell Delphi PCM or Delphi ETC modules “for Hyundai vehicles or any other original equipment manufacturer vehicles in Pennsylvania.”²⁸ The subject “PCM was supplied by Defendant Delphi Automotive Systems LLC (no comma) (hereinafter ‘Old Delphi’)” — “a separate and distinct entity from Moving Defendant.”²⁹ “The subject ETC was manufactured and supplied by Delphi Powertrain ... Systems Korea LLC.”³⁰

Counsel for Defendant DPS, LLC indicates that on October 8, 2005 and on October 24, 2005, “Delphi Corporation and most of its U.S.-based affiliates, including Old Delphi, filed for Chapter 11 bankruptcy.”³¹ On July 30, 2009, Bankruptcy Court entered an Order known as the “Modification Approval Order” that approved Debtor’s First Amended Joint Plan of Reorganization known as the “Modified Plan.” The effective date of the Modified Plan was October 6, 2009, which is after the subject 2009 Hyundai Santa Fe was manufactured. Debtor’s assets, including the estate of Old Delphi, were sold under a Master Disposition Agreement (“MDA”) to an affiliate of General Motors Company and a newly formed company owned primarily by Debtors’ debtor-in-possession lenders. “Because the ‘Delphi’ name was one of the assets sold by the Debtors under the MDA to the newly formed company, the Debtors effectuated a series of name changes in connection with the closing of the transactions under the Modified Plan and MDA.”³² “It is clear from the Modification Approval Order and MDA that the purchase of Old Delphi’s assets was made ‘free and

²⁵ Plaintiffs’ Memorandum of Law at p. 21; See also Ex. 3, *Delphi Automotive Systems, LLC Board Summary.*
²⁶ Plaintiffs’ Supplemental Memorandum of Law at pp. 9-10.
²⁷ Defendant DPS, LLC’s Preliminary Objections at ¶¶ 18, 22; See also Ex. C, *Declaration of Michele Compton* at ¶¶ 14, 16.
²⁸ Defendant DPS, LLC’s Preliminary Objections at ¶ 24; See also Ex. C, *Declaration of Michele Compton* at ¶ 18.
²⁹ Ex. C, *Declaration of Michele Compton* at ¶ 5; See also Defendant DPS, LLC’s Preliminary Objections at ¶ 39.
³⁰ Defendant DPS, LLC’s Preliminary Objections at ¶ 40; See also Ex. C, *Declaration of Michele Compton* at ¶ 20.
³¹ Defendant DPS, LLC’s Preliminary Objections at ¶ 54; See also Ex. C, *Declaration of Michele Compton* at ¶ 6.
³² Defendant DPS, LLC’s Preliminary Objections at ¶ 56; See also Ex. C, *Declaration of Michele Compton* at ¶ 8.

clear of all liens, claims, encumbrances, and other interests,’ ‘including, but not limited to, claims otherwise arising under doctrines of successor liability and related theories; any product liability or similar Claims’ for products manufactured or designed on or before October 9, 2009.’³³ The assets of Old Delphi were transferred to Delphi Automotive Systems, LLC. Then, in December 2017, the powertrain portion of Delphi Automotive Systems, LLC (includes the PCM business) was “spun off” into Defendant DPS, LLC as a newly, separate U.S. entity.³⁴ “Thus, Moving Defendant, took over the operation of the powertrain systems segment of the former business.”³⁵

To the contrary, Plaintiffs’ counsel argue and state, “The Court should reject Delphi’s attempt to invoke the bankruptcy bar because Plaintiffs had no notice of the bankruptcy proceedings and, therefore, are not bound by it.”³⁶ Liability of Old Delphi for injuries caused by its defective products passed to New Delphi under Pennsylvania successor liability. In 2009, Bankruptcy Court approved the sale of assets of Old Delphi to New Delphi as to free and clear of property interests, but only “**if various conditions are met.**”³⁷ (emphasis added) The Order further provides New Delphi shall have no successor or vicarious liability with respect to the obligations of the Old Delphi “**arising prior to the Closing.**”³⁸ Therefore, Plaintiffs’ counsel argue Defendant DPS, LLC’s attempt to invoke the bankruptcy bar should be rejected because the Bankruptcy Court Order “applies only to liability arising prior to the Closing.”³⁹ Undisputedly the accident in the instant case occurred on July 7, 2017, approximately eight (8) years after the Bankruptcy Closing.⁴⁰ Plaintiffs’ counsel argue, “courts have held that the bar of bankruptcy effected both by discharge and by ‘free and clear’ sales of assets applies only to ‘claims’ that exist as of the date of the filing of the bankruptcy petition.”⁴¹ Plaintiffs’ counsel point to *In re Grossman’s Inc.* which states, the term claim should be given the broadest available definition and discharge does not apply to all potential future tort claimants without proper due process notice according to the Fourteenth Amendment.⁴²

Further, Plaintiffs’ counsel argue the product-line exception applies where the successor corporation, Defendant DPS, LLC, acquires all or substantially all the manufacturing assets of the selling corporation, Old Delphi, with essentially the same manufacturing operation as the selling corporation.⁴³ Therefore, the successor corporation, Defendant DPS, LLC, is strictly liable for injuries caused by defects in units of the same product line, Delphi ETC and Delphi PCM, even if the product line was previously manufactured and distributed by the selling corporation, Old Delphi.⁴⁴ Plaintiffs’ cause of action occurred in 2017; therefore, Plaintiffs

³³ Defendant DPS, LLC’s Preliminary Objections at ¶ 58; *See also* Ex. D, *Modified Approval Order* at p. 18-19; *See also* Ex. C, *Declaration of Michele Compton* at ¶ 10.

³⁴ Defendant DPS, LLC’s Preliminary Objections at ¶ 60; *See also* Ex. C, *Declaration of Michele Compton* at ¶ 11.

³⁵ Defendant DPS, LLC’s Preliminary Objections at ¶ 61; *See also* Ex. C, *Declaration of Michele Compton* at ¶ 12.

³⁶ Plaintiffs’ Memorandum of Law at p. 9.

³⁷ *Id.*

³⁸ *Id.* at p. 10; *see also In re Delphi Corp.*, No. 05-44481 (RDD), 2009 Bankr. LEXIS 4663 at *70.

³⁹ Plaintiffs’ Memorandum of Law at p. 10.

⁴⁰ Defendant DPS, LLC’s Supplemental Brief at p. 5.

⁴¹ *Id.*

⁴² *Id.* at p. 10-11; *see also Jeld-Wen, Inc. v. Van Brunt (In re Grossman’s Inc.)*, 607 F.3d 114, 121 (3d. Cir. 2010).

⁴³ Plaintiffs’ Memorandum of Law at p. 12.

⁴⁴ *Id.* at p. 13, citing *Schmidt v. Boardman Co.*, 11 A.3d 924 at 929; *Keselyak v. Reach All, Inc.*, 660 A. 2d 1350, 1353 (Pa Super. 1995) (quoting *Ramirez v. Amsted Indus., Inc.*, 86 N.J. 332, 431 A.2d 811, 825 (N.J. 1981); *Dawejko v. Jorgensen Steel Co.*, 434 A.2d 106, 109 (Pa. Super 1981).

had no notice of the bankruptcy proceedings.⁴⁵ Since the Bankruptcy Court’s approval of the sale of assets by Old Delphi to New Delphi did not extinguish Plaintiffs’ claims, Defendant DPS, LLC is liable under Pennsylvania’s product-line successor liability rule.⁴⁶

Furthermore, Plaintiffs’ counsel argue specific personal jurisdiction exists over Defendant DPS, LLC since the entity “is now carrying on the business of the powertrain systems segment in the United States.”⁴⁷ Due to Defendant DPS, LLC manufacturing powertrains for purchase in every state in the union, including Pennsylvania, Defendant DPS, LLC “has purposely availed itself of the privilege of doing business in Pennsylvania.”⁴⁸

In Reply, counsel for Defendant DPS, LLC argue Plaintiffs’ counsel has not established Defendant DPS, LLC’s “specific requisite contacts with Pennsylvania regarding the subject products at issue.”⁴⁹ Further, “merely placing a part into the stream of commerce, even with knowledge that the part could end up in Pennsylvania, is insufficient to confer personal jurisdiction.”⁵⁰ Pennsylvania law should not apply to the issue of successor non-liability because Defendant DPS, LLC “formed and existing under the laws of Delaware” and Old Delphi “filed for Chapter 11 bankruptcy in a federal bankruptcy court in the state of New York.”⁵¹ Further, “the Modified Plan is governed by the laws of the State of New York” under the choice of law provision.⁵²

IV. ANALYSIS

A. Bankruptcy and Products Liability

Assuming New York Law applies, this Trial Court finds the recent decision by the Second Circuit of the U.S. Court of Appeals in the case of *In Matter of Motors Liquidation Co.* is pertinent. *In Matter of Motors Liquidation Co.* involves vehicle owners’ claims of defective ignition switches against a successor corporation that bought seller’s assets in Bankruptcy Court. Successor corporation moved to enforce “free and clear” language as to liens while vehicle owner claimants objected to enforcement due to lack of due process.

Said bankruptcy filed in June of 2009 involved the largest U.S. automobile manufacturer, General Motors (GM). Second Circuit Court Judge Chin of the U.S. Court of Appeals in New York, New York, on behalf of a three-judge panel writes, “Beginning in February 2014, New GM began recalling cars due to a defect in their ignition switches. The defect was potentially lethal: while in motion, a car’s ignition could accidentally turn off, shutting down the engine, disabling power steering and braking, and deactivating the airbags.”⁵³ Judge Chin indicates, “Many of the cars in question were built years before the GM bankruptcy, but individuals claiming harm from the ignition switch defect faced a potential barrier created by the bankruptcy process. In bankruptcy, Old GM had used 11 U.S.C. § 363 of the Bankruptcy Code (the ‘Code’) to sell its assets to New GM ‘free and clear.’ In plain terms, where individuals might have had claims against Old GM, a ‘free and clear’ provision in

⁴⁵ Plaintiffs’ Memorandum of Law at p. 9.

⁴⁶ *Id.* at p. 13.

⁴⁷ *Id.* at p. 14; *See also* Ex. C, *Declaration of Michele Compton* at ¶ 11.

⁴⁸ Plaintiffs’ Memorandum of Law at p. 14.

⁴⁹ Defendant DPS, LLC’s Reply at p. 2.

⁵⁰ *Id.*

⁵¹ *Id.* at p. 7.

⁵² *Id.*

⁵³ *In Matter of Motors Liquidation Co.*, 829 F.3d 135, 143 (2d Cir. 2016).

the bankruptcy court's sale order (the 'Sale Order') barred those same claims from being brought against New GM as the successor corporation."⁵⁴

The claimants in the case of *In Matter of Motors Liquidation Co.* began class action lawsuits against New GM, initiating claims of "successor liability" for damages resulting from ignition switch defects and other defects. Undisputedly, the Bankruptcy Court found claimants did not receive the required notice under the Due Process Clause of the Fifth Amendment. However, counsel for New GM asserted the "free and clear" provision in the Bankruptcy Court's Sale Order to prevent claimants from bringing their lawsuits against New GM.

Judge Chin further explains, "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"⁵⁵ "Courts ask 'whether the state acted reasonably in selecting means likely to inform persons affected, not whether each property owner actually received notice.'"⁵⁶

Judge Chin further elaborates, "If a debtor reveals in bankruptcy the claims against it and provides potential claimants notice consistent with due process of law, then the Code affords vast protections. Both § 1141(c) and § 363(f) permit 'free and clear' provisions that act as a shield against liability. These provisions provide enormous incentives for a struggling company to be forthright. But if a debtor does not reveal claims that it is aware of, then bankruptcy law cannot protect it. Courts must 'limit the opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor.'"⁵⁷ Thus, where Old GM knew or reasonably should have known about the ignition switch defect and provided no due process or notice to the vehicle owners, purchasers of the New GM became at risk for successor liability claims by vehicle owners.

Judge Chin further explains that federal law requires automakers to maintain records of the first vehicle owners for recalls as per the consumer-automaker relationship. Therefore, Judge Chin states, "Thus, to the extent that Old GM knew of defects in its cars, it would also necessarily know the identity of a significant number of affected owners."⁵⁸ However, Judge Chin opines, "The facts paint a picture that Old GM did nothing, even as it knew that the ignition switch defect impacted consumers. From its development in 1997, the ignition switch never passed Old GM's own technical specifications. Old GM knew that the switch was defective, but it approved the switch for millions of cars anyway."⁵⁹

Moreover, Judge Chin states, "Even assuming the bankruptcy court erred in concluding that Old GM knew, Old GM — if reasonably diligent — surely should have known about the defect. Old GM engineers should have followed up when they learned their ignition switch did not initially pass certain technical specifications. Old GM lawyers should have followed up when they heard disturbing reports about airbag non-deployments or moving

stalls. Old GM product safety teams should have followed up when they were able to recreate the ignition switch defect with ease after being approached by NHTSA. If any of these leads had been diligently pursued in the seven years between 2002 and 2009, Old GM likely would have learned that the ignition switch defect posed a hazard for vehicle owners."⁶⁰ "Such 'reckless disregard of the facts [is] sufficient to satisfy the requirement of knowledge.'"⁶¹

Judge Chin remarks, "[this] GM bankruptcy was extraordinary because a quick § 363 sale was required to preserve the value of the company and to save it from liquidation. *See* New GM Br. 34 ('Time was of the essence, and costs were a significant factor.'). Forty days was indeed quick for bankruptcy and previously unthinkable for one of this scale. While the desire to move through bankruptcy as expeditiously as possible was laudable, Old GM's precarious situation and the need for speed did not obviate basic constitutional principles. Due process applies even in a company's moment of crisis."⁶²

In the instant case, as in the Second Circuit Court of Appeals case of *In Matter of Motors Liquidation Co.*, a selling corporation known as "Old Delphi" manufactured and supplied the subject PCM and ETC prior to filing for Chapter 11 Bankruptcy in 2009.⁶³ Plaintiffs' counsel provided evidence indicating "specific issues, problems, and potential defects" with the Delphi PCM and Delphi ETC.⁶⁴ Just as in *In Matter of Motors Liquidation Co.*, the subject 2009 Hyundai Santa Fe vehicle was manufactured prior to Old Delphi's bankruptcy proceedings as admitted by counsel for Defendant DPS, LLC.⁶⁵

Further, Old Delphi's assets were sold "free and clear" of claims "arising prior to the Closing" of the bankruptcy action, "[e]xcept where expressly prohibited under applicable law."⁶⁶ This Trial Court recognizes vast protections exist by law for a successor corporation if a selling corporation reveals to the Bankruptcy Court any present or future claims that could be brought against the successor corporation by providing notice to potential claimants of the bankruptcy proceedings. However, if the selling corporation does not provide such information to the bankruptcy court and claimants do not receive proper notice of the bankruptcy proceedings, then the "free and clear provisions" cannot protect the successor corporation from claims that the selling corporation knew or should have known could be brought against the successor corporation.

Old Delphi as the selling corporation should have provided notice of the bankruptcy proceedings to the first owners of the Hyundai vehicles wherein the Delphi PCM and Delphi ETC had been installed. However, in the instant case, "Plaintiffs had no notice of the bankruptcy proceedings."⁶⁷ If Old Delphi had provided such notice, then New Delphi, Defendant DPS, LLC, would have been protected as the successor corporation from liability. Old Delphi, the selling corporation, knew or reasonably should have known about the Delphi ETC and Delphi PCM defects but provided no due process or notice to the owners of these

⁶⁰ *Id.* at 160.

⁶¹ *Id.* (quoting *McGinty v. State*, 193 F.3d 64, 70 (2d. Cir. 1999)).

⁶² *In Matter of Motors Liquidation Co.*, 829 F.3d at 161 (citing *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 425 (1934)).

⁶³ Defendant DPS, LLC's Preliminary Objections at ¶¶ 39-40, 52; *See also* Ex. C, Declaration of Michele Compton at ¶¶ 5, 20.

⁶⁴ Plaintiffs' Supplemental Memorandum of Law at p. 5; *See also* Ex. 3, Hyundai Defendants' TSB.

⁶⁵ Defendant DPS, LLC's Preliminary Objections at ¶ 55.

⁶⁶ *Id.* at ¶ 58; *See also* Plaintiffs' Memorandum of Law at p. 10; *See also* Ex. 2, Master Disposition Agreement p. 107.

⁶⁷ Plaintiffs' Memorandum of Law at p. 9.

vehicles. Therefore, the successor corporation of Old Delphi, that is, Defendant DPS, LLC, became at risk for liability to the Plaintiffs. Defendant DPS, LLC cannot avail itself as a shield against successor liability to avoid potential claims of Plaintiffs where Plaintiffs received no notice of Old Delphi's bankruptcy proceedings.

In the alternative, this Trial Court will now address the applicability of the Federal District Court case from the Southern District of New York, *In re Grumman Olson Indus., Inc.* as cited and argued by Plaintiffs' counsel.⁶⁸ The Honorable J. Paul Oetken states, "This case ultimately turns on the potential reach of a Section 363 'free and clear' sale order to extinguish a claim against a purchaser that is based on pre-bankruptcy conduct of the debtor that did not cause any harm to an identifiable claimant until after the bankruptcy closed."⁶⁹ Judge Oetken points to the Second Circuit's explanation of the breadth of the term claim: "'Congress unquestionably expected this definition to have wide scope' so that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'"⁷⁰ Judge Oetken emphasizes that in the context of § 363 sales, "[n]otice is the cornerstone underpinning Bankruptcy Code procedure."⁷¹

Judge Oetken describes how claimants' "due process rights would be violated because not only did they not receive notice of the bankruptcy, but there was no future claims representative or any provisions made for future claimants."⁷² However, Judge Oetken reasons, "Either way, the fact remains that there was not a future claims representative in this case, or any provisions made for unrepresented future claimants."⁷³ Accordingly, Judge Oetken opines claimants as well as other future claimants in their position "were not afforded either the notice and opportunity to participate in the proceedings or representation in the proceedings that due process would require in order for them to be bound by the Bankruptcy Court's orders."⁷⁴

In the instant case, since Plaintiffs' claims occurred after the Bankruptcy Court's confirmation of Old Delphi's Modification Plan and Bankruptcy Closing, Plaintiffs can be viewed as future tort claimants. While the term claim is given the broadest available definition, liability to all potential future tort claimants cannot be discharged without proper notice under the Fourteenth Amendment. The Bankruptcy bar under Old Delphi's Modification Plan applies only to liability "arising prior to the Closing." The collision on July 7, 2017 involving the subject Hyundai vehicle did not occur until long after the Bankruptcy Closing. Therefore, since Plaintiffs did not receive proper notice of the Bankruptcy proceedings and also were not represented in the proceedings as future tort claimants, Plaintiffs' claims are not barred or bound by the "free and clear" provisions of the Bankruptcy Closing.

Assuming Pennsylvania law applies, this Trial Court will now address the applicability of

⁶⁸ In the underlying bankruptcy case of *In re Grumman Olson Indus., Inc.*, the Bankruptcy Court discusses two categories of future tort claims. The first category encompasses individuals "who had pre-petition physical contact with or exposure to the debtor's product but have not yet manifested symptoms or discovered their injury." The second category are individuals "injured after consummation of an asset sale or confirmation of a plan as a result of a defective product manufactured and sold by the debtor prior to the bankruptcy." *In re Grumman Olson Indus., Inc.*, 445 B.R. 243, 251 (Bank. S.D.N.Y. 2011).

⁶⁹ *In re Grumman Olson Indus., Inc.*, 467 B.R. 694, 703 (S.D.N.Y. 2012).

⁷⁰ *Id.* at 704 (quoting *In re Chateaugay Corp.*, 944 F.2d 997, 1003 (2d Cir.1991); *See also* H.R. Rep No. 595, 95th Cong., 2d Sess. 309 (1978)).

⁷¹ *In re Grumman Indus., Inc.*, 467 B.R. at 706 (quoting *In re Savage Indus., Inc.*, 43 F.3d 714, 720 (1st Cir.1994)).

⁷² *In re Grumman Indus., Inc.*, 467 B.R. at 710.

⁷³ *Id.*

⁷⁴ *Id.*

Pennsylvania case law as in *Dawejko v. Jorgenson Steel Co.* Generally, Pennsylvania law recognizes that when the selling corporation sells or transfers all of its assets to a successor corporation, that successor corporation does not acquire liabilities of the selling corporation simply due to acquiring the selling corporation's assets.⁷⁵ Exceptions to this general rule exist when one of the following is shown: "(1) the purchaser expressly or impliedly agrees to assume such obligation; (2) the transaction amounts to a consolidation or merger; (3) the purchasing corporation is merely a continuation of the selling corporation; or (4) the transaction is fraudulently entered into to escape liability."⁷⁶

Applying third exception, the product line exception, to the instant case, this Trial Court must assess whether the successor corporation, Defendant DPS, LLC, is a mere continuation of the selling corporation, Old Delphi. Continuation of the enterprise is defined as "existing when there is continuity of the [selling] corporation's enterprise (management, personnel, physical location, assets, etc.), and when, after the transaction, the [selling] corporation ceases its ordinary business operations, while the successor corporation continues those operations."⁷⁷ Under the product line exception, "the successor corporation remains strictly liable in tort for the defective products of [the selling corporation]."⁷⁸ In 1981, the Pennsylvania Superior Court in *Dawejko* stated the successor corporation is strictly liable for injuries caused by products in the same product line that are defective where the successor corporation acquires the assets of the selling corporation and undertakes the same manufacturing operation.⁷⁹ The Court in *Dawejko* cited to the *Ray v. Alad Corp.* three-part test for determining strict liability under the product line exception:

- (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business,
- (2) the successor's ability to assume the original manufacturer's risk-spreading rule, and
- (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being employed by the successor in the continued operation of the business.⁸⁰

Additionally, a court is to consider:

Where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor.⁸¹

⁷⁵ *Dawejko v. Jorgenson Steel Co.*, 434 A.2d 106, 107 (Pa. Super. 1981).

⁷⁶ *Id.* (citing *Graham v. Textile Machine Works*, 326 A.2d 449 (Pa. Super. 1974)).

⁷⁷ *Dawejko*, 434 A.2d at 108-109.

⁷⁸ *Berg Chilling Systems, Inc. v. Hull Corp.*, 435 F.3d 455, 465 (3d Cir. 2006).

⁷⁹ *Dawejko*, 434 A.2d at 110 (citing *Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 358 (1981)).

⁸⁰ *Dawejko*, 434 A.2d at 109 (quoting *Ray v. Alad Corp.*, 19 Cal. 3d 22, 30-31 (1977)).

⁸¹ *Dawejko*, 434 A.2d at 110 (quoting *Ramirez*, 86 N.J. at 358).

Further the Court in *Dawejko* took note of various sets of relevant factors developed in the courts of other jurisdictions as pertinent to the imposition of liability on the successor corporation:

[F]or example, whether the successor corporation advertised itself as an ongoing enterprise, []; or whether it maintained the same product, name, personnel, property, and clients, []; or whether it acquired the predecessor corporation's name and good will, and required the predecessor to dissolve, [].⁸²

In 2011, the Supreme Court of Pennsylvania in *Schmidt v. Boardman Co.* recognized the above *Ray* three-part test as stated in *Dawejko* as “non-mandatory” in the product line exception application. Further, the Supreme Court of Pennsylvania verified the validity of the “operative *Dawejko* language, and the various factors identified in *Dawejko* were identified as criteria which are ‘also used’ in the product-line assessment.”⁸³

By applying the product line exception in the instant case, Plaintiffs’ remedies would be virtually destroyed by Defendant DPS, LLC’s acquisition of the business and operation of Old Delphi. Defendant DPS, LLC accepted responsibility of Old Delphi’s future tort claims by assuming Old Delphi’s “risk-spreading rule” when Defendant DPS, LLC became a successor corporation to Old Delphi. Defendant DPS, LLC accepted the responsibility and liability for defective products, such as Delphi PCM and Delphi ETC, which necessarily attached to Old Delphi’s good will. Therefore, it is fair to conclude that by continuing the business and operation of Old Delphi, Defendant DPS, LLC would be liable under Pennsylvania’s product-line successor liability rule. The Bankruptcy Court’s approval of the sale of assets by Old Delphi to Defendant DPS, LLC did not extinguish Plaintiffs’ claims and the product line exception applies.

Moreover, in the instant case, Defendant DPS, LLC continues to carry on the business of the powertrain systems segment in the U.S. When Defendant DPS, LLC, in 2017, acquired the operation of the powertrain systems segment of Old Delphi, Defendant DPS, LLC accepted the responsibility of the operations of the powertrain systems segment of Old Delphi in the U.S. as per its counsel, Michele Compton, in her Declaration. The liability of Old Delphi for injuries caused by its defective products were the continued responsibility of Defendant DPS, LLC under Pennsylvania successor liability. As the successor corporation, Defendant DPS, LLC, therefore, can be held strictly liable in tort for the defective Delphi ETC and defective Delphi PCM of the selling corporation, Old Delphi.

B. Specific Personal Jurisdiction

Under Pennsylvania Rule of Civil Procedure 1028, “(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds: (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint” Case law clearly indicates, “when deciding a motion to dismiss for lack of personal jurisdiction, the court must consider the

⁸² *Dawejko*, 434 A.2d at 111.

⁸³ *Schmidt v. Boardman Co.*, 608 Pa. 327, 361 (2011).

evidence in the light most favorable to the non-moving party.”⁸⁴ “Preliminary objections challenging personal jurisdiction ‘should be sustained only in cases which are clear and free from doubt.’”⁸⁵ As aptly stated under federal law, “the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence.”⁸⁶

Hammons v. Ethicon is the leading Pennsylvania Supreme Court case involving specific personal jurisdiction. In *Hammons*, our Pennsylvania Supreme Court states, “Pennsylvania courts have repeatedly opined in addressing a defendant’s challenge to personal jurisdiction that the burden is first on the defendant, as the moving party, to object to jurisdiction.”⁸⁷ Furthermore, “once raised by a defendant, the burden of establishing personal jurisdiction under Pennsylvania’s long arm statute is placed on the plaintiff asserting jurisdiction.”⁸⁸ Then in turn, “defendant can respond by demonstrating that the imposition of jurisdiction would be unfair.”⁸⁹ The Supreme Court in *Hammons* acknowledges, “this practice is consistent with federal jurisprudence” and cites to 4 Federal Practice & Procedure Civil § 1069, which provides “[T]he plaintiff initially bears the burden of showing that the defendant purposefully directed its activities at residents of the forum state, and that the claim arises out of or relates to those activities. The defendant then bears the burden of showing that, in light of other factors, the assertion of jurisdiction would be unreasonable or unfair.”⁹⁰

The Pennsylvania Superior Court in the relevant case of *Fulano v. Fanjul Corp.* explains: “The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the authority of a state to exercise in personam jurisdiction over nonresident defendants.”⁹¹ “The extent to which the Due Process Clause proscribes jurisdiction depends on the nature and quality of the defendant’s contacts with the forum state.”⁹² “Where a defendant ‘has established no meaningful contacts, ties or relations’ with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction.”⁹³ “‘A defendant’s activities in the forum [s]tate may give rise to either specific or general jurisdiction.’”⁹⁴

Personal jurisdiction can either be in the form of general (i.e. all-purpose) personal jurisdiction or specific (i.e. case-linked) personal jurisdiction.⁹⁵ “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.”⁹⁶ “General jurisdiction, as its name implies, extends to ‘any and all claims’ brought against a defendant.”⁹⁷

⁸⁴ *Calabro v. Socolofsky*, 206 A.3d 501, 505 (Pa. Super. 2019) (quoting *Sulkava v. Glaston Finland OY*, 54 A.3d 884, 889 (Pa. Super. 2012)).

⁸⁵ *D & S Auto Sales, Inc. v. Commercial Sales & Marketing, Inc.*, 2021 WL 683483 at *2 (Pa. Com. Pl.) (quoting *Schiavone v. Aveta*, 41 A.3d 861, 865 (Pa. Super. 2012)).

⁸⁶ *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, Footnote n.9 (3d Cir. 1984).

⁸⁷ *Hammons v. Ethicon*, 240 A.3d 537, 561 (Pa. 2020).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Fulano v. Fanjul Corp.*, 236 A.3d 1, 12 (Pa. Super. Ct. 2020) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985)).

⁹² *Fulano*, 236 A.3d at 12–13 (citing *Burger King* 471 U.S. at 474–76; *See also Kubik v. Letteri*, 532 Pa 10, 17 (1992)).

⁹³ *Fulano*, 236 A.3d at 13 (quoting *Burger King* 471 U.S. at 472).

⁹⁴ *Fulano*, 236 A.3d at 13 (quoting *Mendel v. Williams*, 53 A.3d 810, 817 (Pa. Super. 2012)).

⁹⁵ *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. ___, 137 S. Ct. 1773, 1780 (2017) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

⁹⁶ *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 592 U.S. ___, 141 S. Ct. 1017, 1024 (2021) (quoting *Goodyear*, 564 U.S. at 919).

⁹⁷ *Ford*, 141 S. Ct. at 1024 (quoting *Goodyear*, 564 U.S. at 919).

“Those claims need not relate to the forum State or the defendant’s activity there; they may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select ‘set of affiliations with a forum’ will expose a defendant to such sweeping jurisdiction.”⁹⁸ “[F]orums for a corporation are its place of incorporation and principal place of business.”⁹⁹ “General Jurisdiction ... is established over a nonresident corporation when it: ‘(1) is incorporated under or qualified as a foreign corporation under the laws of this Commonwealth; (2) consents, to the extent authorized by the consent; or (3) carries on a continuous and systematic part of its general business within this Commonwealth.’”¹⁰⁰

In the instant case, counsel agree Defendant DPS, LLC is not amenable to general personal jurisdiction, and, therefore, only specific personal jurisdiction is currently at issue.¹⁰¹ When determining if the defendant is subject to specific personal jurisdiction within the forum State, a court first looks to the State’s long-arm statute. Pennsylvania’s long-arm statute allows courts to assert personal jurisdiction over non-resident defendants “to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.”¹⁰² This Trial Court must determine “whether, under the Due Process Clause, the defendant has ‘certain minimum contacts with ... [Pennsylvania] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’”¹⁰³

Recently, the Pennsylvania Supreme Court in *Hammons* confirmed “specific personal jurisdiction continues to be whether the defendant has sufficient ‘minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’”¹⁰⁴ Moreover, “[r]equiring minimum contacts satisfies due process by ensuring that the defendant may ‘reasonably anticipate’ where it may be ‘haled into court’ based upon which forums it has ‘purposefully availed itself of the privilege of conducting activities.’”¹⁰⁵ “The High Court has opined that this requirement ensures that a defendant will not be subject to jurisdiction ‘solely as a result of random, fortuitous, or attenuated contacts.’”¹⁰⁶

Pennsylvania Supreme Court Justice Baer, now Chief Justice Baer, writing for the Majority in *Hammons*, implemented a three-part test to determine whether specific jurisdiction is appropriate in the forum state. He referred to U.S. Supreme Court Justice Sotomayor’s

⁹⁸ *Ford*, 141 S. Ct. at 1024 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)).

⁹⁹ *Ford*, 141 S. Ct. at 1024.

¹⁰⁰ *Fulano*, 236 A.3d at 13 (quoting *Seeley v. Caesars Entertainment Corporation*, 206 A.3d 1129, 1133 (Pa. Super. 2019)).

¹⁰¹ The U.S. Supreme Court in *Ford* states, “Specific jurisdiction covers defendants less intimately connected with a State, but only as to a narrower class of claims. To be subject to that kind of jurisdiction, the defendant must take ‘some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.’” *Ford*, 141 S. Ct. at 1019 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “[T]he plaintiff’s claims ‘must arise out of or relate to the defendant’s contacts’ with the forum.” *Ford*, 141 S. Ct. at 1019 (quoting *Bristol-Myers*, 137 S. Ct. at 1786). “[T]he Court has ‘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.’” *Lewis v. Mercedes-Benz USA, LLC*, 2021 WL 1216897 at *35 (S.D. Fla. Mar. 30, 2021) (quoting *Ford*, 141 S. Ct. at 1026). “Because the prong is separated by an ‘or,’ specific jurisdiction may also exist where a claim ‘relates to the defendant’s contacts with the forum.’” *Lewis*, 2021 WL 1216897 at *35.

¹⁰² 42 Pa. Cons. Stat. § 5322(b).

¹⁰³ *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 316-317 (3d Cir. 2007) (quoting *Int’l Shoe*, 326 U.S. at 316).

¹⁰⁴ *Hammons*, 240 A.3d at 556 (quoting *Int’l Shoe*, 326 U.S. at 316).

¹⁰⁵ *Hammons*, 240 A.3d at 556 (quoting *Burger King*, 471 U.S. at 474).

¹⁰⁶ *Hammons*, 240 A.3d at 556 (quoting *Burger King*, 471 U.S. at 475).

Dissenting Opinion in the *Bristol-Myers Squibb* case, wherein she cites “a more manageable three-part test” as stated in *Federal Practice and Procedure*:

- (1) Did the plaintiff’s cause of action arise out of or relate to the out-of-state defendant’s forum-related contacts?
- (2) Did the defendant purposely direct its activities, particularly as they relate to the plaintiff’s cause of action, toward the forum state or did the defendant purposely avail itself of the privilege of conducting activities therein?
- (3) Would the exercise of personal jurisdiction over the nonresident defendant in the forum state satisfy the requirement that it be reasonable and fair?¹⁰⁷

Specific personal jurisdiction “requires consideration of the factual nuances of jurisdictional connections in each case.”¹⁰⁸ Specific jurisdiction analysis focuses “on the relationship among the defendant, the forum, and the litigation.”¹⁰⁹ “Specific jurisdiction involves ‘a more limited form of submission to a State’s authority,’ elaborating that when a defendant ‘purposefully avails itself of the privilege of conducting activities within the forum state,’¹¹⁰ ... it submits

¹⁰⁷ *Hammons*, 240 A.3d at 556; *See also* 4 Fed. Prac. & Proc. Civ. § 1067.2 Minimum Contacts, Fair Play, and Substantial Justice (4th ed.).

¹⁰⁸ *Hammons*, 240 A.3d at 556.

¹⁰⁹ *Id.* at 559 (quoting *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115 (2014)).

¹¹⁰ Plaintiffs’ counsel raise the stream of commerce issue as to Defendant DPS, LLC’s purposeful availment in the Commonwealth of Pennsylvania. *See* Plaintiffs’ Memorandum of Law at pp. 16-17. Under “stream-of-commerce,” specific jurisdiction would exist over a non-resident defendant who placed goods into the stream of commerce with the knowledge the goods could end up in the forum State. The U.S. Supreme Court in *Ford* explains a corporation cultivates a market within the forum state when it undertakes activities such as advertising and marketing a product within the forum state. *Ford*, 141 S. Ct. at 1019. The courts are split as to whether component part manufacturers purposefully avail themselves of specific personal jurisdiction within a forum state through the stream of commerce. The Third Circuit in *Shuker v. Smith & Nephew, PLC* recently declined to adopt the stream of commerce theory to exercise specific personal jurisdiction over the non-resident parent company of a manufacturer, explaining “[a] plurality of Supreme Court Justices has twice rejected [it] ...” *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018). “In ‘stream of commerce’ jurisdictions, on the other hand, the analysis focuses on whether the manufacturer reasonably expected, at the time it placed its product into the stream of commerce, that the part would make it into the forum state. Jurisdictions such as the Fifth and Eighth Circuits (and again several states) subscribe to this view. From a policy standpoint, advocates of this approach rely on the notion that a defendant who placed parts into the stream of commerce benefits from the retail sale of a final product in the forum state. As such, ‘the possibility of a lawsuit there cannot come as a surprise,’ and the litigation will not ‘present a burden for which there is no corresponding benefit.’” Kathleen Ingram Carrington and Derek Rajavuori, *Navigating the Stream of Commerce: “Purposeful Availment” in the Wake of Ford*, JDSupra (April 28, 2021), https://www.jdsupra.com/legalnews/navigating-the-stream-of-commerce-9958431/#_ednref17.

Where a corporation does not come into direct contact with the forum state, specific jurisdiction may lie where the corporation “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.” *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). While the Circuit Courts are split as to the application of stream of commerce on component part manufacturers, *Fulano v. Fanjul Corp.*, which is still valid law in Pennsylvania, allows a court to exercise personal jurisdiction over a defendant through stream of commerce where a relationship exists between the defendant’s contact with the forum and the plaintiff’s injury and claim within the forum. The Pennsylvania Superior Court aptly states in *Fulano*, “‘Stream of commerce cases typically involve an injury allegedly caused by a product or part manufactured by a nonresident defendant and placed into the stream of commerce without knowledge of its eventual destination.’” *Fulano*, 236 A.3d at 14 (quoting *Zeger v. Joseph Rhodes, Ltd.*, 775 F. Supp. 817, 820 (M.D. Pa. 1991)). “Because Plaintiffs do not allege that they were injured in Pennsylvania by a product produced by *Fanjul*, their effort to invoke ‘stream of commerce’ for specific personal jurisdiction is unavailing.” *Fulano*, 236 A.3d at 14-15. “If these ‘purposeful

to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State.”¹¹¹

In the instant case, this Trial Court is required to consider the evidence in the light most favorable to the nonmoving parties in order to sustain Defendant DPS, LLC's Preliminary Objections on lack of specific personal jurisdiction.¹¹² Defendant DPS as a successor corporation to Old Delphi accepted the responsibility of any risk in the manufacture of the Delphi ETC System and the Delphi PCM system, which were installed as integral component parts of the 2009 Hyundai Santa Fe. The Delphi ETC System as the “brains” within this vehicle works in tandem with the Delphi PCM as a partnership to make this 2009 Hyundai Santa Fe vehicle function for transportation purposes.¹¹³ In sync with the “essence” or “brains” known as the Delphi ETC System, the Delphi PCM communicates with the Delphi ETC System to control the acceleration of the instant vehicle.¹¹⁴ As an integral, inseparable and necessary component of the subject vehicle, both the Delphi ETC System and Delphi PCM controlled the acceleration of this 2009 Hyundai Santa Fe, and thereby became inseparable from the function of the instant vehicle. Plaintiffs' counsel allege the Delphi ETC System and Delphi PCM were defective as a result of the known actions or behaviors of this vehicle on July 7, 2017. Therefore, Defendant DPS, LLC purposefully availed itself of Pennsylvania law when the 2009 Hyundai Santa Fe was distributed, sold, and resold in Erie County, Pennsylvania.

Moreover, due to the connection between Plaintiffs' claims and Defendant DPS, LLC's Delphi ETC System as well as the Delphi PCM integral components, a relationship among Defendant DPS, LLC, the State of Pennsylvania, and this litigation was and is created. This relationship is more than sufficient to support specific personal jurisdiction in Pennsylvania. Pennsylvania indeed has a “manifest interest” in providing its residents, the Plaintiffs, with a convenient forum for redressing injuries inflicted by out-of-state actors. Defendant DPS, LLC's business falls within Section (a)(1)(iii) of Pennsylvania's long-arm statute as to

¹¹⁰ continued availment' and 'relationship' requirements are met, a court may exercise personal jurisdiction over a defendant so long as the exercise of that jurisdiction 'comport[s] with fair play and substantial justice.'" *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 97 (3d. Cir. 2004) (quoting *Burger King*, 471 U.S. at 476). In addressing the “fairness question,” a trial court may consider “the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering substantive social policies.” *Miller Yacht*, 384 F.3d at 97.

Assuming arguendo that the stream of commerce is applicable, Defendant DPS, LLC's counsel argues his client did not advertise or sell Delphi PCM or Delphi ETC in Pennsylvania nor had any sales agents to market said component parts in Pennsylvania. However, this Trial Court finds a component part manufacturer, such as Defendant DPS, LLC, would not advertise the component parts, the Delphi PCM and Delphi ETC known as the “brains” of the subject vehicle, that are integrally and inseparably installed into an end product, the subject vehicle, prior to final sale. The entry of the Defendant DPS, LLC's product or parts into the forum is an aspect of a consistent pattern of multistate business so that it is reasonable for Defendant DPS, LLC to foresee the potential dispersion of its products at the time they are sold, particularly when accompanied by their conduct demonstrating Defendant DPS, LLC intended to take advantage of the local Erie, Pennsylvania marketplace by installing their essential parts into the subject vehicle. Unlike the facts in *Fulano*, Plaintiffs in instant case allege they were injured in Pennsylvania by the integral and essential Delphi PCM and Delphi ETC sold by Defendant DPS, LLC to Hyundai Defendants and installed as essential and inseparable from the subject vehicle. Therefore, where the end product, the subject 2009 Hyundai Santa Fe, was delivered into the stream of commerce with the expectation that a consumer would purchase said vehicle in Pennsylvania, Defendant DPS, LLC purposefully availed itself of the laws of Pennsylvania through the stream of commerce and Pennsylvania's exercise of specific personal jurisdiction over Defendant DPS, LLC comports with fair play and substantial justice.

¹¹¹ *Hammons*, 240 A.3d at 556. (quoting *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873, 881 (2011)).

¹¹² *Calabro*, 206 A.3d at 505.

¹¹³ N.T.: *Defendant DPS, LLC's Preliminary Objections*, July 9, 2020, 41:2-4.

¹¹⁴ Exhibit 6, filed under seal, as per this Trial Court's Protective Order.

“shipping of merchandise ... indirectly into or through this Commonwealth.”¹¹⁵ Defendant DPS, LLC has and continues to have more than minimum contacts with the Commonwealth of Pennsylvania in that maintenance of this lawsuit “does not offend traditional notions of fair play and substantial justice.”¹¹⁶ Therefore, Pennsylvania's assertion of specific personal jurisdiction over Defendant DPS, LLC does not cause an unreasonable exercise of Pennsylvania's long-arm statute over Defendant DPS, LLC.

As to part one of the Hammons three-part test, specifically and undisputedly, the subject 2009 Hyundai Santa Fe vehicle was originally sold in Erie County, Pennsylvania and later resold to Erie County, Pennsylvania residents.¹¹⁷ Defendant DPS, LLC has repeatedly admitted Old Delphi designed the hardware and software for the subject PCM and also validated the PCM, according to Hyundai's specifications, at Old Delphi's facility in Kokomo, Indiana.¹¹⁸ Further, Plaintiffs provided photographs, see page 11, of the sticker on the PCM, as well as, the clear display of “Delphi” on the subject ETC body.¹¹⁹ In Exhibit 5, filed under seal, Figure 1 shows a diagram of the Delphi PCM within the Cruise Control System, and Exhibit 6, also filed under seal, displays the components for the Hyundai Lambda engine system, which prominently indicates the Delphi PCM at the center of the engine system.¹²⁰ Defendant DPS, LLC admitted the subject vehicle was sold in Pennsylvania “with the incorporated PCM and ETC [System] componentry” at issue in this case.¹²¹ Therefore, Defendant DPS, LLC as the successor corporation of Old Delphi supplied and manufactured the Delphi PCM and the Delphi ETC for the subject vehicle.¹²²

Moreover, the cause of action in the instant case arose out of Defendant DPS, LLC's contacts with Pennsylvania as a component part manufacturer that placed integral parts inside this 2009 Hyundai Santa Fe vehicle. The evidence in the instant case derived by Plaintiffs' counsel from Jurisdictional Discovery does relate to Defendant DPS, LLC's forum-related contacts. A component part manufacturer “cultivate(s) the market” differently than auto manufacturers. Component part manufacturers do not advertise to the public and do not persuade citizens of a forum state to choose their products. Because component part manufacturers do not engage in the same kinds of activities as manufactures of completed products, the minimum contacts standard under *Int'l Shoe* applies in the instant case.

In the instant case, Defendant DPS, LLC engages in a global market. Plaintiffs' counsel aptly points out: “Delphi Automotive Systems, LLC manufactures products — including electronic throttle controls — that it knows are being placed in cars sold in Pennsylvania.”¹²³ “Automobiles that are designed for the U.S. market are marketed and sold in **every state**.”¹²⁴ Defendant DPS, LLC as the successor corporation of Old Delphi accepted the responsibility as manufacturer and supplier of the Delphi ETC and Delphi PCM to design these component parts in a manner that is free from safety hazards. Defendant DPS, LLC

¹¹⁵ 42 Pa.C.S. § 5322.

¹¹⁶ *Int'l Shoe*, 326 U.S. at 316.

¹¹⁷ N.T.: *Defendant [DPS, LLC]'s Preliminary Objections*, April 26, 2021, 9:14-17.

¹¹⁸ Ex. 2, *Defendant DPS, LLC's Answers to Interrogatories* No. 24 on pp. 22-25.

¹¹⁹ Plaintiffs' Supplemental Memorandum of Law at p. 3-4.

¹²⁰ Ex. 5 and 6 filed under seal per this Trial Court's Protective Order.

¹²¹ Defendant DPS, LLC's Supplemental Brief at p. 4.

¹²² Plaintiffs' Supplemental Memorandum of Law at p. 4.

¹²³ Plaintiffs' Memorandum of Law at p. 21.

¹²⁴ *Id.*

as the successor corporation has accepted the duty to warn consumers of potential injuries that could result due to defects in the Delphi ETC and Delphi PCM. Furthermore, as aptly stated by Plaintiffs' counsel, "[e]ven though [Defendant] DPS, LLC admits its predecessor 'Old Delphi' supplied the at issue PCM for this vehicle, and the PCM was equipped in numerous other Santa Fe vehicles sold in Pennsylvania, it nevertheless provided neither any data in response to questions concerning the number of vehicles containing this PCM that were sold in Pennsylvania nor any documentation of the same."¹²⁵ Therefore, part one of the *Hammons* three-part test has been established. For this Trial court to hold otherwise, a component part manufacturer could "hide behind the shield of manufacturers" and not be held accountable where potential injuries arise.

As to part two of the *Hammons* three-part test, discovery in the instant case produced documents that evidence Defendant DPS, LLC's involvement in the subject Delphi ETC System regarding the identity of the manufacturer, designer, supplier, tester, and entity responsible for quality control of the Delphi ETC System. These documents provided by Hyundai Defendants clearly contain the 'Delphi' name. Defendant DPS, LLC as the successor corporation is the designer and manufacturer of products "worldwide" which includes each state within the U.S.¹²⁶ At the time of the subject incident, Defendant DPS, LLC, as successor corporation continued, and still presently continues, to have facilities in Brighton and Troy, Michigan; Rochester, Michigan; and Kokomo, Indiana.

Moreover, Plaintiffs' counsel stated that Discovery evidence was "uncovered" indicating specific issues, problems, and potential defects with this 'Delphi' componentry."¹²⁷ Hyundai Defendants' Technical Service Bulletin specifically references Delphi ETC System Malfunction.¹²⁸ "Delphi Defendants designed and produced the relevant throttle position sensor (TPS) in addition to the engine control module (ECM) referenced in this TSB and equipped in the subject vehicle."¹²⁹ Defendant HMC produced documentation that Delphi: "conducted the FMEA on Lambda ETC; produced the calibration guideline for the ETC integrated Cruise Control System; [and] produced and supplied numerous components for the subject Hyundai Lambda engine system. This diagram specifically highlights the PCM, ETC System, throttle body and throttle position sensor(s) in blue — indicating they are Delphi Components."¹³⁰

In the instant case, Defendant DPS, LLC admits "it was generally 'foreseeable' to some Delphi entity that a 'Delphi' product might end up in Pennsylvania" ¹³¹ Further, "[i]t is undisputed that a Delphi entity, or entities, supplied and/or manufactured the [ETC] componentry and [PCM] system for the subject vehicle."¹³² Therefore, Defendant DPS, LLC as the successor corporation to Old Delphi could have reasonably foreseen that consumers such as Plaintiffs would buy this vehicle with the Delphi ETC and Delphi PCM being installed to operate electronic signals commanding its throttle to either open or close. Defendant DPS,

¹²⁵ Plaintiffs' Supplemental Memorandum of Law at pp. 9-10.

¹²⁶ *Id.* at p. 9.

¹²⁷ Plaintiffs' Supplemental Memorandum of Law at p. 5.

¹²⁸ Ex. 3, *Hyundai Defendants' TSB*.

¹²⁹ Plaintiffs' Supplemental Memorandum of Law at p. 5.

¹³⁰ *Id.* at p. 5-6.

¹³¹ Defendant DPS, LLC's Supplemental Brief based on Lack of Personal Jurisdiction at p. 6.

¹³² Plaintiffs' Supplemental Memorandum of Law at p. 4.

LLC knew a possible malfunction of its components within this 2009 Hyundai Santa Fe could cause Defendant DPS, LLC to litigate in Pennsylvania over injuries to Pennsylvania consumers and residents. This foreseeability and action by Defendant DPS, LLC connects and has connected Defendant DPS, LLC to the forum state of Pennsylvania. Therefore, under part two of the *Hammons* three-part test, this Trial Court concludes Defendant DPS, LLC purposefully availed itself of the privilege of conducting activities in the Commonwealth of Pennsylvania.

As to part three of the *Hammons* three-part test, this collision and the resulting deaths occurred in Pennsylvania where the deceased Plaintiffs had resided. Defendant DPS, LLC is a U.S. corporation incorporated under the laws of Delaware with its principal place of business in Michigan and Defendant DPS, LLC is located geographically close in proximity to Pennsylvania. Delaware borders on the southern portion of Pennsylvania. The city of Erie, Pennsylvania is located on Lake Erie, which is contiguous with Michigan on its western shore. The Commonwealth of Pennsylvania's exercise of specific personal jurisdiction over Defendant DPS, LLC would not cause an unreasonable exercise of the long-arm statute to "hale" Defendant DPS, LLC into Erie, Pennsylvania. The connection between Plaintiffs' claims and Delphi ETC System or the "brains" component within this 2009 Hyundai Santa Fe vehicle creates a sufficient relationship among Defendant DPS, LLC, the Commonwealth of Pennsylvania, and this litigation, to support specific personal jurisdiction with Pennsylvania, in particular, Erie, Pennsylvania. Indeed, Pennsylvania "has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors."¹³³

Further, an important nexus in this case is that this 2009 Hyundai Santa Fe vehicle contained the Delphi ETC System, known as the "brains" of this subject vehicle. The subject vehicle containing the installed Delphi ETC and Delphi PCM was originally sold and resold in Erie County, Pennsylvania to a resident of Erie County, Pennsylvania. This Delphi ETC System as the main component is the essence of this subject vehicle, and, therefore, Defendant DPS, LLC purposefully availed itself of the laws of Pennsylvania. Therefore, as to part three of the *Hammons* three-part test, the exercise of specific personal jurisdiction by the forum state of Pennsylvania in Erie County over nonresident Defendant DPS, LLC meets the requirement of "reasonable and fair."

In conclusion, Defendant DPS, LLC's Preliminary Objections can only be sustained where the record is clear and free from doubt. Moreover, this Trial Court is required to consider all matters indicated above in the light most favorable to the non-moving parties. This Trial Court finds and concludes Defendant DPS, LLC's Preliminary Objections are overruled as the record is not free and clear from doubt and for the reasons as set forth above. This Trial Court hereby enters the following attached Order:

¹³³ *Burger King*, 471 U.S. at 473.

ORDER

AND NOW, to-wit, on this 23rd day of June, 2021, as per the Opinion attached, it is hereby **ORDERED, ADJUDGED, and DECREED** Defendant Delphi Powertrain Systems, LLC's Preliminary Objections are **OVERRULED**. Defendant Delphi Powertrain Systems, LLC's Preliminary Objections to Defendant Dave Hallman Chevrolet, Inc.'s "New Matter Cross-Claim" are **OVERRULED**. Defendant Delphi Powertrain Systems, LLC's counsel has twenty-four (24) days to Answer both Plaintiffs' First Amended Complaint and Defendant Dave Hallman Chevrolet, Inc.'s "New Matter Cross-Claim."

Plaintiffs' counsel did not correctly number Paragraphs 18, 19, 20, 21, 22, 23, and 24; therefore, Plaintiffs' counsel are **DIRECTED** to re-number their First Amended Complaint's Paragraphs **immediately**. Plaintiffs' counsel will provide ASAP a copy to all Defendants as well as this Trial Court of the "Corrected Plaintiffs' First Amended Complaint" as well as file said pleading with the Prothonotary of Erie County, Pennsylvania.

BY THE COURT

/s/ **Stephanie Domitrovich, Judge**

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CHANGE OF NAME NOTICE
In the Court of Common Pleas of Erie County Pennsylvania
Docket No. 11233-21

In re: Lorelei Bryanne Churchill, a minor
Notice is hereby given that a Petition has been filed in the above named Court by Amy Churchill, requesting an Order to change the name of Lorelei Bryanne Churchill to Kevin Bryan Churchill.

The Court has fixed the 26th day of July, 2021 at 3:00 p.m. in Courtroom G, Room 222 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all parties may appear and show cause, if any they have, why the prayer of the petitioner should not be granted.

July 9

INCORPORATION NOTICE
Notice is hereby given that Articles of Incorporation have been filed with the Pennsylvania Department of State for Brown's Automotive & Service Center, Inc., which has been incorporated under the PA Business Corporation Law of 1988.
Kurt L. Sundberg, Esquire
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, PA 16507

July 9

INCORPORATION NOTICE
Notice is hereby given that Articles of Inc. were filed with the Dept. of State for Lee-Ada Unified Inc., a corp. organized under the PA Business Corp. Law of 1988.

July 9

LEGAL NOTICE
CIVIL ACTION
COURT OF COMMON PLEAS
ERIE COUNTY, PA
CIVIL ACTION-LAW
NO. 2021-10352
NOTICE OF ACTION IN
MORTGAGE FORECLOSURE
U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE
FOR STRUCTURED ASSET
SECURITIES CORPORATION
MORTGAGE PASS-THROUGH

CERTIFICATES, SERIES 2007-BC4, Plaintiff
v.
JENNIFER KENNY, IN HER CAPACITY AS HEIR OF KEVIN J. KENNY; et al, Defendants
To: UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER KEVIN J. KENNY Defendant(s), 457 W 28TH ST., ERIE, PA 16508

COMPLAINT IN MORTGAGE FORECLOSURE
You are hereby notified that Plaintiff, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BC4, has filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County, PA docketed to No. 2021-10352, seeking to foreclose the mortgage secured on your property located, 457 W 28TH ST ERIE, PA 16508.

NOTICE
YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION

ABOUT HIRING A LAWYER.
IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.
Lawyer Referral & Information Service
PO Box 1792
Erie, PA 16507
814-459-4411
Robertson, Anschutz, Schneid, Crane & Partners, PLLC
ATTORNEYS FOR PLAINTIFF
Jenine Davey, Esq. ID No. 87077
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906

July 9

SHERIFF SALES
Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**JULY 16, 2021
AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.
John T. Loomis
Sheriff of Erie County

June 25 and July 2, 9

SALE NO. 1
Ex. #10763 of 2020
Producers Credit Corporation,
Plaintiff
v.

Howard J. Hammond, III and
Kelli R. Hammond, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed at No. 2020-10763, Producers Credit Corporation v. Howard J. Hammond, III and Kelli R. Hammond, owners of property situated in the Township of Concord, Erie County, Pennsylvania being commonly known as 20258 Hammond Road, Corry, PA 16407 (Parcel No. (3) 15-35-004.00) with 130.48 acreage.
Assessment Map No.
Parcel No. (3) 15-35-004.00

Assessed Value Figure: \$163,866.20
Improvement thereon:
Barns and sheds
Mark G. Claypool, Esquire
Knox McLaughlin Gornall & Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

June 25 and July 2, 9

SALE NO. 2
Ex. #10183 of 2021
Producers Credit Corporation,
Plaintiff
v.

Howard J. Hammond, III,
Thomas Leretsis, and the United
States Of America, Department
of the Treasury, Internal Revenue
Service, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-10183, Producers Credit Corporation v. Howard J. Hammond, III, Thomas Leretsis, and the United States Of America, Department of the Treasury, Internal Revenue Service, owners of property situated in the Township of Concord, Erie County, Pennsylvania being commonly known as 99.43 acres more or less along Hammond Road, Corry, PA 16407 (Parcel No. (3) 20-36-18) and 20281 Hammond Road, Corry, PA 16407 (Parcel No. (3) 14-36-1) with 2,156 square footage and 50.0 acreage.
Assessment Map No.
Parcel No. (3) 20-36-18
Assessed Value Figure: \$57,840.20
Improvement thereon:
One-sided open pole building
Parcel No. (3) 14-36-1
Assessed Value Figure: \$116,714.80
Improvement thereon:
Two-story dwelling
Mark G. Claypool, Esquire
Knox McLaughlin Gornall & Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

June 25 and July 2, 9

SALE NO. 3
Ex. #10066 of 2021
HOME POINT FINANCIAL
CORPORATION, Plaintiff
v.
JUDITH A. BURKE, IN HER
CAPACITY AS EXECUTRIX
AND DEVISEE OF THE
ESTATE OF THOMAS A.
BURKE, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2021-10066, HOME POINT FINANCIAL CORPORATION vs. JUDITH A. BURKE, IN HER CAPACITY AS EXECUTRIX AND DEVISEE OF THE ESTATE OF THOMAS A. BURKE THOMAS A. BURKE, owner(s) of property situated in North East Borough, ERIE County, Pennsylvania
21 EAGLE STREET, NORTH EAST, PA 16428
35-006-047.0-004.00;
980 square feet; 0.0583 acreage
Assessment Map number: 35-006-047.0-004.00
Assessed Value figure: \$65,630
Improvement thereon:
Single Family
Vincent DiMaiolo, Jr., Esq.
Court I.d. No. 59461
Ashleigh Levy Marin, Esq.
Court I.d. No. 306799
Mehmet Basoglu, Esq.
Court I.d. No. 329635
7660 Imperial Way, Suite 121
Allentown, Pennsylvania 18195
(610) 395-3535

June 25 and July 2, 9

SALE NO. 4
Ex. #13114 of 2018
The Bank of New York, not in its
individual capacity but solely as
Trustee on behalf of the holders
of the CIT Mortgage Loan Trust,
2007-1 Asset-Backed Certificates,
Series 2007-1, Plaintiff
v.
Timothy T. Markin, Individually
and as Executor of the Estate of
Helen M. Markin, Deceased, and
Mary F. Markin, Defendants
DESCRIPTION

By Virtue of Writ of Execution filed to No. 2018-13114, The Bank of New York, not in its individual

capacity but solely as Trustee on behalf of the holders of the CIT Mortgage Loan Trust, 2007-1 Asset-Backed Certificates, Series 2007-1 vs. Timothy T. Markin, Individually and as Executor of the Estate of Helen M. Markin, Deceased, and Mary F. Markin Timothy T. Markin and Mary F. Markin, owner(s) of property situated in the Township of Millcreek, Erie County, Pennsylvania being 1129 Marshall Drive, Erie, PA 16505 0.1399 acres
Assessment Map number: 33028075001600
Assessed figure: \$93,130.00
Improvement thereon: Single Family Residential Dwelling Hladik, Onorato & Federman, LLP 289 Wissahickon Avenue North Wales, PA 19454 (215) 855-9521

June 25 and July 2, 9

SALE NO. 5

Ex. #12131 of 2020
Nationstar Mortgage LLC d/b/a Mr. Cooper, Plaintiff

v.

Gary Nitkiewicz and Vicki L. Nitkiewicz, Defendants DESCRIPTION

By virtue of a Writ of Execution filed to No. 12131-2020, Nationstar Mortgage LLC d/b/a Mr. Cooper v. Gary Nitkiewicz and Vicki L. Nitkiewicz, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 2225 Eastlawn Pkwy, Erie, PA 16510 0.1148

Assessment Map number: 18051042022600
Assessed Value figure: \$77,900.00
Improvement thereon: a residential dwelling
LOGS Legal Group LLP
Attorney for Movant/Applicant 3600 Horizon Drive, Suite 150 King of Prussia, PA 19406 (610) 278-6800

June 25 and July 2, 9

SALE NO. 6

Ex. #10153 of 2020
First Heritage Financial LLC, Plaintiff

v.

Gregory M. Scott and Zane D. Fallon, Defendants DESCRIPTION

By virtue of a Writ of Execution filed to No. 2020-10153, First Heritage Financial LLC vs. Gregory M. Scott and Zane D. Fallon, owner(s) of property situated in the Borough of Girard, Erie County, Pennsylvania being 170 Locust Street, Girard, PA 16417 0.1791
Assessment Map number: 23-015-052.0-020.00
Assessed Value figure: \$73,400.00
Improvement thereon: a residential dwelling
LOGS Legal Group LLP
Attorney for Movant/Applicant 3600 Horizon Drive, Suite 150 King of Prussia, PA 19406 (610) 278-6800

June 25 and July 2, 9

SALE NO. 7

Ex. #10202 of 2018
LSF10 Master Participation Trust, Plaintiff

v.

Nathan G. Zaczek aka Nathan Gerid Zaczek aka Nathan Zaczek, Defendant DESCRIPTION

By virtue of a Writ of Execution filed to No. 10202-18, LSF10 Master Participation Trust v. Nathan G. Zaczek aka Nathan Gerid Zaczek aka Nathan Zaczek, owners of property situated in the Township of North East, Erie County, Pennsylvania being 8615 Route 89 AKA 8615 Station Road, North East, Pennsylvania 16428.
Tax I.D. No. 37-29-131-2
Assessment: \$ 125,563.80
Improvements: Residential Dwelling McCabe, Weisberg & Conway, LLC 123 South Broad Street, Suite 1400 Philadelphia, PA 19109 215-790-1010

June 25 and July 2, 9

SALE NO. 8

Ex. #13438 of 2019
Towd Point Mortgage Trust 2018-2, Plaintiff

v.

Donald L. Dorman and Jennine M. Dorman, Defendants DESCRIPTION

By virtue of a Writ of Execution filed to No. 2019-13438, Towd Point Mortgage Trust 2018-2 vs. Donald L. Dorman and Jennine M. Dorman, owner(s) of property situated in the Borough of Waterford, Erie County, Pennsylvania being 109 East 2nd Street, Waterford, PA 16441 Single Family 75 X 155
Assessment Map number: 46009048000200
Assessed Value figure: \$95,100
Improvement thereon: Residential Single Dwelling Stern & Eisenberg, P.C. Andrew J. Marley, Esquire 1581 Main Street, Suite 200 Warrington, PA 18976

June 25 and July 2, 9

SALE NO. 9

Ex. #11842 of 2020
Deutsche Bank National et. al, Plaintiff

v.

Colleen L. Cardoza and Charles K. Foht, Jr., Defendants DESCRIPTION

By virtue of a Writ of Execution filed to No. 2020-11842, Deutsche Bank National et. al vs. Colleen L. Cardoza and Charles K. Foht, Jr., owner(s) of property situated in the Borough of Wesleyville, Erie County, Pennsylvania being 1805 Market Street, Erie, PA 16510 Single Family 95 X 138 IRR
Assessment Map number: 50001004001000
Assessed Value figure: \$78,000
Improvement thereon: Residential Single Dwelling Stern & Eisenberg, P.C. Andrew J. Marley, Esquire 1581 Main Street, Suite 200 Warrington, PA 18976

June 25 and July 2, 9

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Rick L. Clayton, CPA • Christopher A. Elwell, CPA • Ryan Garofalo, CPA

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ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

**ANDREWS, JANE L., a/k/a
JANE LINDA ANDREWS,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan L. Moyer, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**BANKS, ROBERT LOUIS, a/k/a
ROBERT L. BANKS,
deceased**

Late of the Township of North East, County of Erie and Commonwealth of Pennsylvania
Executrix: Donna Banks, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**BRADSHAW, DORIS R., a/k/a
DORIS BRADSHAW,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Mark E. Bradshaw
Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**COWGER, MICHAEL L.,
deceased**

Late of the Borough of Cranesville, County of Erie, Commonwealth of Pennsylvania
Administrator: Keith Cowger, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**HARRISON, THELMA E.,
deceased**

Late of the Township of McKean, County of Erie and Commonwealth of Pennsylvania
Executor: Michael Harrison, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**HAYES, PATRICIA H., a/k/a
PATRICIA HAYES,
deceased**

Late of the Borough of Girard, County of Erie, Commonwealth of Pennsylvania
Executor: Roger R. Hayes, III, 12946 Lemur Lane, Cypress, TX 77429
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**KIEHLMEIER,
WILLIAM C., a/k/a
WILLIAM JOSEPH
KIEHLMEIER, a/k/a
WILLIAM J. KIEHLMEIER,
a/k/a WILLIAM KIEHLMEIER,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: William J. Kiehlmeier, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509
Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

**MERSKI, WILLIAM F.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executrix: Robin Hites, c/o Elizabeth Brew Walbridge, Esq., 4258 W. Lake Road, Erie, PA 16505
Attorney: Elizabeth Brew Walbridge, Esq., 4258 W. Lake Road, Erie, PA 16505

**SCHMITT, JAMES J., a/k/a
SCHMITT, JAMES J., SR.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Patricia A. Slaughter, 5325 Washington Ave., Erie, PA 16509
Attorney: None

**SHENK, MILDRED S.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Barbara S. McGill, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**STEWART, MARY E., a/k/a
MARY ELIZABETH STEWART,
a/k/a BETH STEWART,
deceased**

Late of Girard Borough
Executor: John H. Stewart, c/o Brenc Law, 9630 Moses Road, Springboro, Pennsylvania 16435
Attorney: Andrew S. Brenc, Esquire, 9630 Moses Road, Springboro, Pennsylvania 16435

**WHITE, JANET L., a/k/a
JANET LOUISE WHITE, a/k/a
JANET WHITE,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-executors: Christopher L. White and Brent R. White, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

SECOND PUBLICATION

**ANTHONY, CAMILLE W., a/k/a
CAMILLE A. ANTHONY, a/k/a
MARY CAMILLE ANTHONY,
deceased**

Late of the Town of Reading, County of Middlesex, Commonwealth of Massachusetts
Executrix: Jill McFadden, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**ARMITAGE, HELEN M., a/k/a
HELEN MARIE ARMITAGE,
deceased**

Late of the City of Corry, Erie County
Executrix: Jacqueline Marie Polito
Attorney: Steven E. George, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

**CAMILLO, CARMINE,
deceased**

Late of the Township of Millcreek, Erie County, Commonwealth of Pennsylvania
Executor: Carmine A. Camillo, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**CHERVENKA, THOMASINA,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of PA
Administratrix: Ruth Parr, c/o 102 East 4th Street, Erie, PA 16507
Attorney: Richard E. Filippi, Esquire, 102 East 4th Street, Erie, PA 16507

**FITCH, VIVIAN M., a/k/a
VIVIAN FITCH,
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Virginia M. MacWilliams, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**FRANZ, EVELYNNE J., a/k/a
EVELYNNE FRANZ,
deceased**

Late of the Township of Fairview, Commonwealth of Pennsylvania
Executor: Richard A. Vendetti, Esquire, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

**GOULD, DOROTHY JAY, a/k/a
DOROTHY J. GOULD,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Kathleen Presogna, 1404 East 30th Street, Erie, PA 16504
Attorney: Gary K. Schonthaler, Esquire, The Conrad - A.W. Brevillier House, 510 Parade Street, Erie, PA 16507

**LOBAUGH, MARK S.,
deceased**

Late of Greene Township
Executor: Evan W. Lobough
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**MILLER, PATRICIA M., a/k/a
PATRICIA M. BRISKA, a/k/a
PATRICIA BRISKA,
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Lynne Martin, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**OSTROWSKI, JOSEPH, a/k/a
JOSEPH OSTROWSKI, JR.,
deceased**

Late of the Borough of Cranesville, County of Erie, Commonwealth of Pennsylvania
Executrix: Kimberly Rearic, 9791 Franklin Center Road, Cranesville, PA 16410
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**SHURER, JOHN J.,
deceased**

Late of Fairview Township, Erie County
Administratrix: Constance Williams, 7101 Old Ridge Rd., Fairview, PA 16415
Attorney: None

**SMITH, STEPHEN J.,
deceased**

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executrix: Janice L. Vacco, 7797 Daggett Road, Girard, PA 16417
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

YOUNG, STEPHAN, deceased

Late of the City of Erie, Erie County
Co-administratrices: Norma Young, 441 West Third Avenue, Apartment 116, Erie, PA 16507 and Desiree Abell, 5586 East Hermans Road, #1, Tucson, AZ 85756
Attorney: Matthew A. Bole, Esquire, Fiffik Law Group, PC, Foster Plaza 7, Suite 315, 661 Andersen Drive, Pittsburgh, PA 15220

THIRD PUBLICATION

ALLEGRETTO, IRENE A., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Administrator: William M. Allegretto
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

BEHAN, JOANN, deceased

Late of Millcreek Township
Administratrix: Colleen Pagano
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

COWHER, ROBIN R., deceased

Late of Springfield Township
Administratrix: Carlie A. Chamberlain, c/o Brenc Law, 9630 Moses Road, Springboro, Pennsylvania 16435
Attorney: Andrew S. Brenc, Esquire, 9630 Moses Road, Springboro, Pennsylvania 16435

DUNLAP, ROBERT H., deceased

Late of the Township of Amity, County of Erie, Commonwealth of Pennsylvania
Executrix: Yvonne J. Cebe, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

ENGEL, ARLENE A., deceased

Late of Millcreek Township
Executor: John C. Engel
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

JOHNSON, PEGGIE S., deceased

Late of Fairview Township, County of Erie, Commonwealth of Pennsylvania
Executor: Clayton Johnson, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

MOREALLI, MARIE S., deceased

Late of the City of Erie, County of Erie
Executor: Gregory Morealli, 434 Cambridge Road, Erie, Pennsylvania 16511
Attorney: Kari A. Froess, Esquire, CARNEY & GOOD, 254 West Sixth Street, Erie, Pennsylvania 16507

NLEWOLAK, IRENE, a/k/a IRENE M. NIEWOLAK, deceased

Late of Erie, Erie County, Pennsylvania
Executrix: Linda Trott, c/o 502 Parade Street, Erie, PA 16507
Attorney: Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

OAKS, MARY ALICE, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Donald Oaks, c/o Anthony Angelone, Esquire, NIETUPSKI ANGELONE, 818 State Street, Suite A, Erie, PA 16501
Attorney: Anthony Angelone, Esquire, NIETUPSKI ANGELONE, 818 State Street, Suite A, Erie, PA 16501

OAKS, SAMUEL C., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Donald Oaks, c/o Anthony Angelone, Esquire, NIETUPSKI ANGELONE, 818 State Street, Suite A, Erie, PA 16501
Attorney: Anthony Angelone, Esquire, NIETUPSKI ANGELONE, 818 State Street, Suite A, Erie, PA 16501

ONUFFER, CINDY A., deceased

Late of the Township of Union, County of Erie and State of Pennsylvania
Executor: Thomas Onuffer, 17671 Wilson Rd., Union City, PA 16438
Attorney: None

ROSS, DONNA M., a/k/a DONNA H. ROSS, a/k/a DONNA H. EADES, deceased

Late of Erie County, Pennsylvania
Executor: Douglas P. Nielson, 201 Hidden View Drive, Wheeling, WV 26003
Attorney: William T. Morton, Esquire, 2225 Colonial Ave., Suite 206, Erie, PA 16506

THORPE, DOUGLAS S., deceased

Late of the City of Erie
Executrix: Elizabeth J. Woodworth
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

TOOMEY, RONALD C., deceased

Administrator: Terry Toomey, Esq., 1098 Market Street, Meadville, PA 16335
Attorney: Terry Toomey, Esq., 1098 Market Street, Meadville, PA 16335

VALERIO, DOUGLAS JAMES, a/k/a DOUGLAS J. VALERIO, deceased

Late of the City of Erie, Erie County, Pennsylvania
Administratrix: Mary Ellen Valerio, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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 PAUL J. CARNEY, JR.Corry@carneyruth.com
 THOMAS J. RUTHUnioncity@carneyruth.com

Weekly Wrap-up

July 9, 2021

Cause of death on death certificates: not a legal conclusion - Trial lawyers in personal injury cases frequently see death certificates within the (sometimes) voluminous pages of medical records at issue. The death certificate may be critical in a lawsuit for many reasons, not the least of which is potential liability, as well as the nature of the death, contributing factors to the death, the timeframe of the death, and illnesses that may have impacted the death but not directly caused it. But how reliable is the death certificate, the document in which so many place their faith and legal filing fees? Maybe not as much as we would like to think. Read more ... <https://www.natlawreview.com/article/cause-death-death-certificates-not-legal-conclusion>

Can businesses recover for pandemic losses? 8th Circuit is first federal appeals court to rule - An Iowa dental clinic can't recover for COVID-19 "business interruption" losses under an insurance policy that covers "accidental physical loss or accidental physical damage," a federal appeals court has ruled. The 8th Circuit is the first federal appeals court to rule on a business interruption claim related to the COVID-19 pandemic, according to the news coverage. Oral Surgeons' insurance policy "cannot reasonably be interpreted to cover mere loss of use when the insured's property has suffered no physical loss or damage," the appeals court said. "This decision is not the end of the story but the beginning," he said. Read more ... <https://www.abajournal.com/news/article/can-businesses-recover-for-pandemic-losses-8th-circuit-is-first-federal-appeals-court-to-rule>

Interviews with lifeguards are privileged, judge rules in water park injury lawsuit - A federal judge has denied a request to disclose the contents of two deposition interviews with lifeguards on duty while a man suffered personal injuries at the Camelback Lodge and Indoor Waterpark, finding them to be privileged work product. Read more ... <https://pennrecord.com/stories/604860666-interviews-with-lifeguards-are-privileged-judge-rules-in-water-park-injury-lawsuit>

Requirements related to surprise billing; Part 1: Policy Update - On July 1, 2021, the US Departments of Health and Human Services (HHS), Treasury and Labor, and the Office of Personnel Management issued an Interim Final Rule with comment (IFR) implementing portions of the No Surprises Act, legislation enacted in December 2020 that bars surprise billing beginning January 1, 2022. Under the law, payers and providers (including hospitals, facilities, individual practitioners and air ambulance providers) are prohibited from billing patients more than in-network cost-sharing amounts in certain circumstances. The prohibition applies to both emergency care and certain non-emergency situations where patients do not have the ability to choose an in-network provider.

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<https://nfpstructures.com/pdf/nfp-brochure.pdf>



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