DAKOTA OIL PROCESSING, LLC, *Plaintiff/Appellee,* -v.- JEFFRY L. HARDIN, ESQ., LOCKE LORD, LLP, COMPANY/CORPORATION 1-5, AND JOHN/JANE DOES 1-5, *Defendants/Appellants*.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002519-23 CIVIL ACTION On Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Monmouth County Submitted: May 24, 2024 Trial Court Docket No.: MON-L-002411-22 Sat Below: Hon. Kathleen A. Sheedy, J.S.C.

BRIEF OF DEFENDANTS/APPELLANTS JEFFRY L. HARDIN, ESQ. AND LOCKE LORD LLP

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PRELIMINARY STATEMENT

The Trial Court's denial of Defendants' motion to dismiss this legal malpractice action, brought against non-resident defendants and arising out of legal services rendered to a North Dakota entity, is unsustainable as a matter of law and should be reversed. As a matter of both personal and subject matter jurisdiction, this action cannot be maintained in New Jersey. All salient facts are undisputed. Plaintiff Dakota Oil Processing, LLC ("Plaintiff") is a North Dakota limited liability company, formed for the purpose of developing an oil topping refinery in North Dakota. In 2016, Plaintiff retained Defendants Locke Lord LLP and Jeffry L. Hardin, Esq. ("Defendants") in connection with a loan transaction that included an escrow arrangement with Christopher Hayes, a Pennsylvania attorney who Plaintiff had agreed would serve as escrow agent on its planned transaction.

Defendant Locke Lord is a Delaware limited liability partnership with its principal place of business in Texas. Defendant Hardin is a Virginia resident who is licensed to practice law in the District of Columbia and worked exclusively from Locke Lord's Washington, D.C. office during his representation of Plaintiff. No Locke Lord attorneys barred in New Jersey were involved (or had any reason to be involved) in the representation, nor did Hardin or any other Locke Lord attorneys ever travel to New Jersey in connection with

the representation. Plaintiff was registered to do business only in North Dakota at the time—where its headquarters and principal executive office was located—and did not have a certificate of authority to transact business in New Jersey through the time that it commenced this action in the Trial Court in September 2022.

With respect to the threshold issue of personal jurisdiction, the Trial Court erred first by concluding that transient jurisdiction was obtained over Defendants when two Locke Lord partners with no involvement in the underlying representation were served with the First Amended Complaint ("FAC") in New Jersey. This Court has expressly rejected the proposition that jurisdiction over a foreign partnership like Locke Lord can be obtained in this manner.

The Trial Court's conclusions that it could also exercise both general and specific jurisdiction over Defendants in New Jersey were equally flawed. Its general jurisdiction finding bypassed the rigorous "at home" standard entirely, and its conclusion that specific jurisdiction exists did not address, as the law requires, the relationship between Defendants' limited contacts with New Jersey and Plaintiff's claim in this case. The record here—developed during a period of extensive jurisdictional discovery—is clear that no such relationship exists, let alone the direct one required to justify the exercise of specific jurisdiction.

In short, the Trial Court lacks personal jurisdiction over Defendants in New Jersey, and its Order denying Defendants' motion to dismiss should be reversed.

The Trial Court's Order should also be reversed because Plaintiff was barred from bringing this action in New Jersey. Under New Jersey law, foreign LLCs that do business in the State are specifically prohibited from maintaining lawsuits in New Jersey courts unless they have a certificate of authority to transact business in New Jersey. Plaintiff, by its own admission, did not have such a certificate at any time prior to commencing this action in September 2022 or for the ensuing eleven-plus months that it prosecuted the case. In addition to undermining Plaintiff's attempt to recast itself as a New Jersey-centric business for purposes of this litigation, Plaintiff's failure to obtain the statutorily-mandated certificate deprived Plaintiff of the right to bring the action and the Trial Court of subject matter jurisdiction to consider it. The Trial Court's conclusion that Plaintiff retroactively cured this defect by obtaining the certificate for the first time in September 2023—and only after Defendants raised the jurisdictional bar to suit—is premised on a misreading of New Jersey law and provides an independent basis for reversal.

PROCEDURAL HISTORY

On September 8, 2022, Plaintiff filed the FAC, in which it asserts one count of professional negligence against Defendants. Da21–32. Following a period of extensive jurisdictional discovery, Defendants filed a motion to dismiss the FAC for lack of personal jurisdiction, standing, and subject matter jurisdiction. Da2-5; Da138. Oral argument on Defendants' motion was conducted on March 1, 2024, and the Trial Court entered Orders dated March 13, 2024 denying Defendants' motion. Da1–19; Da20.[1] On April 2, 2024, Defendants timely filed a motion for leave to appeal those aspects of the Trial Court's March 13, 2024 Order that denied Defendants' motion to dismiss. Da384. On April 19, 2024, this Court granted Defendants' motion for leave to appeal, and on April 25, 2024 entered an Accelerated/Peremptory Scheduling Order. Da384.

[1] As noted in Defendants' motion for leave to appeal, the Trial Court entered two Orders denying Defendants' motion to dismiss, both dated March 13, 2024. Da1–19; Da20. The Order filed on March 14, 2024, Da1–19, appended the Trial Court's Statement of Reasons and is the focus of Defendants' appeal. For completeness and out of an abundance of caution, Defendants have again appended both Orders.

STATEMENT OF FACTS

A. Relevant Background

Plaintiff is a limited liability company formed in North Dakota. Da21 ¶ 1; Da150. Plaintiff was formed for the purpose of developing and operating a crude oil topping refinery in North Dakota. Da23 ¶ 16. According to annual reports filed by Plaintiff with North Dakota's Secretary of State, Plaintiff's headquarters and principal executive office from 2016-2018 was in North Dakota. Da148; Da156–65. Plaintiff also maintained a mailing address in New Jersey during this period—where its Chief Financial Officer ("CFO"), Tristram Collins, resides, Da148—but was not registered to do business in the State. Da148–49; Da156–65. From 2016 through August 2023, Plaintiff was registered to do business only in North Dakota. Da148.

In early 2016, Plaintiff engaged SRW Ventures, LLC to obtain financing for the North Dakota refinery project through Cal & Schwartz ("C&S"), a venture financing firm incorporated in Bermuda. Da24 ¶ 17; Da82. Pursuant to a loan transaction with C&S, Plaintiff agreed to deposit into escrow $2.5 million to be released from escrow and paid to C&S only after the conditions provided in an escrow agreement among the parties were satisfied. Da24–25 ¶¶ 18–26. Plaintiff and C&S initially agreed that Emile Barton, Esq., a New York-based attorney, would act as the escrow agent. Da24 ¶ 20. On or around August 18,

2016, however, C&S informed Plaintiff that it required Christopher G. Hayes, Esq. ("Hayes"), an attorney practicing law in Pennsylvania, to replace Barton as escrow agent. Da22 ¶ 6; Da25 ¶ 28.

On or around August 25, 2016, Plaintiff retained Hardin, an attorney licensed to practice law in the District of Columbia, to represent Plaintiff in connection with the escrow arrangement with Hayes. Da21 ¶ 2; Da25–26 ¶ 29; Da76–80. Hardin was and remains a resident of Virginia, was an "Of Counsel" employee at Locke Lord at the time, and performed all work in connection with the representation of Plaintiff from Locke Lord's office in Washington, D.C. Da167 ¶¶ 1–5; Da176 ¶ 5. Hardin never traveled to New Jersey in connection with the representation. Da168 ¶ 8. Locke Lord is a limited liability partnership with its headquarters and principal place of business in Dallas, Texas. Da195 ¶ 4. In addition to its Dallas headquarters, Locke Lord has offices in eighteen other locations throughout the United States, including a small office in Newark, New Jersey. Da196 ¶¶ 6–11. Locke Lord does not have any attorneys who utilize the Newark office as their primary office location, and none of Locke Lord's New Jersey-barred attorneys ever consulted on, billed for, or did any work in connection with the representation of Plaintiff. Da168 ¶ 9; Da196 ¶¶ 6–7. Similarly, neither Hardin nor any other Locke Lord attorney did any work

in connection with the representation of Plaintiff that involved issues of New Jersey law. Da190–92; Da224–25.

On or around September 13, 2016, Plaintiff, C&S, and Hayes executed an escrow agreement (entitled, "Transaction Agreement") in connection with the loan. Da24 ¶ 30; Da82–90. Pursuant to the escrow agreement, Hayes was obligated to hold $2.5 million deposited by Plaintiff in an escrow account pending email confirmation from Plaintiff's bank that it had received initial funding under the loan of no less than $5 million, at which time Hayes would release the escrowed $2.5 million to C&S. Da26 ¶ 31; Da82–83.

Between September 14 and September 29, 2016, Hardin, Hayes, and Plaintiff communicated via email and phone regarding the escrow agreement and the process to validate the email confirmation from Plaintiff's bank that Hayes was required to receive before releasing the escrowed $2.5 million to C&S. Da26 ¶¶ 32–33. By email to Plaintiff dated September 14, 2016, Hardin warned that the "key with using [Attorney] Hayes is to be certain that he cannot be duped into prematur[e]ly releasing your money. You need to be certain that only a legitimate email (or maybe an old school fax?), and maybe followed by a confirmatory call with you[r] banker, will result in the release." Da26 ¶ 32; Da92. On September 28, 2016, Hardin emailed Hayes proposing an authentication process whereby Plaintiff's bank would send an email to Hayes

when it had received the initial funding, and would include in that email a phone number and contact person at the bank who Hayes must then call to confirm that the funds were in fact received by the bank before Hayes would release the escrow payment to C&S. Da100–03.

On or about September 30, 2016, Plaintiff funded the escrow account by depositing $2.5 million into Hayes's Pennsylvania IOLTA account. Da28 ¶ 41. Prior to this time, Plaintiff had directed Hardin to "stand down" and cease any discussions with Hayes and any work on the escrow agreement because Hardin "was raising too many questions about the nature of the escrow, the escrow agreement and the transaction itself." Da229 ¶ 9; Da235 T66-4 to 13, T67-18 to T68-8. On or about November 3, 2016, Plaintiff discovered that Hayes had released the $2.5 million escrow payment to C&S without having received the required confirmation from Plaintiff's bank that Plaintiff had received funding under the loan. Da29 ¶ 43. Plaintiff never received any funding under the loan with C&S. Da29 ¶ 44.

B. Plaintiff's Prior, Unsuccessful Attempts to Assert Jurisdiction Over Defendants in Pennsylvania Courts

This is the third forum in which Plaintiff has sued Hayes, Hardin, and Locke Lord for alleged professional negligence. First, on October 5, 2018, Plaintiff commenced an action in the United States District Court for the Eastern District of Pennsylvania. Da241. On October 9, 2018, the District Court

ordered Plaintiff to show cause as to why the federal action should not be dismissed for lack of subject matter jurisdiction or, alternatively, transferred to another venue. Da238–39. One week later, Plaintiff voluntarily dismissed the action. Da242.

Second, on October 15, 2018, Plaintiff commenced an action against Hayes, Hardin, and Locke Lord in the Court of Common Pleas in Chester County, Pennsylvania. Da284. In response to Locke Lord's and Hardin's jurisdictional challenges, Plaintiff argued that "every action relevant to this dispute took place in Pennsylvania." Da251, Da255–56. On April 16, 2020, the Chester County Court dismissed the action with prejudice as against Locke Lord and Hardin for lack of personal jurisdiction. Da259–75. In its opinion, the Chester County Court rejected Plaintiff's argument that Defendants' representation of Plaintiff "primarily occurred in Pennsylvania" and emphasized that "Hardin never physically entered Pennsylvania in connection with his representation of Dakota." Da268–69. The Chester County matter proceeded against Hayes until Plaintiff and Hayes settled. Da277.

C. Plaintiff's Commencement of This Action and the Jurisdictional Discovery That Ensued

On September 2, 2022, Plaintiff initiated this action in the Trial Court, and on September 8, 2022 filed the FAC.[2] Da21. Defendants filed initial motions to dismiss for lack of personal jurisdiction on October 25, 2022, following which Plaintiff served the FAC on two Locke Lord partners who reside in New Jersey. Da304, 306. Neither of those partners had any involvement in the underlying representation of Plaintiff. Da153, 196.

On January 30, 2023, the Trial Court denied without prejudice Defendants' initial motions to dismiss subject to renewal following jurisdictional discovery.[3] Da127–30. As part of the extensive jurisdictional discovery that ensued, Plaintiff served 100 interrogatories, to which Defendants responded, objected, and later served supplemental responses. Da170–93; Da199–226. On December 7, 2023, Plaintiff deposed Hardin. Da232.

D. The Trial Court Denies Defendants' Motion to Dismiss and this Interlocutory Appeal Follows

In accordance with a Stipulated Scheduling Order, Defendants filed on January 5, 2024 a renewed motion to dismiss the FAC for lack of jurisdiction.

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[2] Plaintiff removed Hayes as a named defendant in the FAC and later filed a Voluntary Dismissal With Prejudice as to Hayes. Da131.

[3] The parties expressly agreed that Defendants' participation in jurisdictional discovery was without waiver of their jurisdictional challenge and would not constitute consent to jurisdiction. Da137–38.

Da138. On January 26, 2024, Plaintiff opposed Defendants' motion and filed a cross-motion for leave to file a Second Amended Complaint, following which Defendants filed a reply and opposition to Plaintiff's cross-motion. Da2–10.

The Trial Court held oral argument on the motions on March 1, 2024. In Orders dated March 13, 2024, the Trial Court denied both Defendants' motion to dismiss and Plaintiff's cross-motion for leave to amend. Da1–19; Da20. In an accompanying Statement of Reasons, Da1–19, the Trial Court concluded, among other things, that it could exercise transient jurisdiction, general jurisdiction, and specific jurisdiction over Defendants in New Jersey, and that it has subject matter jurisdiction because Plaintiff cured during the pendency of the litigation the defect caused by its failure to have a certificate of authority to transact business in New Jersey. Da10–17.

On April 2, 2024, Defendants filed a motion for leave to appeal the Trial Court's Order denying Defendants' motion to dismiss, which Plaintiff opposed.[4] Da384. On April 19, 2024, this Court granted Defendants' motion for leave to appeal. Da384.

[4] In accordance with Rule 4:6-1(b), and while expressly maintaining and reserving all rights regarding their jurisdictional arguments and defenses, Defendants filed an Answer and Affirmative Defenses on March 25, 2024.

LEGAL ARGUMENT

I. THE TRIAL COURT CANNOT PROPERLY EXERCISE PERSONAL JURISDICTION OVER DEFENDANTS IN NEW JERSEY (Da10–15)

"A fundamental question in every legal action is whether a given court has jurisdiction to preside over a given case. Absent personal jurisdiction over the parties, a judge has no authority to proceed." Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 595 (App. Div. 2017) ("Dutch Run"). "A court's jurisdiction is 'a mixed question of law and fact' that must be resolved at the outset, 'before the matter may proceed.'" Pullen v. Galloway, 461 N.J. Super. 587, 596 (App. Div. 2019) (citing Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017)).

A two-part test governs the personal jurisdiction analysis: (1) each defendant must have "certain minimum contacts" with New Jersey, and (2) maintaining the suit in New Jersey cannot offend "traditional notions of fair play and substantial justice." Pullen, 461 N.J. Super. at 596–97 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). It is "well settled that the requisite quality and quantum of contacts is dependent on whether general or specific jurisdiction is asserted." Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 526–27 (App. Div. 1996). That is, "whether the defendant is subject to any claim that may be brought against him in the forum state whether or not

related to or arising out of the contacts themselves, i.e., general jurisdiction, or whether the claim is related to or arises out of the contacts in the forum, i.e., specific jurisdiction." Id.; see also Dutch Run, 450 N.J. Super. at 598. Either way, it is Plaintiff who "bears the burden of proof on the question of the adequacy of the . . . defendants' contacts to sustain an exercise of" personal jurisdiction. Citibank, N.A., 290 N.J. Super. at 533; Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 477 (App. Div. 2013) ("[T]he burden is on [the plaintiff] to 'allege or plead sufficient facts' to warrant the court's exercise of jurisdiction, and it must do so by way of 'sworn affidavits, certifications, or testimony.'") (citations omitted).

The Trial Court's factual findings concerning jurisdiction are entitled to deference on appeal only if they are "supported by substantial, credible evidence." Rippon, 449 N.J. Super. at 358. This Court reviews "de novo the legal aspects of personal jurisdiction." Pullen, 461 N.J. Super. at 596 (citation omitted). Accordingly, the Trial Court's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference [on appeal]." Id. (citation omitted).

As explained below, the Trial Court's decision denying Defendants' motion to dismiss is premised on fundamental legal errors, and Plaintiff did not come close to meeting its burden of establishing a basis for personal jurisdiction

over Defendants in New Jersey—a burden that, notably, the Trial Court did not even acknowledge in its decision is Plaintiff's to bear.

A. The Trial Court Erred in Concluding That Transient Jurisdiction Was Obtained Over Defendants in New Jersey (Da11–13)

The Trial Court's first jurisdictional conclusion—that transient jurisdiction exists over Defendants because two Locke Lord partners were served with the FAC in New Jersey, Da12–13—is unsustainable for several reasons. First, and most fundamentally, the Trial Court's conclusion overlooks this Court's holding in Citibank, N.A. that personal jurisdiction over a law firm partnership is "not obtained by personal service in New Jersey on a partner having no connection with the subject representation." 290 N.J. Super. at 528–31 (personal jurisdiction was not obtained where "the law firm's partner who was personally served in New Jersey engaged in no conduct related to the transaction in controversy"). Because it is undisputed that the two Locke Lord partners who were served with the FAC in New Jersey had no involvement in the underlying representation of Plaintiff, Da153; Da196, the Trial Court's ruling is flatly inconsistent with New Jersey law.

Second, as the Trial Court itself acknowledged, Da13, "[s]ervice on a partner who is resident in New Jersey will not result in acquisition of personal jurisdiction over his foreign partnership absent the partnership's having

sufficient New Jersey contacts to sustain an exercise of long-arm jurisdiction." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.4 on R. 4:4–4(a)(5);[5] id. cmt. 1 on R. 4:4–4(a) ("[T]he various modes of service specified by paragraph (a) . . . cannot be read as mechanisms for obtaining long-arm jurisdiction unless the underlying predicate of long-arm jurisdiction, adequate contact with the State, exists."). Again, this Court made that clear in Citibank, N.A.:

> Plainly, a foreign corporation or unincorporated association would not be subject to this State's in personam jurisdiction merely because a person authorized to receive service on its behalf happened to be present in this State and was personally served here. We are convinced that the same is true in respect of a foreign partnership.

290 N.J. Super. at 529–30 (citation omitted); id. at 528–29 ("R. 4:4–4 does not undertake to define jurisdictional limits" and "merely prescribes the method of acquiring jurisdiction when constitutional principles of due process of law—not the rule—permit assertion of jurisdiction.").[6] Plaintiff did not make that showing here, and the Trial Court's conclusory finding that "Locke Lord's

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[5] The two Locke Lord partners who were served with the FAC in New Jersey are also not "general partners" of Locke Lord, as contemplated by Rule 4:4–4(a)(5); Locke Lord is a limited liability partnership and has no general partners.

[6] Several courts have held that "tag" or "transient" jurisdiction does not extend to corporate defendants at all. See, e.g., Martinez v. Aero Caribbean, 764 F.3d 1062, 1064 (9th Cir. 2014) ("Burnham does not apply to corporations."); Sokolow v. Palestine Liberation Org., 607 F. Supp. 3d 323, 327 (S.D.N.Y. 2022) ("Burnham's tag jurisdiction theory only applies to individuals."); see also Mallory v. Norfolk Southern Railway Co., 600 U.S. 122, 128 (2023) ("tag" or "transient" jurisdiction "applies to natural persons").

presence within the state of New Jersey is . . . so continuous and systematic as to render the Defendants at home in the forum state," Da13, is irreconcilable, as explained below, with the governing "at home" standard. See infra Point I(B).

Third, the Trial Court's transient jurisdiction conclusion as it relates to Hardin is unsustainable for the additional reason that Hardin has not been a partner of Locke Lord since January 1, 2016 and was not personally served with the FAC in New Jersey. Da167. In other words, even if there were a basis (and there is not) for finding that transient jurisdiction was obtained over Locke Lord because two of its partners who reside in the State were served with the FAC in 2023, that finding cannot possibly extend to Hardin—a non-partner and now former "Of Counsel" employee, individual defendant.

Finally, this Court in Dutch Run squarely rejected the proposition, argued by Plaintiff below, that service on a non-resident's registered agent in New Jersey establishes general jurisdiction.[7] 450 N.J. Super. at 605–06 (rejecting

[7] In an unsuccessful motion to vacate the Trial Court's jurisdictional discovery orders, Da135, Plaintiff relied upon Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023), in support of a consent-based theory of jurisdiction. Mallory, however, did nothing to disturb Dutch Run and the principles for which it stands, including because, as the Trial Court found, "New Jersey does not have a consent-by-registration statute akin to Pennsylvania's." Da12; see also Simplot India LLC v. Himalaya Food Int'l Ltd., 2024 WL 1136791, at *10 (D.N.J. Mar. 15, 2024) (rejecting "argument that the Supreme Court's recent decision in Mallory overrules the holding of the Display Works line of cases,"

argument that "a corporate entity's registration and acceptance of service of process in the state constitutes consent to submit to the general jurisdiction of the New Jersey courts"); see also Display Works, LLC v. Bartley, 182 F. Supp. 3d 166, 173–79 (D.N.J. 2016) (rejecting argument that defendant "consented to jurisdiction in New Jersey because it is registered to do business in the state, it designated an agent for service of process whom [plaintiff] served in the state, and it engages in business" in New Jersey). And Dutch Run was addressed, as here, to personal jurisdiction over a foreign law firm partnership, thus undermining the Trial Court's suggestion that Locke Lord's status as a foreign LLP and not a corporation is a critical distinction for purposes of the analysis. Da12.

In sum, the Trial Court had no basis in the facts or the law for concluding that transient jurisdiction was obtained over either Defendant in New Jersey.

B. The Trial Court Erred In Concluding That Defendants Are Subject to General Jurisdiction In New Jersey (Da13–14)

The Trial Court's conclusion that Defendants are subject to general jurisdiction in New Jersey results from a wholesale disregard for the governing legal standard. For general jurisdiction to attach, Defendants' contacts with New Jersey must be "so 'continuous and systematic' as to render [each]

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as "[u]nlike the express consent statute at issue in Mallory, New Jersey's registration statute does not include such an express consent requirement.").

essentially at home in the forum State." FDASmart, Inc. v. Dishman Pharm. & Chems., Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016) (quoting Daimler AG v. Bauman, 571 U.S. 117, 128 (2014)). This standard is thus "a difficult one to meet, requiring extensive contacts between a defendant and a forum." Id. at 202–03 (citation omitted).

For business entities like Locke Lord, typically the "principal place of business and place of incorporation establishes where the [entity] is 'at home' and subject to general jurisdiction." Id. Locke Lord's principal place of business is in Texas, and the firm was formed as a limited liability partnership under Delaware law. Da3; Da195. Although the Trial Court acknowledged these "established"—and, here, dispositive—facts at the outset of its analysis, Da3; Da13, it then disregarded them in application, concluding instead that Locke Lord's "continuous maintaining of a physical office building" in New Jersey; "employment of its agents" and "practicing of law" in the State; and other unspecified "continued and pervasive contacts" demonstrate "sufficient contacts within the state" to support the exercise of general jurisdiction. Da14. But this conclusion, in addition to being factually flawed and unsupported by the record,[8] cannot be squared with binding precedent.

[8] It is undisputed, for example, that Locke Lord leases (and does not own) a small office space in Newark, New Jersey and that none of the firm's attorneys use that space as their primary office location. Da196; Da208; Da223. It is also

Indeed, the United States Supreme Court has "rejected the premise of 'approv[ing] the exercise of general jurisdiction in every [s]tate in which a [defendant] 'engages in a substantial, continuous, and systematic course of business.'" Baskin v. P.C. Richard & Son, LLC, 462 N.J. Super. 594, 616–17 (App. Div. 2020), rev'd on other grounds, 246 N.J. 157 (2021) (quoting Daimler, 571 U.S. at 138). After all, a business "that operates in many places can scarcely be deemed at home in all of them." Id. at 617 (quoting BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559 (2017)). New Jersey courts have thus "noted the incredible difficulty of establishing 'general jurisdiction [over a business] in a forum other than the place of incorporation or principal place of business.'" Baskin, 462 N.J. Super. at 617 (quoting Dutch Run, 450 N.J. Super. at 608); see also Daimler, 571 U.S. at 139 n.19 (only in an "exceptional case" can an entity's operations outside of its place of formation or principal place of business be "so substantial and of such a nature as to render the corporation at home in that State.").

Plaintiff did not come close to making that showing as to Locke Lord, which does not have anything approaching the type of "extensive contacts"

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undisputed that the Newark office presently has no employees, Da223, and that the percentage of total revenue attributable to clients based in New Jersey has ranged over the past ten years from 0.0119% to a high of 4.6046%. Da223; Da286.

required to render it "essentially at home" in New Jersey and thus subject to general jurisdiction in the State. See, e.g., BNSF Ry. Co., 137 S. Ct. at 1559 (no general jurisdiction in Montana over railroad company that owned more than 2,000 miles of tracks and had more than 2,000 employees in Montana); Baskin, 462 N.J. Super. at 615–18 (no general jurisdiction over defendants that conducted over 25 percent of business in New Jersey and generated nearly 25 percent of revenue from New Jersey sales).

The Trial Court's finding that Hardin is subject to general jurisdiction in New Jersey is similarly inconsistent with controlling legal principles. For an individual like Hardin, "the paradigm forum for the exercise of general jurisdiction is the individual's domicile." Daimler, 571 U.S. at 137. In other words, "an individual is 'at home' where they are domiciled." Koch v. Pechota, 744 F. App'x 105, 110–11 (3d Cir. 2018). Hardin is domiciled in Virginia, and he has never worked or resided in New Jersey or even visited New Jersey on work-related matters. Da167–68; Da178. That should have ended the general jurisdiction inquiry. Instead, the Trial Court found general jurisdiction over Hardin based upon his (i) "continued contacts with [Plaintiff's CEO, Steven] Schneider," Da14, who, like Hardin, resides in Virginia and not New Jersey, Da4; Da148; (ii) Hardin having "directed" invoices to Plaintiff's CFO, Tristram Collins, in New Jersey, Da14, as instructed by Schneider, Da4; Da180; (iii)

Hardin having communicated with Schneider and Collins via email and phone, Da14;[9] and (iv) Hardin having emailed Locke Lord marketing materials unrelated to Plaintiff to Schneider and Collins on one occasion in 2017. Da14; Da345–79. This hodgepodge of "contacts" falls far short of the contacts with New Jersey required to "approximate physical presence in the State." Wilson v. Paradise Vill. Beach Resort and Spa, 395 N.J. Super. 520, 528 (App. Div. 2007); Koch, 744 F. App'x at 110–11 ("Consideration of business activities to find general jurisdiction has not been applied to individuals."). Like Locke Lord, then, there was no basis for the Trial Court to exercise general jurisdiction over Hardin.

C. The Trial Court Erred in Concluding That It Has Specific Jurisdiction Over Defendants (Da14)

The Trial Court's conclusion that it has specific jurisdiction over Defendants was also in error. Specific jurisdiction is available only when the "cause of action arises directly out of a defendant's contacts with the forum state." Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994). Absent

[9] Because the record does not support the Trial Court's finding that "[i]t was understood that Plaintiff's principal place of business was the state of New Jersey," Da14, that finding is not entitled to deference on appeal. Rippon, 449 N.J. Super. at 358. Hardin understood only that Collins, Plaintiff's CFO, resided and worked in New Jersey, Da178, and Plaintiff's own public filings reflect that North Dakota, not New Jersey, was the location of Plaintiff's headquarters and principal executive office throughout the underlying representation. Da148; Da156–65.

such a connection, specific jurisdiction will not exist "regardless of the extent of a defendant's unconnected activities in the State." Bristol-Myers Squibb Co. v. Superior Court of Cal., 137 S. Ct. 1773, 1781 (2017).

The Trial Court's specific jurisdiction analysis, contained in a single paragraph, neither acknowledged nor applied this standard. Instead, the Trial Court concluded without citation or record support that "Defendants maintained continuous contacts and physical presence within the state of New Jersey that were substantial in nature" and had "such ongoing presence within the state of New Jersey and with the Plaintiff themself, that it is reasonable to foresee being hailed into a Court within New Jersey." Da14. Those conclusions are divorced entirely from the standard that must be satisfied to warrant the exercise of specific jurisdiction.

In examining specific jurisdiction, the "minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989) (citation omitted). As this Court has explained, this "fact-sensitive analysis is particularly necessary when a party attempts to assert jurisdiction over a non-resident attorney based upon allegedly deficient legal services rendered to that party in another forum." Reliance Nat. Ins. Co. in Liquidation v. Dana Transport, Inc., 376 N.J. Super. 537, 545 (App. Div. 2005) (reversing interlocutory order

denying motion to dismiss and remanding for order of dismissal because specific jurisdiction was lacking over non-resident law firm in malpractice action brought by plaintiff with New Jersey principal place of business).

In this case, no such relationship exists. Neither Hardin nor any other Locke Lord lawyer involved in the representation of Plaintiff traveled to New Jersey in connection with the representation, was licensed to practice law in New Jersey, conducted legal research in New Jersey or regarding New Jersey law, or did any work on the matter that implicated New Jersey law. Da168; Da184; Da224–25. Those undisputed facts are alone dispositive, as the alleged conduct that forms the basis for Plaintiff's claim simply has no nexus to any of Defendants' limited contacts with New Jersey, much less the direct relationship required to warrant specific jurisdiction. See, e.g., Dutch Run, 450 N.J. Super. at 598–603 (no specific jurisdiction where alleged "negligence forming plaintiff's cause of action did not arise from defendant's contacts with New Jersey" and plaintiff could not "show any relationship between the underlying matter and the [defendant's] business or attorneys in New Jersey").

That Plaintiff's CFO Collins worked from an office in New Jersey during the representation does not alter the analysis, nor does the fact that Hardin addressed the parties' engagement letter and Locke Lord's invoices to Collins in New Jersey—as instructed by Plaintiff's CEO Schneider—and had a small

number of email and telephone communications that included Collins.[10] Da168; Da180; Da233 T50-19 to 25; Da234 T55-5 to 10; Da235 T69-10 to 13. After all, the specific jurisdiction "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Walden v. Fiore, 571 U.S. 277, 285 (2014); see also Baanyan, 433 N.J. Super. at 478 ("[T]elephonic and electronic communications with individuals and entities located in New Jersey alone, are insufficient minimum contacts to establish personal jurisdiction over a defendant," and "the fact that defendant received payment from [plaintiff in New Jersey], and submitted timesheets to [plaintiff in New Jersey] does not support a finding of personal jurisdiction."). In addition, pertinent contacts for purposes of specific jurisdiction must "result from the defendant's purposeful conduct and not [as here] the unilateral actions of the plaintiff." Bayway Ref. Co. v. State Utilities, Inc., 333 N.J. Super. 420, 429–32 (App. Div. 2000) (that defendant mailed payments to plaintiff's New Jersey office as instructed did not "support the proposition that [defendant] availed itself of the 'benefits' or 'protections' of New Jersey law, or militate in favor of New Jersey's jurisdiction").

[10] In connection with his representation of Plaintiff, Hardin's "interactions with DOP personnel were limited and, to the extent correspondence was made, it occurred through electronic mail and telephone communications." Da168 ¶ 10. Email correspondence attached to the FAC reflects that Hardin did not have Collins' cell phone number as of September 28, 2016. Da100–01.

Finally, the doctrine of judicial estoppel also separately bars Plaintiff's attempt to manufacture a basis for specific jurisdiction in New Jersey. Da9. Indeed, the doctrine is designed to prevent precisely what Plaintiff has done here: argue on the one hand in a Pennsylvania state court that "every action relevant to this dispute took place in Pennsylvania," Da251; Da255, and then, a few years later, argue on the other hand in a New Jersey state court that Plaintiff's cause of action arose from Defendants' contacts with New Jersey. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 385–87 (App. Div. 1996) ("The doctrine of judicial estoppel operates to 'bar a party to a legal proceeding from arguing a position inconsistent with one previously asserted'" and "is designed to prevent litigants from 'playing fast and loose with the courts.'") (citations omitted).[11]

In sum, Plaintiff did not and could not demonstrate that Defendants are subject to specific jurisdiction in New Jersey. The Trial Court's Order must be reversed.

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[11] Although Plaintiff's arguments were ultimately rejected by the Pennsylvania state court, the party against whom judicial estoppel is asserted need only have been "allowed by the court to maintain the position" for the doctrine to apply. Cummings, 295 N.J. Super. at 387–88 ("The judicial determination does not have to be in favor of the party making the assertion."). In this case, Plaintiff clearly was. See Da268–71 (Pennsylvania state court considering and rejecting Plaintiff's arguments that the "legal representation of Dakota 'primarily occurred in Pennsylvania'" and that Plaintiff's professional negligence claim arises out of "Hardin's Pennsylvania-based activities").

D. Exercising Personal Jurisdiction Over Defendants Would Also Offend Traditional Notions of Fair Play and Substantial Justice (Da14–15)

Because Plaintiff did not meet its burden of establishing sufficient contacts with New Jersey as to either Defendant, personal jurisdiction is lacking and the Court need not proceed to the second step of the analysis. See Reliance Nat. Ins. Co., 376 N.J. Super. at 550 ("Ordinarily, a conclusion that [defendant] lacked sufficient minimum contacts with New Jersey to be subject to the jurisdiction of our courts would conclude the matter."). But if it does, the second step provides another basis for reversal, as exercising personal jurisdiction over Defendants in New Jersey would also offend "traditional notions of fair play and substantial justice." Interlotto, Inc. v. Nat'l Lottery Admin., 298 N.J. Super. 127, 136 (App. Div. 1997).

Just as this Court concluded in Interlotto, "New Jersey simply has no interest in the outcome of the litigation," id. at 137, brought by a North Dakota LLC against a Virginia-domiciled, D.C.-barred lawyer and a Texas-based law firm and premised on transactional work that indisputably did not involve any travel to New Jersey or implicate any issues of New Jersey law. Da148–50; Da167–68; Da176; Da184; Da195; Da224–25. Indeed, this Court's reasoning in Interlotto that the second step of the jurisdictional analysis was not satisfied is remarkably salient here: just like the plaintiff in Interlotto, Plaintiff's

revisionist claim that it is a New Jersey-based business is belied by the reality that Plaintiff "thought so little of its relationship to this state that it failed to obtain a certificate of authority from the Secretary of State before commencing this action" or any time before then, including "when the cause of action arose" six years prior in 2016.[12] Interlotto, 298 N.J. Super. at 137; see Da148–49; Da156–65. Accordingly, the Trial Court's assertion of personal jurisdiction over Defendants also fails the second step of the analysis, thereby providing another basis for reversing the Trial Court's Order.

II. PLAINTIFF WAS BARRED FROM BRINGING THIS ACTION IN NEW JERSEY AND THE TRIAL COURT ERRED IN CONCLUDING THAT IT HAS SUBJECT MATTER JURISDICTION (Da15–17)

The Trial Court also erred in denying Defendants' motion to dismiss for a separate threshold reason: Plaintiff was prohibited from bringing this action in New Jersey and the Trial Court lacked subject matter jurisdiction to consider it. "Subject matter jurisdiction involves 'a threshold determination as to whether [a court] is legally authorized to decide the question presented.'" Robertelli v. New Jersey Off. of Atty. Ethics, 224 N.J. 470, 481 (2016) (citation omitted).

[12] In addition to ignoring Interlotto, the Trial Court appears to have conflated the "purposeful availment" requirement with the second step of the personal jurisdiction analysis, Da15, which involves instead "consideration of various factors [that] may show that it would be unfair to confer jurisdiction." Interlotto, 298 N.J. Super. at 137 (relevant factors under second step of jurisdictional analysis include "the interests of the forum state").

"When a court lacks subject matter jurisdiction, its authority to consider the case is 'wholly and immediately foreclosed.'" Id. (citations omitted). Likewise, "[a] lack of standing by a plaintiff precludes a court from entertaining any of the substantive issues for determination." EnviroFinance Grp., LLC v. Env't Barrier Co., LLC, 440 N.J. Super. 325, 339 (App. Div. 2015) (citations omitted). Determinations regarding subject matter jurisdiction and standing are reviewed by this Court de novo. AmeriCare Emergency Med. Serv., Inc. v. City of Orange Twp., 463 N.J. Super. 562, 570 (App. Div. 2020) ("The determination of whether subject matter jurisdiction exists is a legal question, which we review de novo."); Brennan on behalf of State v. Lonegan, 454 N.J. Super. 613, 618 (App. Div. 2018) ("Standing is a question of law we review de novo.").

Pursuant to N.J.S.A. 42:2C-65(a), entitled Effect of Failure to Have Certificate of Authority, "[a] foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State." N.J.S.A. 42:2C-65(a). By its own sworn admission, Plaintiff, a North Dakota LLC, did not have such a certificate when it commenced this action in September 2022. Da148–49. Nor did Plaintiff seek or obtain one for the ensuing eleven months that it prosecuted the case. Da5; Da9. In fact, it was not until Defendants flagged the jurisdictional bar to suit that Plaintiff obtained for the first time on

September 2, 2023 a certificate of authority to transact business in New Jersey. Da324.

Contrary to the Trial Court's conclusion, Plaintiff's belated procurement of a certificate did not automatically "cure[] this defect" or retroactively remedy the absence of subject matter jurisdiction[13] that it caused. Da16. Indeed, the Trial Court's finding rested on the faulty premise that "published and binding case law" makes it "plainly evident" that a plaintiff can cure the certificate deficiency at any time. Ibid. But neither of the cases upon which the Trial Court relied for that proposition are "binding" or "established precedent regarding the matter." Ibid. (citing Menley & James Laboratories, Ltd. v. Vornado, Inc., 90 N.J. Super. 404, 414 (Ch. Div. 1966) (Chancery Division decision addressing a different statute that expressly contemplated the ability to cure); Peter Doelger Brewing Corp. v. Spindel, 186 A. 429 (N.J. Dist. Ct. 1936) (88-year old District Court decision addressing different statute)).

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[13] In its opposition to Defendants' motion for leave to appeal, Plaintiff argued for the first time that its failure to obtain a certificate of authority raised an issue of "statutory standing" and not subject matter jurisdiction. As the federal cases upon which Plaintiff relied make clear, however, the question of statutory standing asks whether a party has a particular cause of action under a particular statute—an issue that is not implicated here. See Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 n.4 (2014) (addressing "statutory standing" question of "whether Static Control has a cause of action under the [federal] statute" at issue). But whether analyzed as an issue of standing, subject matter jurisdiction, or both, the outcome is the same: the FAC must be dismissed.

The question of whether a foreign LLC like Plaintiff can cure the defect caused by its failure to have a certificate of authority when it commenced (and, in this case, prosecuted for many months) an action in New Jersey remains unresolved by either the New Jersey Supreme Court or any published opinion of this Court. To date, this Court has addressed the subject only in unpublished opinions and has reached varied outcomes on varied facts—each time in the context of foreign corporations, which are governed by a different New Jersey statute.[14] Compare Seven Caesars, Inc. v. House, 2014 WL 4450441, at **7–10 (N.J. Super. Ct. App. Div. Sept. 11, 2014) (holding that trial court lacked subject matter jurisdiction and foreign corporation was barred from bringing action because it did not have valid certificate at time of filing and did not "retroactively cure[]" the "jurisdictional bar to suit" when it restored its registration status during pending litigation) with Radiac Research Corp. v. Pasqua, 2023 WL 8177052, at *3 (N.J. Super. Ct. App. Div. Nov. 27, 2023)

[14] Although the statute that applies to foreign corporations (N.J.S.A. 14A:13-11(1)) bears many similarities to the statute at issue here (N.J.S.A. 42:2C-65(a)), they differ in at least one notable respect: whereas N.J.S.A. 14A:13-11(1) bars a foreign corporation transacting business in the State from maintaining any action in a New Jersey court "*until* such corporation shall have obtained a certificate of authority," N.J.S.A. 42:2C-65(a) prohibits a foreign LLC transacting business in the State from maintaining any action in a New Jersey court "*unless* it has a certificate of authority to transact business in this State." See Lipkowitz v. Hamilton Surgery Ctr., LLC, 415 N.J. Super. 29, 35 (App. Div. 2010) ("A statute's language 'is the surest indicator of the Legislature's intent.'") (citation omitted).

(rejecting argument that final judgment was void because plaintiff's certificate was revoked before it filed complaint where foreign corporation plaintiff "was not deficient in maintaining their certificate of authority for years before the litigation" and "was compliant with statutory requirements for more than five years while th[e] litigation took place") and Basement Store Franchise Corp. v. Natali, 2014 WL 4328218 (N.J. Super. Ct. App. Div. Sept. 3, 2014) (finding that trial court exercised "mistaken use of discretion" in dismissing complaint with prejudice where foreign corporation "plaintiff acted within days of entry" of order requiring it to obtain certificate of authority).

In sum, Defendants submit that the circumstances here—including Plaintiff's failure to obtain a certificate of authority to transact business in New Jersey at any time prior to its commencement of this action in September 2022 through the first eleven-plus months that it prosecuted the case—together with the plain language of N.J.S.A. 42:2C-65(a) itself, render the admitted jurisdictional defect in this case fatal. See Seven Caesars, Inc., 2014 WL 4450441, at **8–10 (that plaintiff "might easily cure the defect does not defeat the court's inability to act in the first instance," and because plaintiff did not have a valid certificate of authority when it filed complaint, "[a]s a matter of law, [plaintiff']s complaint could not be considered and its suit should have been dismissed" for lack of subject matter jurisdiction); see also SMS Financial P,

LLC v. M.P. Gallagher, LLC, 2019 WL 5459849, at **8–11 (N.J. Super. Ct. Law Div. Jan. 25, 2019) (dismissing foreign LLC's complaint for failure to have certificate of authority when complaint was filed, reasoning that "[s]ubject matter jurisdiction must exist at the time of filing and cannot be cured after the fact"); Form Tech Concrete Forms v. Two Bros. Contr., 2019 N.J. Super. Unpub. LEXIS 6257, at **10–13 (N.J. Super. Ct. Law Div. May 20, 2019) (plaintiff's "registration after the filing of this particular Complaint does not prevent its dismissal" because the registration statute "does not provide any language for a retroactive validation or for any permissible, corrective measure to be taken" after complaint filed).

Accordingly, because the FAC should also have been dismissed because Plaintiff was barred from bringing this action in New Jersey and the Trial Court lacked subject matter jurisdiction, the Trial Court's Order denying Defendants' motion to dismiss should be reversed.

CONCLUSION

For the reasons set forth above, Defendants request that the Court reverse the Trial Court's Order denying Defendants' motion to dismiss and remand to the Trial Court for entry of an order dismissing the FAC.

Dated: May 24, 2024

Respectfully submitted,

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DAKOTA OIL PROCESSING, LLC, *Plaintiff/Respondent,* -v.- JEFFRY L. HARDIN, ESQ., LOCKE LORD, LLP, COMPANY/CORPORATION 1-5, AND JOHN/JANE DOES 1-5, *Defendants/Appellants.*	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002519-23 CIVIL ACTION On Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Monmouth County Submitted: June 17, 2024 Trial Court Docket No.: MON-L-002411-22 Sat Below: Hon. Kathleen A. Sheedy, J.S.C.

BRIEF OF PLAINTIFF/RESPONDENT DAKOTA OIL PROCESSING, LLC

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PRELIMINARY STATEMENT

Defendant Locke Lord is asking this Court to review the trial court's finding and set it aside, instead finding New Jersey lacks jurisdiction to redress legal malpractice committed by a transactional lawyer working for a law firm with New Jersey offices that resulted in direct damages to a New Jersey client. Defendants fail to cite a case setting forth any such holding and the reason is obvious: any law firm that maintains a physical office in a state where it also provides representation to a client must certainly anticipate being haled into court there.

The genesis of this litigation is a $2,500,000 wire sent by Plaintiff to its escrow attorney as the first piece of funding a $500,000,000 oil refinery construction project (the "Project"). Plaintiff retained Defendants, Locke Lord LLP ("Locke Lord") and Jeffry Hardin, Esq. ("Hardin"), to ensure the wire would be properly handled and the funding would proceed as intended. Despite this, Defendants failed to protect Plaintiff's interests and, as a result, Plaintiff lost the $2,500,000 wire and the total financing meant to fund the Project.

Defendants continue to assert they were practicing law everywhere and nowhere on behalf of Plaintiff and that this Court cannot exercise personal jurisdiction over them. While Defendants avoided jurisdiction in Pennsylvania by arguing they did not employ lawyers there, did not maintain a physical office location, and had no other ties to the state, those arguments fail in New Jersey where

they have had a physical office for decades, employ numerous attorneys admitted here, and solicit clients.

After directing an engagement letter, all billing, and nearly every email to Plaintiff's CFO, Tristram Collins ("Mr. Collins"), at Plaintiff's New Jersey headquarters, Defendants argue this Court does not have personal jurisdiction over them. Further, they assert that an attorney rendering advice in this state on multi-jurisdictional transactional matters is outside the reach of New Jersey's long-arm statute.

The trial court correctly determined that New Jersey has transient, general, and specific jurisdiction over Defendants. Transient jurisdiction is appropriate because two general partners and a registered agent of Locke Lord were served here and there is a territorial/physical presence in the state. General jurisdiction is appropriate because Locke Lord has continuous and systematic contacts with New Jersey through maintenance and daily use of its New Jersey offices, establishment of a New Jersey IOLTA account, solicitation of Plaintiff and other New Jersey clients, and direction of its engagement letter, billing, and communications to Plaintiff in New Jersey.

Specific jurisdiction also exists as Defendants purposefully directed activities to the forum and because their contacts with Plaintiff, its management entity, Starboard Tack Capital, LLC ("Starboard"), and, in particular, Plaintiff's principal,

Mr. Collins – who was described by Defendants as Plaintiff's "quarterback" – resulted in Plaintiff's losses here. In this situation, traditional notions of fair play and substantial justice require that Defendants be held to account for their legal malpractice in New Jersey and that their game of cat and mouse be shut down. The trial court correctly ended this game based upon sound jurisdictional findings.

Finally, Defendants' argument that principles of judicial estoppel and subject matter jurisdiction compel a different result is nothing more than a red herring without merit that should be ignored.

PROCEDURAL HISTORY

In October 2018 and January 2019, Plaintiff filed a legal malpractice Complaint and Amended Complaint in the Court of Common Pleas of Chester County, Pennsylvania, against Locke Lord; Hardin; The Law Office of Christopher G. Hayes; and Christopher G. Hayes, Esquire ("Attorney Hayes"). Da283–84. In that action, Locke Lord and Hardin asserted Pennsylvania jurisdiction was improper because they were not physically served with the Complaint there, maintained no physical office there, were not registered to do business there, did not lease real property there, and did not have any employees or agents in the state. Da167–68, Da310–11. After jurisdictional discovery, the Court of Common Pleas sustained the preliminary objections on April 16, 2020, and dismissed Plaintiff's Amended Complaint as to Locke Lord and Hardin based on lack of personal

jurisdiction. Da259–75.

Thereafter, Plaintiff filed this legal malpractice Complaint and Amended Complaint against Locke Lord and Hardin in the Superior Court of New Jersey in Monmouth County. Da21–126. Locke Lord and Hardin again argued that the trial court lacked personal jurisdiction over them, adding that it also lacked subject matter jurisdiction because Plaintiff did not have a certificate of authority to transact business in New Jersey when it filed suit. Da2–5. Once again, jurisdictional discovery took place. Then, in March 2024, the Superior Court found it had personal jurisdiction over Locke Lord and Hardin. The court further found it had subject matter jurisdiction because, by then, Plaintiff had obtained a certificate of authority to transact business. Da1; Da10–17.

On April 2, 2024, Defendants filed a motion for leave to appeal the Superior Court's decision which was granted by this Court on April 19, 2024. Da384.

STATEMENT OF FACTS

A. Locke Lord Is "At Home" In New Jersey

Locke Lord is a foreign limited liability partnership established in Delaware and headquartered in Texas. It maintains twenty different offices (including internationally and in New Jersey) and employs hundreds of attorneys. "Locke Lord is a premier full-service Am Law 100 law firm that has earned a solid reputation for complex litigation, regulatory and transactional work on behalf of clients in

important and growing industry sectors around the world." Da298–302.

Two Locke Lord partners, Christopher B. Fontenelli, Esq., and Lisa Ann T. Ruggiero, Esq., were served in New Jersey. Furthermore, Locke Lord has designated CT Corporation System, R.A. as its agent for service of process in New Jersey, which was also properly served in this matter. Da304–08.

Locke Lord has maintained a New Jersey office for dozens of years – first in Morristown, then Princeton, then Newark. Da208. In 2016, thirty-one Locke Lord attorneys were admitted to practice law in New Jersey. Da211. Locke Lord has filed both income and payroll taxes in New Jersey from 2009 to the present. Da206. In 2016, while Defendants represented Plaintiff, Locke Lord had twenty-seven clients providing New Jersey addresses – a figure which is down from a high of eighty-three in 2013. Da209. Locke Lord sponsored numerous New Jersey bar events and its New Jersey lawyers received numerous in-state professional honors. Da208– 09. Further information was sought in jurisdictional discovery, however, Locke Lord refused to provide its LPL policies, total New Jersey payroll, number of New Jersey leasehold parking spaces, or a list of New Jersey litigation in which it was a party. Da206–07.

B. Plaintiff's Nerve Center is in New Jersey

Plaintiff is an oil development company based in New Jersey and was formed for the purpose of developing, constructing, owning, and operating a crude oil

topping refinery near Trenton, North Dakota. Da21–23 ¶¶ 1 & 11. At all relevant times, Plaintiff's CFO, Mr. Collins, was involved in raising capital to fund the transaction at issue in this case. Da314 ¶¶ 5, 6 & 11. Plaintiff conducts all its administrative affairs and operations from New Jersey and has done so since it was formed in 2013. Id. at ¶ 11. Plaintiff does not have an office in North Dakota – Plaintiff's website confirms its corporate location is in Sea Girt, New Jersey. Id. at ¶¶ 5, 10 & 11. Hardin concedes Mr. Collins was spearheading the Project's financing and was the "quarterback" of the deal. Da234 55:5–20.

Plaintiff is managed by its New Jersey parent company, Starboard, and has been since Plaintiff's inception in 2013. Da314 ¶ 5. Starboard has always had and continues to have a direct interest in Plaintiff and oversees all its financial transactions. There is daily interaction and collaboration between Starboard and Plaintiff. Id. at ¶ 8. All professional services provided to Plaintiff are conducted in New Jersey including, but not limited to, tax returns, tax accounting, operations, compliance, and bank accounts. Id. at ¶ 6; Da151 No. 6. Two partners of Starboard run Plaintiff: Mr. Collins and Steven Schneider ("Mr. Schneider"). Da314 ¶ 6. Plaintiff is publicly identified as part of Starboard's portfolio. Id. at ¶ 8. Starboard and Plaintiff share a mailing address of 1420 Meetinghouse Road, Suite 4, Sea Girt, New Jersey 08750. Id. at ¶¶ 9 & 10. In 2016, Plaintiff and Starboard shared a mailing address of 2520 Highway 35N, Suite 102, Manasquan, New Jersey 08736. Id. at ¶

12; Da149 No. 2. At the inception of this action, Starboard was registered to do business in New Jersey. Da320–22. During the pendency of this action, Plaintiff was registered to do business as a foreign LLC. Da324.

C. Hardin's Long-Standing Relationship with Plaintiff and Starboard

While Plaintiff retained Defendants in this case in 2016, Plaintiff, through its corporate officers, has known Hardin for years. Da326 ¶¶ 4 & 5. Defendants concede that Hardin sent his résumé to Starboard in New Jersey in July 2009, offering his legal services. Da152 No. 9. Hardin testified that his official legal relationship with Plaintiff began in Spring 2016 while assisting with a lender note dispute. Pa15 17:17–23. That matter was venued in Minnesota federal court, even though Locke Lord had no office there and Hardin was not admitted there. Da314 ¶ 13.

Defendants sent an engagement letter to Plaintiff at its New Jersey address in August 2016 outlining the lender dispute and the escrow transaction for the Project and indicating Locke Lord would advise Plaintiff as to "general corporate matters as you shall present to us." Da315 ¶¶ 17 & 19; Da76 ¶ 1. The engagement letter was printed on Locke Lord letterhead and listed its office locations, including Morristown, New Jersey. The engagement letter did not specify a jurisdiction or

reference a venue or choice of law provision. Da76–80.[1] Defendants also directed all billing to New Jersey and were paid from Plaintiff's New Jersey bank account. Da315–17 ¶¶ 17, 29 & 30; Da329–343.

D. Defendants' Multi-Jurisdictional Marketing Attracted Plaintiff

A significant part of Plaintiff's decision to hire Defendants was their ability to provide multi-jurisdictional services. Da315 ¶ 15. Plaintiff needed legal representation to liaise with its note holders and New York escrow attorney and later with its Pennsylvania escrow attorney, as well as to review multiple agreements specifying various other jurisdictions for choice of law. Id.

Locke Lord markets itself as a "premier full-service law firm" with a "strong reputation" for litigation and transactions on behalf of clients "around the world." Da298–302. Hardin testified his clients were based in their home states, not just the District of Columbia where he is admitted, and that Locke Lord is "a national practice." Pa12–Pa13 10:21–25 & 11:1–5. He added that his legal work is not limited to the jurisdiction where he is admitted to practice. Pa13 1:13–16. He also stated his legal work with Locke Lord was "D.C. based and involves businesses

[1] The engagement letter made part of Defendants' Appendix is missing Locke Lord's office locations. That information was erased as part of the Bates stamp process. However, it was visible on the engagement letter attached as Exhibit O to Wendy Crowther's Certification in the trial court. Da295. It is also visible elsewhere in Defendants' Appendix. Da329-43.

national in scope or with holdings around the county and I represent clients…wherever they are located." Pa14 12:4–11. He continued, "Locke Lord has offices in various states and attorneys licensed in other states so the fact that I am licensed only in D.C. is rarely mentioned as a point of emphasis." Pa16 20:9–12. Further, as Hardin admitted, his forte was multi-jurisdictional clients, and he was very familiar with choice of law issues. Id. In sum, Hardin was not just a D.C. lawyer and did not market himself as such. Id.

Hardin continued to market Locke Lord's services to Plaintiff even after the Project went awry. In 2017, Hardin sent an email to Plaintiff's principal in New Jersey attaching additional marketing materials touting the global legal services Defendants could provide in the energy sector. Da152 No. 9; Da315 ¶ 14; Pa17.

E. Defendants Knew Plaintiff was Based in New Jersey

Although Defendants claim they are blindsided as to Plaintiff's principal place of business in New Jersey, this fact was well known to Defendants. Plaintiff told Hardin its main offices were in New Jersey. Da315 ¶ 14. There are countless emails between all parties in which Hardin and other Locke Lorde attorneys and support staff contacted Plaintiff via Starboard email addresses through Starboard's principal, headquartered in New Jersey. Da316 ¶¶ 26 & 28. Defendants sent not only the engagement letter but also legal bills to Plaintiff's New Jersey address, which were paid via Plaintiff's New Jersey bank accounts. Da315– 317 ¶¶ 17, 29

& 30. The various transactional and escrow agreements Defendants were hired to review listed Plaintiff's mailing address and principal place of business as New Jersey. Id. at ¶¶ 15–16 & 20–25. The funding at issue was directed towards Plaintiff's New Jersey bank accounts. Da313–316 ¶¶ 2–4, 6, 8 & 20–25.

Plaintiff does not have and never represented having any North Dakota bank accounts, nor was North Dakota law or any North Dakota licensed attorney involved in any transaction at issue in this case. Da314 ¶¶ 6–8

F. Transaction where Defendants Represented Plaintiff Took Place in New Jersey

Plaintiff retained Defendants to assist in a multi-million-dollar wire transfer, including liaising with escrow attorneys to ensure the wire was not released improvidently. Da313 ¶¶ 2 & 3. Specifically, Plaintiff hired Attorney Hayes to hold money in escrow until he received funding for the Project, and retained Defendants to ensure the escrow deposit was not released prematurely. Da23 ¶¶ 13 & 14.

By way of background, Plaintiff engaged SRW Ventures, LLC ("SRW") in early 2016 to obtain financing for the Project through Cal & Schwartz ("C&S"). Da24 ¶ 17. Plaintiff agreed to pay C&S a $2,500,000 escrow payment once C&S secured a standby letter of credit in the amount of $500,000,000 through HSBC, PLC, after which a third-party lender would utilize the letter of credit as collateral to lend funds to develop the Project. Id. at ¶ 18. In August 2016, Plaintiff and C&S

executed a transaction agreement in connection with the loan. Id. at ¶ 19. New York attorney, Emile Barton, Esq. ("Attorney Barton"), was the initial escrow attorney for the loan. Id. at ¶ 20. Later, C&S replaced Attorney Barton with Attorney Hayes, first as escrow agent and then, at Hardin's recommendation, as "escrow attorney" to ensure his LPL insurance would be in place to cover any negligence. Da25 ¶ 28.

For months, Defendants assisted Plaintiff in negotiating the terms of the escrow arrangement with Attorney Hayes, which detailed how and when Plaintiff's money was to be released. Da25–28 ¶¶ 29–39. This assistance was in the form of phone calls and emails wherein Defendants advised Plaintiff as to Attorney Hayes' role in the transaction, written terms, and authentication processes, all to safeguard the loan funding and prevent a premature release. Da94–105. Defendants also counseled Plaintiff to ensure Attorney Hayes held Plaintiff's funds in his IOLTA Trust Account in accordance with the Rules of Professional Conduct and Attorney Hayes' liability insurance policy. Id.

On September 30, 2016, Plaintiff directed the deposit of $2,500,000 into Attorney Hayes' IOLTA Trust Account. Da28 ¶¶ 41 & 42. On or about November 3, 2016, Hardin discovered that Attorney Hayes released the $2,500,000 without authorization and without confirmation that Plaintiff received any funding under the loan. Da29 ¶¶ 43 & 44. As a result of Defendants' negligence, Plaintiff incurred substantial loss, including but not limited to the amount of the wire. Id. at ¶ 45.

Subsequently, Hardin and various Locke Lord attorneys from other Locke Lord offices arranged for Plaintiff's representatives to meet with the FBI in New Jersey as part of the investigation of the misdirected wire. Da317 ¶ 31.

Hardin testified he was asked to "stand down" weeks before the wire was stolen. Da234 56:5–12. Defendants' billing invoices, however, confirm he was working on the Project actively through the end of October 2016. In addition, his November invoice contained over $19,000 in legal services provided that month. Da329–43. Hardin continued to engage and confirmed the scope of Locke Lord's representation as it related to review of the Project financing agreement. Hardin also reviewed fee agreements for the Project financing in late October 2016. Furthermore, he made the inquiry with Attorney Hayes about whether the $2,500,000 was still on deposit and was the first to discover it was not. Hardin remained actively engaged in the early days after it was discovered the funds had been improperly wired; he then brought in litigators from other Locke Lord offices in Boston, Vermont, and New Hampshire.[2]

G. Hardin Was a Multi-Jurisdictional Transactional Attorney

Hardin testified:

> In my experience as a multi-jurisdictional transactional lawyer, the buyers and sellers or a

[2] Locke Lord refused to specify what part of the engagement involved those jurisdictions. Da213-15 at Nos. 40-46.

> borrower and lender are seldom located in the same jurisdiction. And oftentimes where they are located, they are in jurisdictions that do not have developed laws that sophisticated parties adopt as the choice of law for transactions that are not local transactions.
>
> Pa8 47:18–25.

He also testified that, when he takes on a representation, he does not give thought to which law pertains to the agreements he reviews and that he feels the law governing the document is "rarely relevant" to any advice to the clients. Pa3–Pa4 28:4–12 & 28:19–29:7.

Hardin was neither guided by Locke Lord in his intake nor advised how to properly staff a case to comport with practice of law requirements; however, he was well-versed in the benefits provided to his clients by use of a national/international firm, indicating they no longer had to hire "special counsel" or a "specialist" from other firms. Pa5 35:5–20. As a result, Hardin never staffed a case based on the jurisdictional law being analyzed while employed at Locke Lord. Pa5–Pa6 35:21–36:4. Further, he does not recall Locke Lord having protocols or policies in place for its transactional attorneys regarding multi-jurisdictional practice and case staffing. Pa6 36:5–14.

Hardin views multi-jurisdictional practice as involving a lawyer in one jurisdiction who may have a transaction that involves other jurisdictions. Whenever he encounters such a transaction, however, he does not conduct an analysis to

determine if he can meet the client's needs or whether he should bring in additional attorneys admitted in other jurisdictions to help. Pa6–Pa7 36:22–37:23.

Hardin testified he never registered in any jurisdiction as a multi-jurisdictional practitioner: "I mean, handling multi-state transactions, I have done those as a D.C. – a lawyer licensed in D.C." Pa9 53:7–23. Throughout his representation of Plaintiff, he never associated with a New Jersey attorney in Locke Lord's New Jersey office, nor did he associate with an attorney admitted in North Dakota, although Locke Lord apparently had one associate in its Texas office who was barred there. Da211 No. 33.

LEGAL ARGUMENT

"The question of *in personam* jurisdiction is a mixed question of law and fact[.]" Patel v. Karnavati America, LLC, 437 N.J. Super. 415, 423 (App. Div. 2014) (quoting Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996). "[W]hether a court has personal jurisdiction over a defendant is a question of law . . . [and] review of the issue is de novo." YA Global Investments, L.P. v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011) (citing Mastondrea v. Occidental Hotels Management S.A., 391 N.J. Super. 261, 268 (App. Div. 2007)). However, "factual findings with respect to jurisdiction" are reviewed "under the standards set forth in Rova Farms . . . and Jacobs[.]" Mastondrea, supra.

"Findings by the trial judge are considered binding on appeal when supported

by adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Investors Insurance Co. of America, 65 N.J. 474, 484 (1974). The Appellate Division "will not disturb 'the factual findings and legal conclusions of the trial judge unless …they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 452 (App. Div. 1998) (quoting Rova Farms, supra).

Here, in the interests of justice, this Court should affirm the trial court's determination and let this five-and-a-half-year-old case proceed because the undisputed facts demonstrate the trial court correctly found it had personal and subject matter jurisdiction over Defendants.

I. THE TRIAL COURT CORRECTLY APPLIED THE LAW GOVERNING TRANSIENT JURISDICTION (Da11–13)

New Jersey Rule of Court 4:4–4(a)(5) states: "The primary method of obtaining *in personam* jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State... [u]pon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint... on an officer or managing agent or, in the case of a partnership, a general partner[.]" While service in this manner does not *per se* confer jurisdiction, our Supreme Court has confirmed that

transient jurisdiction, *i.e*., service on a party while in the state, is still valid and separate and apart from a long-arm analysis required when Defendants have no presence or have not consented to jurisdiction. See Mallory v. Norfolk Southern Ry., 143 S. Ct. 2028 (2023).

Prior to the Mallory decision, the New Jersey Appellate Division addressed the issue of transient jurisdiction, albeit in *dicta*, relating to service upon a law firm partner while in the state where the law firm had no physical presence here. The Citibank, N.A. court held:

> As we have noted, none of the third-party defendants resides or does business or has an ascertainable presence in New Jersey. Defendant, therefore, served process on the corporate and partnership entities by certified mail sent to their respective principal place of business, registered agent, or managing partner at their New York addresses. Defendant served the managing partners of Manhattan West by certified mail addressed to their respective residences, either in New York, Connecticut or Florida. The law firm was also served by personal service pursuant to R. 4:4–4(a)(1) upon one of its partners, John L. Loehr, at his New Jersey residence.
>
> Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 526 (App. Div. 1996).

Elaborating further, the Court indicated that: "once third-party defendants have shown that they have no territorial presence in this state, the burden shifts, as it were, to third-party plaintiff, who must then demonstrate their amenability, nonetheless, to an exercise of *in personam* jurisdiction based on minimum contacts."

Id. at 533. In other words, contrary to Defendants' assertions, Citibank confirms a minimum contacts analysis is only required where the Defendants have "no territorial presence in this state." Id. at 531, 533.

Here, two of Locke Lord's partners were served in New Jersey. In addition, Locke Lord was served in-state through its registered agent. Da304–308. Contrary to Defendants' suggestion, the trial court did not conclude it had personal jurisdiction simply because service was proper under R. 4:4–4(a)(5). Da13–15. Instead, the court found that it had personal jurisdiction because service was proper **and** Defendants' "presence within the state of New Jersey is not temporary," comporting with the holding in Citibank as to transient jurisdiction. Da13–15.[3]

II. THE TRIAL COURT CORRECTLY FOUND GENERAL AND SPECIFIC JURISDICTION OVER DEFENDANTS THAT DID NOT OFFEND NOTIONS OF FAIR PLAY AND JUSTICE (Da13–15)

New Jersey allows long-arm jurisdiction over non-resident defendants to the "outermost limit" consistent with due process. Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). General jurisdiction exists when a defendant has "continuous and systematic" contacts with the forum state. Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989). A defendant need not be present in the forum state for personal

[3] Although the trial court did not expressly cite Citibank N.A. v. Estate of Simpson, 290 N.J. Super. 519 (App. Div. 1996), it nevertheless applied Citibank when deciding this case. Da13.

jurisdiction, rather it need only have minimum contacts to satisfy "traditional notions of fair play and substantial justice." International Shoe Co., v. Washington, 326 U.S. 310 (1945).

A minimum contacts analysis involves looking at whether a defendant "purposefully availed" itself of "the privilege of conducting activities within the forum state," "invoking the benefits and protection of its laws" such that the defendant expected its conduct to have significant effects there. Avdel, 58 N.J. at 271. The foreseeability component is a question of whether the defendant's conduct and connection with the forum state are such that it should reasonably expect to be "haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

Defendants cannot deny their continuous and systematic contacts with New Jersey. "Locke Lord was actively practicing law within the borders of the State of New Jersey at the time of the subject malpractice. Locke Lord maintained an office which employed individuals on a daily basis at its Newark, New Jersey location." Da14. More specifically, Locke Lord has maintained a New Jersey office for dozens of years – first in Morristown, then Princeton, then Newark. Da208. In 2016, thirty-one Locke Lord attorneys were admitted to practice law in New Jersey. Da211. Locke Lord has filed both income and payroll taxes in New Jersey from 2009 to the present. Da206. In 2016, Locke Lord had twenty-seven clients providing New Jersey

addresses and, in 2013, had eighty-three New Jersey clients. Da209. In addition, Locke Lord sponsored numerous New Jersey bar events and its New Jersey lawyers received numerous in-state professional honors. Da208–09.

As for Hardin, he "directed all communications and billings to Plaintiff's principal place of business in the state of New Jersey, as well as continued maintaining contact with Plaintiff after the 2016 escrow transaction, contacting Plaintiff with marketing prospects for its parent company in 2017." Da14; Da152 at No. 9; Da315 at ¶ 14; Pa17. Specifically, Plaintiff's CEO, Mr. Schneider, met Hardin in 2001 and later utilized his services in connection with a New Jersey LLC and other businesses here. Da326 at ¶¶ 4 & 5. This history led to Plaintiff seeking Hardin's legal services in 2016 for a lender dispute and for the Project in this case. Da314 at ¶ 13. All letters, billing, emails and phone communications were directed to Plaintiff's principal place of business in New Jersey. Da316–17 at ¶¶ 27–29. Key contracts Hardin was hired to review listed Plaintiff's address in New Jersey. Da315– 16 at ¶¶ 20–25.

Equally important, both Locke Lord and Hardin knew Plaintiff's main office was in New Jersey. Da315 at ¶ 14. There are many emails between all parties in which Hardin, other Locke Lorde attorneys, and support staff contacted Plaintiff in New Jersey. Da316 at ¶¶ 26 & 28. Defendants sent not only the engagement letter but also legal bills to Plaintiff's New Jersey address, which were paid via Plaintiff's New Jersey bank accounts. Da315–17 at ¶¶ 17, 29 & 30. The funding for the Project

at issue in this case was directed to Plaintiff's New Jersey bank accounts. Da313–16 at ¶¶ 2–4, 6, 8 & 20–25. At all relevant times, Plaintiff conducted its communication (email and phone) from New Jersey. Da316–17 at ¶¶ 27–28. After the miswiring of the escrow money, Defendants helped facilitate the meeting between Plaintiff and law enforcement in Locke Lord's New Jersey office. Da317 at ¶ 31.

The trial court findings of general and specific jurisdiction over these Defendants are supported by substantial, credible evidence and should not be overturned. See Lebel, 115 N.J. at 324–27 (1989) (every constitutional requirement for specific, personal jurisdiction met where defendant "telephoned the buyer in New Jersey to iron out the details of the contract, mailed the contract to the buyer in New Jersey for signing in New Jersey, and received payment from the plaintiff, who defendant knew was a New Jersey resident"; fact defendant knew plaintiff was New Jersey resident "enhance[d] defendant's contacts with the forum"). See also Wartsila NSD North America, Inc. v. Hill International, Inc., 269 F.Supp.2d 547, 559 (D.N.J. 2003) ("[T]he Court is satisfied that Hill has made out a *prima facie* case in favor of asserting general jurisdiction over the Chaffe law firm. While there is no evidence that the firm maintains offices in New Jersey or that any of its attorneys have ever been admitted to practice in the courts of this state, since 1993, the firm has been retained to represent at least 14 different corporate clients with

offices in New Jersey"); Bekier v. Commonwealth Construction Co., 2007 WL 3014704 at * 2 (D.N.J. Oct. 11, 2007) ("Examples of contacts that could establish general jurisdiction in the forum state are the existence of: facilities, offices, employees, registered agents, real property, telephone listings or bank accounts.").

Defendants suggest that because they are "at home" in Texas (Locke Lord's principal place of business) and Virginia (Hardin's domicile), there can be no general jurisdiction over them in New Jersey based on their "continuous and systematic" activity here. Da15–18. The cases cited by Defendants, however, recognize "at home" is not the same as "continuous and systematic." See FDASmart, Inc. v. Dishman Pharm. & Chems., Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016) ("[I]t is undisputed that DPCL is not "at home" in New Jersey; it is not incorporated in this state nor is New Jersey its principal place of business… Therefore, plaintiff must show that defendant had continuous and systematic contacts with New Jersey so as to justify it being haled into New Jersey's courts.").

Finally, this Court exercising personal jurisdiction over Defendants is supported by the fact "it was Defendants' representations of being able to supply multi-jurisdictional services which created interest by the Plaintiff," leading to New Jersey's "interest in adjudicating a matter which involves a multi-jurisdictional law firm with substantial presence within the state of New Jersey." Da14–15. See Waste Management, Inc. v. Admiral Insurance Co., 138 N.J. 106, 125 (1994) (factors

relevant to fair play and substantial justice include "the burden on defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the interstate judicial system's interest in efficient resolution of disputes, and the shared interest of the states in furthering fundamental substantive social policies… burden of a defendant coming to the plaintiff's state, as opposed to the plaintiff going to the defendant's home state, is too slight an imbalance to defeat jurisdiction.")

Locke Lord cites three cases in support of its claim that it is not subject to general jurisdiction, all of which discuss jurisdiction over a corporation, not a partnership. In BNSF Ry. Co. v. Tyrrell, 581 U.S. 402 (2017), the Supreme Court determined Montana's highest court improvidently exercised general jurisdiction in Montana over a corporate railroad in its employees' job injury claims where the workers were neither injured in Montana nor resided there. The Court held the claims were unrelated to any activity in the state and the corporation maintained neither its principal place of business nor incorporation there. However, the Court also held that, in exceptional cases, a corporate defendant's operations in another forum "may be so substantial and of such a nature as to render the corporation at home" in the state. Id. at 413. Setting aside the fact that Locke Lord is an LLP and not a corporation, the nature of the attorney-client relationship requires just such an exception.

In Daimler AG v. Bauman, 571 U.S. 117 (2014), the Supreme Court

determined California did not have jurisdiction over a foreign corporation where injuries at issue occurred outside the United States and where the corporation had inadequate contacts to the forum state. The Court held jurisdiction can be found against a foreign corporation when the corporation's affiliations with the state in which the suit is brought are so constant and pervasive to render it at home in the foreign state. Id. at 138. This matter is distinguishable because it does not involve a foreign corporation, does not include injuries outside of the country, and Locke Lord does have adequate contacts to the forum state.

In Baskin v. P.C. Richard & Son, LLC, 462 N.J. Super. 594 (App. Div. 2020), *rev'd on other grounds*, 246 N.J. 157 (2021), the court again cited the rule that a corporation's operations in a forum state other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in another state. Id. at 616. This case was also distinguishable from the instant matter in that both Baskin defendants were out-of-state residents and the claims concerned products bought in New York – *i.e.*, there was no tie to New Jersey.

In none of these cases was the defendant actually served while present in New Jersey. In addition, under a general jurisdiction analysis, the cases provide Locke Lord no quarter as its substantial presence in New Jersey renders it "at home" here.

Defendants' dependence upon the holdings in Reliance Transport and Display

Works is also misplaced. In Reliance Nat. Ins. Co. v. Dana Transport, Inc., 376 N.J. Super. 537 (App. Div. 2005), a Florida based firm was employed to assert a subrogation action in Florida on behalf of the carrier for an insured cargo transportation company that shipped leaking cargo from Georgia to Puerto Rico, damaging a barge. The insurance carrier paid for the damage to the barge, then sought subrogation from the negligent inspector of the leaking cargo in a Florida action. In that action, the insured did not cooperate with the Florida law firm and the firm was granted permission to withdraw. The carrier then sued its insured directly in New Jersey. The insured asserted a third-party claim against the Florida law firm. The court determined it did not have jurisdiction over the non-resident defendant law firm because the firm did not have "continuous and systematic" contacts with the state and had no "purposeful activity" here. Id. at 549. Further, the court determined that Florida had the most at stake in the action.

In Display Works, LLC v. Bartley, 182 F. Supp. 3d 166 (D.N.J. 2016), a company sued its former employee and his new employer alleging violations of a non-compete, tortious interference and other claims related to his retention of customer information, and solicitation of former co-workers. The court found it had personal jurisdiction over the former employee but not the employer corporation. The court performed an analysis under Daimler, determining general jurisdiction was not appropriate because the defendant had neither incorporated in New Jersey

nor maintained its principal place of business there. It had only three employees in New Jersey and derived less than 1% of its revenue here. It should be noted too that the court improperly determined that a corporation could not "consent" to jurisdiction by registration in the state, questioning Pennsylvania Fire[4] in light of the Goodyear[5] and Daimler line of cases. Id. at 177; see Mallory at 2028, 2045. In Mallory, the Supreme Court specifically upheld its decision in Pennsylvania Fire, decrying the myriad cases applying Daimler and a long-arm analysis where consent to jurisdiction had already been explicitly or implicitly given. Mallory at 2038.

Defendants claim the judicial estoppel doctrine prevents Plaintiff from asserting that jurisdiction should apply here. Under the doctrine of judicial estoppel, "[a] party who advances a position in earlier litigation that is accepted **and permits the party to prevail in that litigation** is barred from advocating a contrary position in subsequent litigation to the prejudice of the adverse party." Bhagat v. Bhagat, 217 N.J. 22, 37 (2014)(emphasis added). As noted, the Pennsylvania court rejected Plaintiff's argument regarding jurisdiction and dismissed Plaintiff's case. Therefore, judicial estoppel does not bar Plaintiff's current jurisdictional argument because Plaintiff did not prevail in Pennsylvania.

[4] Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917).

[5] Goodyear Dunlop Tires Operations, S. A. v. Brown, 564 U.S. 915 (2011).

Further, while judicial estoppel is a doctrine that bars a party to a legal proceeding from arguing a position inconsistent with one previously asserted, it is an "extraordinary remedy" and is only employed where a miscarriage of justice will result from a party's inconsistent behavior. Id. Here, the only miscarriage of justice is that Defendants expect no court to exercise jurisdiction over them for their legal malpractice.

Equally important, "a party's later position must be 'clearly inconsistent' with its earlier position" before courts apply judicial estoppel. New Hampshire v. Maine, 532 U.S. 742, 750 (2001); Ramer v. New Jersey Transit Bus Operations, Inc., 335 N.J. Super 304, 313 (App. Div. 2000) (finding it "not at all clear" the plaintiff's former position was "so contradictory" to her current position as to warrant application of judicial estoppel). Here, Plaintiff's argument that New Jersey courts have jurisdiction is not "clearly inconsistent" with its prior argument because it is based on different evidence developed during a subsequent round of jurisdictional discovery.

Finally, Defendants' judicial estoppel argument is absurd on its face. According to Defendants, once a court in one state concludes it lacks personal jurisdiction over a defendant, the plaintiff is forever barred by judicial estoppel from pursuing its claims against the defendant in the proper state. That cannot be the law, and for all these reasons, Defendants' judicial estoppel argument should be rejected.

III. THE TRIAL COURT CORRECTLY EXERCISED ITS SUBJECT MATTER JURISDICTION AS PLAINTIFF NOW SATISFIES N.J.S.A. 42:2C–65(A) (Da15–17)

Although Plaintiff did not have a certificate of authority to transact business in New Jersey when it commenced this action as required by N.J.S.A. 42:2C–65(a), Plaintiff has since remedied this issue. Da324. Having cured that defect, Plaintiff now can proceed with its case against Locke Lord and Hardin. See Materials Research Corp. v. Metron, Inc., 64 N.J. 74, 77 n.1 (1973) ("[c]ompliance with [this] requirement during the course of trial has been held sufficient for a plaintiff unqualified at the action's inception to avoid being precluded from maintaining suit") (citing Menley & James Laboratories, Ltd. v. Vornado, Inc., 90 N.J. Super. 404, 414 (Ch. Div. 1966) (certificate of authority to do business in New Jersey procured by plaintiff during trial removed "statutory impediment" to bringing suit). Other published cases in New Jersey support this result. In Danka Funding, L.L.C. v. Page, Scrantom, Sprouse, Tucker & Ford, 21 F. Supp. 2d 465 (D.N.J. 1998), Danka filed suit while not complying with N.J.S.A. 42:2B–57(a), which said: "A foreign limited liability company doing business in this State may not maintain any action, suit or proceeding in this State until it has registered in this State[.]" Danka eventually cured the defect, but the defendant still argued the case should be dismissed because Danka "had no standing to file suit."

That argument was rejected by the court because "[t]ime and time again, New

Jersey courts have reiterated their understanding that a company's failure to register before filing does not require dismissal so long as the company corrects the deficiency and files during the proceedings." Danka, 21 F.Supp.2d at 473 (citing Materials Research Corp., supra; Menley & James Labs., supra; Grow Farms Corp. v. National State Bank, 167 N.J. Super. 102, 114 (Law Div. 1979)("[e]ven if plaintiff is later found to... require authorization... it would still be permitted to comply with those statutory provisions during the trial of the matter to avoid a dismissal"); Peter Doegler Brewing Corp. v. Spindel, 14 N.J. Misc. 523, 524 (1936)(same)). Basement Store Franchise Corp. v. Natoli, 2014 WL 4328218 at *4 (N.J. Super. App. Div. Sept. 3, 2014) (where plaintiff complied with requirement during pendency of litigation, dismissal of complaint and denial to reinstate complaint were reversed); Berlin, Sachs & Werkstell v. Cart-Wright Indus., Inc., 1990 WL 126197at *4 n.2 (D.N.J. Aug. 27, 1990) ("the practice of many New Jersey courts has been to allow the plaintiff an opportunity to comply…during the pendency of the litigation"); see also Jamar Development, LLC v. Moderate Income Management Co., 2021 WL 1647793 (D.N.J. Apr. 27, 2021), and Tri-State Motorplex, Ltd. v. Apex Mortgage Corp., 2021 WL 843228 (D.N.J. Mar. 5, 2021) (permitting plaintiff to proceed with the previously filed suit after curing the failure to register).

All the above notwithstanding, Defendants argue that, since Plaintiff filed suit before complying with N.J.S.A. 42:2C–65(a), Plaintiff's case should be dismissed

because (1) the trial court lacked "subject matter jurisdiction" when the case was filed, and (2) subject matter jurisdiction "cannot be cured after the fact." Da22–25. However, this argument is fatally flawed because subject matter jurisdiction is not an issue in this case.

"Jurisdiction over the subject matter is the power of a court to hear and determine cases of the class to which the proceeding in question belongs." State v. Osborn, 32 N.J. 117, 122 (1960). It has nothing to do with whether individual plaintiffs are statutorily prevented from bringing such suits. See Lexmark International, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 n.4 (2014) (clarifying that "statutory standing" does not "implicate subject matter jurisdiction."). Thus, "standing and subject matter jurisdiction are separate questions… While standing, which is an issue of justiciability… addresses the question whether a federal court may grant relief to a party in the *plaintiff's* position, subject matter jurisdiction addresses the question whether a federal court may grant relief to *any* plaintiff given the claim asserted." Rent Stabilization Assoc. of the City of New York v. Dinkins, 5 F.3d 591, 594 n.2 (2d Cir. 1993) (internal citations omitted). See also Leyse v. Bank of America National Ass'n., 804 F.3d 316, 320 n.3 (3d Cir. 2015) ("We have, in the past, suggested that 'statutory standing is an issue of subject matter jurisdiction' …But we have since retreated from this characterization, and the Supreme Court has made clear that it is incorrect.")

(internal citation omitted); (Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 721 A.2d 43, 46 n.6 (Pa. 1998) ("the question of standing is not an issue of subject matter jurisdiction.").

The fact Plaintiff was prohibited by N.J.S.A. 42:2C–65(a) from filing its original Complaint did not involve the trial court's subject matter jurisdiction over this case. Rather, it involved Plaintiff's standing to bring this suit and case law makes clear – now that Plaintiff satisfies N.J.S.A. 42:2C–65(a), Plaintiff can proceed with this suit.

CONCLUSION

For all these reasons, Plaintiff respectfully asks this Court to affirm the trial court's Order denying Defendants' motion to dismiss.

Dated: June 17, 2024

Respectfully submitted,

/s/ Wendy M. Crowther

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DAKOTA OIL PROCESSING, LLC, *Plaintiff/Appellee,* -v.- JEFFRY L. HARDIN, ESQ., LOCKE LORD, LLP, COMPANY/CORPORATION 1-5, AND JOHN/JANE DOES 1-5, *Defendants/Appellants*.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002519-23 CIVIL ACTION On Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Monmouth County Submitted: June 24, 2024 Trial Court Docket No.: MON-L-002411-22 Sat Below: Hon. Kathleen A. Sheedy, J.S.C.

REPLY BRIEF AND APPENDIX OF DEFENDANTS/APPELLANTS JEFFRY L. HARDIN, ESQ. AND LOCKE LORD LLP

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PRELIMINARY STATEMENT

Plaintiff's arguments in defense of the Trial Court's exercise of personal jurisdiction over Defendants in New Jersey repeat the same errors that warrant reversal. Like the Trial Court, Plaintiff ignores the undisputed fact that Hardin was not served in New Jersey, which is the only way to obtain transient jurisdiction over an individual, and cites no authority that supports the assertion of transient jurisdiction over a non-resident entity like Locke Lord. Plaintiff's "transient" jurisdiction argument as to Locke Lord is also directly contrary to this Court's binding precedent.

In the case of general jurisdiction, Plaintiff disregards the rigorous "at home" standard in favor of a more lenient standard that was rejected by the Supreme Court over a decade ago. Plaintiff cannot establish that Locke Lord—a Delaware limited liability partnership with its principal place of business in Texas—or Hardin—a Virginia resident—are "essentially at home" in New Jersey. As for specific jurisdiction, Plaintiff does not acknowledge or apply the applicable standard, effectively conceding that it was not and cannot be met. None of the contacts upon which Plaintiff relies support the Trial Court's exercise of specific jurisdiction over either Defendant.

Unable to establish a basis upon which the Trial Court can exercise jurisdiction, Plaintiff accuses Defendants of playing a "game of cat and mouse"

by asserting "they were practicing law everywhere and nowhere on behalf of Plaintiff." But Defendants have never made any such claim. What Defendants have maintained—consistently and unequivocally—is that the representation of Plaintiff involved no work in New Jersey, did not implicate New Jersey law, and did not involve or require the use of any New Jersey-barred attorneys. That is dispositive, and Defendants are not to blame for Plaintiff's decision to file this meritless lawsuit in a forum in which the Court lacks jurisdiction.

LEGAL ARGUMENT

I. THE TRIAL COURT HAD NO BASIS FOR EXERCISING PERSONAL JURISDICTION OVER DEFENDANTS (Da10–15)

A. The Trial Court Erred in Concluding That Transient Jurisdiction Was Obtained Over Defendants (Da11–13)

There is no dispute that "transient jurisdiction," i.e., "in personam jurisdiction over an individual who is served while present, even though temporarily, in the forum state," provides an "exception to [the] minimum contacts analysis." El-Maksoud v. El-Maksoud, 237 N.J. Super. 483, 486–88 (Ch. Div. 1989) (emphasis added); Burnham v. Superior Court of California, Cnty. of Marin, 495 U.S. 604, 615–19 (1990) (applying transient jurisdiction to an individual). Plaintiff does not—because it cannot—even attempt to argue that Hardin was served while in New Jersey. Da167. Thus, the Trial Court clearly erred when it exercised transient jurisdiction over Hardin.

As to the Trial Court's exercise of transient jurisdiction over Locke Lord, Plaintiff fails to cite to any case that extends such jurisdiction beyond individuals. In fact, several courts have held that "tag" or "transient" jurisdiction does not extend to business entities. See, e.g., Martinez v. Aero Caribbean, 764 F.3d 1062, 1064 (9th Cir. 2014) ("Burnham does not apply to corporations."); Sokolow v. Palestine Liberation Org., 607 F. Supp. 3d 323, 327 (S.D.N.Y. 2022) ("Burnham[] … only applies to individuals."). Plaintiff's suggestion that Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023), approved of the exercise of transient jurisdiction over entities and individuals alike is inaccurate. Pb15–16. Each of the Mallory Court's references to transient, or tag, jurisdiction is in connection with service on an individual, 600 U.S. at 129, 145 (discussing Burnham). Nothing in Mallory addresses, let alone approves, the extension of that rule to a business entity. Indeed, Mallory is not a transient jurisdiction case; instead, the Supreme Court concluded that Pennsylvania courts could, consistent with Due Process, exercise general jurisdiction over foreign corporations registered to do business in Pennsylvania because such registration constituted consent to jurisdiction in Pennsylvania by virtue of the specific (and unique) Pennsylvania statute at issue. Mallory, 600 U.S. at 134. Mallory has no application here, as New Jersey does not have a consent-by-registration statute akin to Pennsylvania's. See Da12; Dutch Run-Mays Draft, LLC v. Wolf Block,

LLP, 450 N.J. Super. 590, 605–06 (App. Div. 2017) ("Dutch Run"); Display Works, LLC v. Bartley, 182 F. Supp. 3d 166, 175–76 (D.N.J. 2016); Simplot India LLC v. Himalaya Food Int'l Ltd., 2024 WL 1136791, at *10 (D.N.J. Mar. 15, 2024) (Mallory did not overrule the Display Works line of cases).

Plaintiff's reliance upon Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519 (App. Div. 1996) ("Citibank") as justifying the Trial Court's exercise of transient jurisdiction over Locke Lord, based upon Plaintiff's service on two Locke Lord partners in New Jersey, fares no better. Citibank makes clear that a non-resident law firm partnership like Locke Lord would "[p]lainly . . . not be subject to this State's in personam jurisdiction merely because a person authorized to receive service on its behalf happened to be present in this State and was personally served here." 290 N.J. Super. at 529–30 (citation omitted). And where, as here, the partners served had no involvement in the underlying representation, Da153, 196, the Court in Citibank held that personal jurisdiction is not obtained over the non-resident partnership, 290 N.J. Super. at 528–31. Plaintiff, like the Trial Court, simply ignores that dispositive, undisputed fact, and the corresponding result dictated by Citibank.

The Court in Citibank further held that "[s]ervice on a partner who is resident in New Jersey will not result in acquisition of personal jurisdiction over his foreign partnership absent the partnership's having sufficient New Jersey

contacts to sustain an exercise of long-arm jurisdiction." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.4 on R. 4:4-4(a)(5) (citing Citibank);[1] see Db14–15. As discussed below, Plaintiff did not and cannot make that showing.

B. The Trial Court Erred In Concluding That Defendants Are Subject to General Jurisdiction In New Jersey (Da13–14)

Like the Trial Court, Plaintiff disregards the rigorous requirement that non-resident defendants be "essentially at home" in the forum for general jurisdiction to attach. Contrary to Plaintiff's argument, see Pb21, the general jurisdiction inquiry "is not whether a foreign [entity's] in-forum contacts can be said to be in some sense 'continuous and systematic,'" it is whether an entity's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." Dutch Run, 450 N.J. Super. at 602 (quoting Daimler AG v. Bauman, 571 U.S. 117, 138–39 (2014)).

The Supreme Court has "made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." Daimler, 571 U.S. at 137. For a business entity, the paradigm forum is "where it is incorporated or has its principal place of business." Dutch Run, 450 N.J. Super. at 602. Here, it is undisputed that Locke Lord was formed under

[1] Because Locke Lord is a limited liability partnership with no general partners, the two partners who were served in New Jersey are also not "general partners" of Locke Lord, as contemplated by Rule 4:4-4(a)(5).

Delaware law and has its principal place of business in Texas. Pb4, 21; Db18; Da3, 195. Accordingly, general jurisdiction over Locke Lord could be sustained only if, at the time of the Complaint, it had sufficiently "continuous and systematic" contacts with New Jersey such that it is "essentially at home" in the State. But the contacts relied upon by both the Trial Court and Plaintiff—that Locke Lord has lawyers "practicing law within the borders of the State of New Jersey" and "maintained an office" in this State, Da14; Pb5, 18–19—amount to nothing more than a conclusion that Locke Lord conducts some business in New Jersey. That conclusion has been repeatedly rejected as insufficient for the exercise of general jurisdiction over a non-resident business entity.

Indeed, the Supreme Court has "rejected the premise of 'approv[ing] the exercise of general jurisdiction in every [s]tate in which a [defendant] 'engages in a substantial, continuous, and systematic course of business.'"[2] Baskin v. P.C. Richard & Son, LLC, 462 N.J. Super. 594, 616–17 (App. Div. 2020), rev'd on other grounds, 246 N.J. 157 (2021) (quoting Daimler, 571 U.S. at 138); Dutch Run, 450 N.J. Super at 601. After all, a business "that operates in many places

[2] Wartsila NSD N. Am., Inc. v. Hill Int'l, Inc., is clearly inapplicable, as the attorneys there were granted pro hac vice admission in the District of New Jersey to represent the plaintiff, the plaintiff named those attorneys as defendants in that same lawsuit, and the Court exercised jurisdiction based on their ongoing attorney-client relationship. 269 F. Supp. 2d 547, 557–58 (D.N.J. 2003). Here, Defendants do not represent Plaintiff in any New Jersey litigation, let alone this lawsuit, and Hardin has never been admitted pro hac vice in New Jersey. Da181.

can scarcely be deemed at home in all of them." BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559 (2017) (quoting Daimler, 571 U.S. at 139 n.20).

The contacts upon which Plaintiff relies are also misguided for the additional reason that nearly all of them amount to purported contacts with New Jersey in 2016 and prior, Pb18–19, and not "at the time of suit." Dutch Run, 450 N.J. Super. at 604. But regardless, maintaining a small office in the State and servicing a limited number of clients with New Jersey addresses—which collectively accounted for less than 5% of the firm's total revenue, Da286—falls well short of establishing that Locke Lord's contacts with New Jersey are so pervasive such that the firm can be deemed "essentially at home" in New Jersey even though it was formed and has its principal place of business elsewhere—a showing that Plaintiff concedes is limited to "exceptional cases." Pb22; Db19.

Plaintiff's assertions that Locke Lord's status as a partnership alters the analysis or that "the nature of the attorney-client relationship" is an "exception" to the general jurisdiction standard are without citation and contradict binding precedent. See Pb22. Indeed, as Dutch Run—itself addressed to personal jurisdiction over a foreign law firm partnership—recognized, "[t]he Fourteenth Amendment due process constraint described in Daimler . . . applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or the business enterprise

sued." 450 N.J. Super. at 602–03 (quoting BNSF, 137 S. Ct. at 1558–59). Unsurprisingly, then, in Dutch Run and other cases addressing jurisdiction over non-resident law firms this Court has recited the same, strict standard that governs the general jurisdiction inquiry.

The analysis as to Hardin is even more straightforward. Hardin is domiciled in Virginia, and he has never resided in New Jersey. Da167–68; Da177–78. That ends the general jurisdiction inquiry: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." Dutch Run, 450 N.J. Super. at 602. Indeed, Plaintiff cites no authority to suggest that an individual can be deemed to be "at home" in New Jersey based upon business-related contacts with the State. See Koch v. Pechota, 744 F. App'x 105, 110–11 (3d Cir. 2018) ("Consideration of business activities to find general jurisdiction has not been applied to individuals."). But even if such authority existed, Plaintiff's recitation of Hardin's random purported "contacts" with New Jersey[3] fall far short of the extensive contacts with New Jersey required to "approximate physical presence" in the State. See Wilson v. Paradise Vill. Beach Resort And Spa, 395 N.J. Super. 520, 528 (App. Div. 2007).

[3] Many of Plaintiff's purported "facts" have no bearing on the jurisdictional inquiry, from Hardin's "multi-jurisdictional" practice and Locke Lord's "multi-jurisdictional services," to non-party, non-client Starboard's New Jersey contacts. Pb6–14.

C. The Trial Court Erred in Concluding That It Has Specific Jurisdiction Over Defendants (Da14)

Plaintiff does not meaningfully attempt to defend the Trial Court's specific jurisdiction ruling, which neither acknowledged nor applied the applicable legal standard. Plaintiff has done the same. Nonetheless, as detailed in Defendants' opening brief, Plaintiff did not and cannot meet its burden of showing that either Defendant is subject to specific jurisdiction in New Jersey.

Specific jurisdiction is appropriate only where a plaintiff's "cause of action arises directly out of a defendant's contacts with the forum state." Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994). The alleged conduct that forms the basis for Plaintiff's claim simply has no nexus to any of Defendants' contacts with New Jersey,[4] let alone the direct relationship required to warrant an exercise of specific jurisdiction. See id.

The purported contacts to which Plaintiff points are precisely the type of Plaintiff-initiated, Plaintiff-focused contacts that this Court has rejected as insufficient to confer specific jurisdiction, as the citations following each make clear. First, Hardin directing the engagement letter and invoices to Plaintiff's

[4] Plaintiff should be estopped from claiming otherwise. In the Pennsylvania action, Plaintiff argued that "every action relevant to this dispute took place in Pennsylvania," Da251, 255—directly contrary to its position here. That the Pennsylvania court ruled against Plaintiff does not bar application of estoppel. See Cummings v. Bahr, 295 N.J. Super. 374, 385–88 (App. Div. 1996); Db25.

New Jersey address, Pb19–20, as instructed by Plaintiff's CEO (a Virginia resident), Da148, 180. See, e.g., Bayway Ref. Co. v. State Utilities, Inc., 333 N.J. Super. 420, 429–32 (App. Div. 2000) (mailings to plaintiff's New Jersey office as instructed did not "militate in favor of … jurisdiction"). Second, Plaintiff paying Locke Lord's bills via "New Jersey bank accounts," Pb19. See, e.g., id. at 432–33; Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 478 (App. Div. 2013) (receipt of payment from plaintiff in New Jersey did not support personal jurisdiction). And, third, Hardin communicating with Plaintiff's CFO via email and phone while the CFO was in New Jersey, Pb19.[5] See, e.g., Baanyan, 433 N.J. Super. at 477 (phone and electronic communications with individuals and entities in New Jersey insufficient to establish personal jurisdiction).

In this regard, Plaintiff, like the Trial Court, disregards entirely three fundamental tenets of the specific jurisdiction inquiry. First, the "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there"—that is, "the plaintiff cannot be the

[5] Plaintiff's reliance on Lebel v. Everglades Marina, Inc. is misplaced, as that decision makes clear that the transmittal of communications within the State "is not the critical factor, it is the nature of the contact;" notably, the defendant's representations to New Jersey were alleged to be fraudulent and formed the basis for plaintiff's claimed damages. 115 N.J. 317, 325–26 (1989). No such allegations are (or could be) made here.

only link between the defendant and the forum." Walden v. Fiore, 571 U.S. 277, 285–86 (2014). Second, in the legal malpractice context, "[t]he fact that a nonresident lawyer's alleged malpractice affected clients who happen to live in the forum state has not been considered a dominant jurisdictional factor." Washington v. Magazzu, 216 N.J. Super. 23, 29 (App. Div. 1987). And third, pertinent contacts for purposes of specific jurisdiction must "result from the defendant's purposeful conduct and not [as here] the unilateral actions of the plaintiff." Bayway Ref. Co., 333 N.J. Super. at 429. Indeed, this Court has held that the exercise of specific jurisdiction over a non-resident law firm is improper where, as here, the (1) alleged "negligence forming plaintiff's cause of action did not arise from defendant's contacts with New Jersey," (2) the underlying work "was neither undertaken nor billed from respondent's New Jersey offices," (3) "no physical meetings took place in New Jersey," and (4) the primary attorney involved "was not licensed to practice law in New Jersey." Dutch Run, 450 N.J. Super. at 597–98, 603; see Da167–68, 176.

D. Exercising Personal Jurisdiction Over Defendants Would Also Offend Traditional Notions of Fair Play and Substantial Justice (Da14–15)

Plaintiff does not address at all the second prong of the jurisdictional analysis, which requires that the exercise of personal jurisdiction over Defendants in New Jersey not offend "traditional notions of fair play and

substantial justice." Interlotto, Inc. v. Nat'l Lottery Admin., 298 N.J. Super. 127, 136 (App. Div. 1997). Just as in Interlotto—discussed at length in Defendants' opening brief but ignored by the Trial Court and now Plaintiff—Plaintiff's revisionist claim that it is a "New Jersey client" long "based in New Jersey"[6] is belied by the reality that Plaintiff "thought so little of its relationship to this state that it failed to obtain a certificate of authority from the Secretary of State before commencing this action" or any time before then, including "when the cause of action arose" in 2016. 298 N.J. Super. at 137; see Da148–49.

Plaintiff laments that "Defendants continue to assert they were practicing law everywhere and nowhere" and "expect no court to exercise jurisdiction over them," Pb1, 26. But even putting aside that it is not, of course, Defendants' responsibility to identify a forum in which they may be sued, Defendants have never taken either of those positions. Plaintiff has been aware since 2016 that Hardin was barred in the District of Columbia and practiced law during his representation of Plaintiff from the Locke Lord office located there—facts that

[6] Plaintiff's assertion that it "does not have an office in North Dakota," Pb6, is undercut by its prior filings with North Dakota's Secretary of State, which reflect that Plaintiff's headquarters and principal executive office from 2016-2018 was in North Dakota. Da148, 156–65. Not until 2019 did Plaintiff claim on its annual reports that its headquarters was located in New Jersey. Da148.

Defendants confirmed during jurisdictional discovery.[7] Plaintiff nevertheless made the decision in 2018 to file an action against Defendants in Pennsylvania rather than in the District of Columbia. And after that action was dismissed, Plaintiff then made the strategic decision to forgo an appeal and file this lawsuit in New Jersey in 2022. By then, the reason for Plaintiff's resort to a New Jersey court rather than the far more logical D.C. forum was transparent: New Jersey has a six-year statute of limitations for malpractice claims, and the District of Columbia's three-year statute of limitations had long since run. Plaintiff cites no authority permitting the Court to exceed the outer bounds of New Jersey's jurisdictional reach to save Plaintiff from its deliberate, strategic decisions. See Shifchik v. Wyndham Worldwide Corp., 2020 WL 1866942, at *3 n.4 (N.J. Super. Ct. App. Div. Apr. 14, 2020) (rejecting argument that court should exercise jurisdiction because plaintiff would otherwise have no recourse, noting plaintiff could have filed timely action in appropriate forum).

II. THE TRIAL COURT ERRED IN CONCLUDING THAT IT HAS SUBJECT MATTER JURISDICTION (Da15–17)

The Complaint should also have been dismissed because Plaintiff was barred from bringing this action in New Jersey and the Trial Court lacked subject

[7] None of the Locke Lord attorneys involved in the representation were barred in New Jersey or worked from Locke Lord's New Jersey office, as Plaintiff has known since the representation began and ended in 2016. Da167, 221, 224.

matter jurisdiction to consider it. Plaintiff does not dispute that it did not have a certificate of authority to transact business in New Jersey at any time prior to commencing this lawsuit or for the first eleven months that it prosecuted the case. Indeed, Plaintiff concedes that it "was prohibited by N.J.S.A. 42:2C-65(a) from filing its original Complaint." Pb30. Thus, the question is whether the Trial Court's resultant lack of jurisdiction was retroactively remedied by Plaintiff's registration as a foreign LLC in New Jersey in September 2023.

It was not, and the cases upon which Plaintiff relies for that proposition do not so hold. The case upon which Plaintiff principally relies, Materials Research Corp. v. Metron, Inc., 64 N.J. 74 (1973), is inapposite, as the Supreme Court there was addressing a situation in which the plaintiff never obtained a certificate of authority. And, the footnoted observation upon which Plaintiff relies is dicta (at best) and based upon a 1966 Chancery Division decision addressing a different statute that expressly contemplated an ability to cure. Id. at 77 n.1 (citing Menley & James Laboratories, Ltd. v. Vornado, Inc., 90 N.J. Super. 404, 414 (Ch. Div. 1966)).

Furthermore, Plaintiff's newfound framing of the issue as one of "statutory standing" ignores the cases discussed in Defendants' opening brief, in which New Jersey courts have addressed the defect as giving rise to a question of subject matter jurisdiction and have concluded (on less compelling facts than

those here) that the "jurisdictional bar to suit" cannot be cured during pending litigation. See Db27–32 (citing Seven Caesars, Inc. v. House, 2014 WL 4450441, **8–9 (N.J. Super. Ct. App. Div. Sept. 11, 2014); SMS Financial P, LLC v. M.P. Gallagher, LLC, 2019 WL 5459849, *6 (N.J. Super. Ct. Law Div. Jan. 25, 2019) ("The precise issue before this court is whether this court lacks subject matter jurisdiction[.]"); Form Tech Concrete Forms v. Two Bros. Contr., 2019 N.J. Super. Unpub. LEXIS 6257, *10 (N.J. Super. Ct. Law Div. May 20, 2019) ("The statute is unambiguous, and provides a jurisdictional standard[.]").

CONCLUSION

For the reasons set forth above and in Defendants' opening brief, Defendants request that the Court reverse the Trial Court's Order denying Defendants' motion to dismiss.

Dated: June 24, 2024

Respectfully submitted,

s/ John D. Haggerty

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