SUPERIOR COURT OF PENNSYLVANIA

Burnley, D. v. Loews Hotel

2026 Pa. Super. 43 · No. 370 EDA 2023; 485 EDA 2023 · Decided March 5, 2026

OPINION

Burnley, D. v. Loews Hotel 2026 Pa. Super. 43

LANE, J.

J-E01004-25 2026 PA Super 43

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

v. : LOEWS HOTEL, PHILADELPHIA :

HOTEL OPERATING COMPANY, INC., : No. 370 EDA 2023

TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : APPEAL OF: CHECKERS INDUSTRIAL : PRODUCTS, LLC : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

J-E01004-25 Appellants : v. : : No. 485 EDA 2023 LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257

BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,
McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J. OPINION IN SUPPORT OF PER CURIAM ORDER TO AFFIRM BY LANE, J.:
FILED MARCH 5, 2026

Checkers Industrial Products, LLC ("Checkers") appeals from the judgment entered in favor of Dana Burnley ("Mrs. Burnley") and Ralph Burnley -2- J-E01004-25 ("Mr. Burnley") (collectively, "the Burnleys") in this products liability action, and the Burnleys cross-appeal from the judgment. After careful review, we affirm. The trial court summarized the relevant factual and procedural history of this matter, as follows: On September 26, 2014, . . . [Mrs.] Burnley attended a conference at a hotel in Philadelphia. She tripped and fell on a defective "cable protector" (a device laid on the hotel ballroom floor to protect temporary audiovisual cables and wiring) and badly fractured her ankle. This serious injury led to hospitalizations, surgeries[,] and other medical procedures, and has . . . cause[d] debilitating, permanent pain. **** The Burnleys filed suit in . . . September . . . 2016, asserting claims for negligence[and] strict liability . . .. The Burnleys alleged that some of the defendants . . . had negligently created the hazardous condition in the ballroom where Mrs. Burnley fell. [The Burnleys further] alleged that Checkers and related entities . . . were strictly liable because they had manufactured, distributed, or sold the cable protector involved in Mrs. Burnley's injury, and that the cable protector was defective. . . . Checkers filed a joinder complaint against Industrial Advanced Technologies, Inc. ("IAT"), Ascendant Ventures, Inc. ("Ascendant"), and FallLine Corporation ("FallLine"), alleging that IAT had manufactured and/or distributed the cable protector, Ascendant had distributed it, and FallLine had manufactured it at IAT's direction. Checkers alleged that its only connection with the cable protector was that it had purchased certain IAT assets seven months after Mrs. Burnley's accident. Checkers also filed crossclaims against a number of other defendants. IAT and Ascendant filed preliminary objections [which the trial court] sustained . . ., dismissing IAT and Ascendant from the action. . . . [As] the case approached trial . . ., six defendants remained: Checkers, FOH Productions [("FOH")], and FallLine, which were allegedly strictly liable for the cable protector, and -3- J-E01004-25 Lawall Communications [("Lawall")], Loews Hotel, and Evan Andrews Productions, which allegedly negligently created the condition in the ballroom that caused Mrs. Burnley's fall. [Each of these remaining defendants, other than Checkers, reached a settlement with the Burnleys, leaving Checkers as the sole defendant to appear at trial.] **** Checkers filed a motion for extraordinary relief [and a motion in limine] . . . asking for an emergency continuance of the August 22[, 2022] trial date [on the basis] that the Burnleys had surprised Checkers with two last-minute disclosures: that Mrs. Burnley had lost her job because of pain from her injuries, and that she was scheduled to have surgery to implant a spinal cord stimulator two weeks before trial. Checkers argued that it needed time to conduct discovery on these issues in order to adequately prepare for trial. Checkers repeated this request in [an additional motion in limine.] The Burnleys responded that prior discovery and expert reports had put Checkers on notice that the job loss and surgery were likely to occur. . . . The Honorable Linda Carpenter [("Judge Carpenter")] entered an order requiring Mrs. Burnley to produce medical records from the spinal cord stimulator placement . . . and to appear for a Zoom deposition, limited to the topics of [her] termination . . . and her surgery[,] and . . . submit . . . employment records. . . . Judge Carpenter entered an order formally denying the motion for extraordinary relief . . .. At argument [before Honorable Michele Hangley ("Judge Hangley")] o[n] the continuance[-]related motions in limine, Checkers' counsel told [Judge Hangley] that that he had received [Mrs. Burnley's] medical records and some, but not all, of [her] employment records, and had deposed Mrs. Burnley. [Judge Hangley] denied relief, finding that Judge Carpenter had adequately addressed the late-disclosure issue. **** The parties agreed that the cable protector Mrs. Burnley stepped on had a manufacturing defect. At the time the cable protector was manufactured, IAT produced Firefly brand cable protectors by supplying molds to FallLine, which poured polyurethane into the molds to form the two pieces of the cable -4- J-E01004-25 protector. At times, FallLine also assembled the hinging mechanism and shipped the finished cable protectors to customers. For part of this relationship, IAT provided molds made of urethane; these molds, in turn, had been made from an aluminum master. At one point, however, IAT asked FallLine to manufacture a second mold, using IAT's aluminum master. FallLine did so, using a material that (as it turned out) was less prone to shrinking than the materials IAT had been using. The result was that some of the parts that FallLine produced were smaller than other Firefly parts, which meant that some assembled Firefly cable protectors had a top layer that was slightly shorter than the bottom layer. At trial, there was conflicting evidence of whose fault this was—IAT's for giving FallLine incorrect molds, or FallLine's for pouring and assembling misaligned cable protectors. It was not in dispute, however, that about [fifty] Firefly cable protectors had a manufacturing defect and that IAT and FallLine knew about this defect by January 2014. . . . [I]n 2014—after IAT and FallLine learned about the defect, but before Mrs. Burnley's accident—IAT and FallLine shipped a batch of the defective cable protectors to . . . FOH . . .. After that, FOH . . . rented a batch of cable protectors to Lawall for the conference Mrs. Burnley attended. There was no evidence that Checkers knew about the defective batch of cable protectors when it purchased IAT's assets in 2015. There was also no evidence that Checkers ever used the mismatched molds or produced cable protectors with the same manufacturing defect. **** [Throughout the litigation, Checkers argued that it could not be liable to the Burnleys under a successor liability theory because IAT manufactured the defective cable protector and Checkers merely purchased the assets of IAT without assuming any of IAT's debts or liabilities. In response, the Burnleys argued that the product line exception applied, which permitted application of successor liability for defective products despite Checkers' mere purchase of assets from IAT.] At trial, the jury heard the following evidence relevant to the successor liability and product-line exception issues: -5- J-E01004-25 On April 1, 2015, about eight months after Mrs. Burnley's accident, Checkers and IAC entered into an Asset Purchase Agreement ("APA"). Under the APA, Checkers purchased IAT's cable protector business. Although Checkers contends that [it] purchased only one product line (the Firefly brand cable protectors), Checkers' corporate designee, William Eaton [("Eaton")], agreed that Checkers had purchased "all Firefly inventory" and "all of IAT's equipment," "IAT's customer list," "all of IAT's intellectual property," "all of the molds for cable protectors . . . the patents for cable protectors, [and] the trade shows and trade names concerning Firefly." The APA included a non[-]compete clause, which prohibited IAT from manufacturing, marketing, or selling cable protectors. After the transaction, Checkers announced that it had "acquire[d] Firefly cable protectors" and that "[t]his acquisition brings together two leaders in the cable management industry." Checkers continued to produce Firefly cable protectors with the Firefly logo and "IAT" stamped into the tread. Checkers' corporate representative agreed that "after the acquisition and merger of IAT and Checkers[,] . . . Checkers continue[d] to market itself as an ongoing enterprise that manufactured and sold the Firefly product line." He testified that Checkers handled customer complaints about defective Firefly products (including, presumably, those manufactured before the asset purchase). In the APA, IAT agreed to retain all liabilities arising before the sale, including "product liability." The APA disclosed a single judgment against IAT that related to the cable protector business, for $15,558.08, and total IAT indebtedness of less than $100,000 in commercial debt and a $40,000 capital loan from a relative of IAT's owners, plus $418,330.00 of shareholder paid-in capital. In exchange for the assets it was purchasing, Checkers agreed to pay IAT $160,000 immediately, plus [sixty] months of "Earnout Payments," calculated as a percentage of sales. The evidence showed that IAT remained in business after the transaction. In the APA, IAT agreed that it would not dissolve for at least two years after the sale. Testimony of IAT's CEO[, Philip Berardi ("Berardi"),] confirmed that IAT was still in business as of August 2, 2018, [distributing] intelligent camera cranes. The Burnleys presented several pieces of evidence in an attempt to show that despite IAT's continued existence, the Burnleys had no remedy against IAT. First, the Burnleys pointed to IAT's -6- J-E01004-25 representation in the APA that at the time of the asset sale, IAT had "no insurance with respect to its properties, assets and operation of its [cable protector] business." Second, the Burnleys presented the testimony of FallLine's owner, Erik York [("York")], that he had considered buying the Firefly line of products in 2014, had reviewed IAT's books, and had determined that IAT's only assets were the Firefly brand and the associated inventory, trademarks, and intellectual property. . . . York also testified that IAT owed FallLine about $13,000, although he conceded that IAT had paid about half of that debt in 2015 or 2016 . . .. **** Th[e trial] court had a several discussions with counsel about how the verdict sheet should allow the jury to allocate liability among [Checkers and the settling] strictly liable and negligent defendants. The problem, th[e] court stated, was that "the negligence defendants get allocated by their relative liability; the strictly liable defendants are allocated pro rata." [The trial] court told the parties that it would list all the defendants on the verdict sheet, ask the jury to assign each liable defendant a "percentage of liability," "and then mold the verdict to apply the correct percentages." [The trial] court stated that it intended to take the total percentage of liability the jury assigned to the strictly liable defendants, "put that into one pot and divide that up equally."

Both parties agreed to that organization of the verdict sheet, noting that they would deal with the issue of how to mold the verdict after the jury returned. **** [Throughout the trial, the court asked the parties for their views on whether the judge or the jury should determine the facts relevant to the product line exception and whether the exception should apply. Checkers argued that the judge should determine the facts and address whether, taken together, they justified application of the product line exception. The Burnleys contended that both of these tasks were for the jury. The day before closing arguments, the trial court informed the parties that it was going to allow the jury to weigh all of the factors relevant to the product line exception and decide whether the exception applied to Checkers.] -7- J-E01004-25 The jury returned its verdict on the morning of August 31, 2022. The jury [determined that Checkers was a successor corporation,] . . . the product[]line exception applie[d] to Checkers[,] . . . the cable protector was defective . . ., that the defect had harmed Mrs. Burnley . . ., and that . . . FOH . . . and FallLine, as well as Checkers, had manufactured, distributed, or sold the cable protector . . .. [The jury] also found that Lawall and Evan Andrews Productions were negligent and that their negligence was a factual cause in bringing harm to Mrs. Burnley . . .. When asked to attribute percentages of liability, however, the jury found Checkers 100% liable and the other defendants 0% liable . . .. The jury awarded Mrs. Burnley $2.7 million for future medical expenses, $11,250.00 for past loss of earnings, $2.4 million for future loss of earnings, and $10 million in noneconomic damages. It awarded Mr. Burnley $3 million for loss of consortium. [The total amount awarded by the jury to the Burnleys was $18,111,250.] . . . [The trial court thereafter molded the verdict to $5,037,083.33 to Mrs. Burnley and $1,000,000.00 to Mr. Burnley.] **** Checkers timely filed a post-trial motion, seeking judgment notwithstanding the verdict [(“JNOV”)] or a new trial. The Burnleys timely filed a motion for delay damages. The Burnleys [filed a motion for delay damages but] did not seek any other relief other than delay damages. Importantly, the Burnleys did not ask th[e trial] court to reconsider its decision to apportion liability among the three strictly liable defendants. On January 10, 2023, th[e trial] court [entered an order] den[ying] Checkers’ motion for post-trial relief[, granting] the Burnleys’ motion for delay damages on the award “on [Mrs.] Burnley’s claims, as molded by the court,” but den[ying] the motion for delay damages on the award for Mr. Burnley’s loss of consortium claim. [On that same date, the trial court] entered judgment against Checkers for $7,354,716.83. Trial Court Opinion, 7/10/23, at 1, 3-8, 10-12, 14, 16-17 (citations, footnotes, and unnecessary capitalization omitted). Checkers filed a timely notice of -8- J-E01004-25 appeal and the Burnleys filed a timely notice of cross-appeal. The parties and the trial court complied with Pa.R.A.P. 1925. In its appeal, Checkers raises the following issues for our review:

A. SHOULD THIS COURT VACATE THE JURY’S VERDICT AND ENTER
[JNOV] IN FAVOR OF CHECKERS, BECAUSE THE SUPREME COURT
HAS NOT ADOPTED THE PRODUCT LINE EXCEPTION TO SUCCESSOR
LIABILITY, BECAUSE [THE BURNLEYS] FAILED TO MEET THEIR
BURDEN OF PROVING THAT THE EXCEPTION APPLIES TO CHECKERS,

AND WHERE THE JUDGE IMPROPERLY ALLOWED THE JURY TO DECIDE THIS ISSUE?

B. IN THE ALTERNATIVE, SHOULD THIS COURT GRANT A NEW TRIAL, BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING CHECKERS' MOTION FOR A MISTRIAL AND IN ALLOWING INTO EVIDENCE A PORTION OF CHECKERS' [APA] WITH IAT, WHICH INDICATED THAT IAT HAD NO INSURANCE WITH RESPECT TO THE ASSETS AT ISSUE AT THE TIME OF THE AGREEMENT'S EXECUTION?

C. SHOULD THIS COURT GRANT A NEW TRIAL, BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ALLOWING CO-DEFENDANT, FALL[]LINE, TO PROVIDE IRRELEVANT AND PREJUDICIAL TESTIMONY REGARDING THE ASSETS OF IAT AT THE TIME FALL[]LINE EXPLORED PURCHASING IAT'S CABLE PROTECTOR LINE?

D. SHOULD THIS COURT GRANT A NEW TRIAL, BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ALLOWING THE INTRODUCTION OF EVIDENCE PRODUCED BY [THE BURNLEYS] SHORTLY BEFORE TRIAL, WHICH INCLUDED NEW ALLEGATIONS WITH REGARD TO THE MEDICAL, WAGE LOSS, AND LOSS OF CONSORTIUM CLAIMS, FOR WHICH CHECKERS WAS DENIED SUFFICIENT OPPORTUNITY TO REFUTE SUCH NEW ALLEGATIONS?

E. SHOULD THIS COURT GRANT A NEW TRIAL, BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REFUSING TO UTILIZE CHECKERS' PROPOSED DETAILED VERDICT SLIP AFTER THE COURT DECIDED THE JURY WOULD DECIDE THE PRODUCT LINE EXCEPTION ISSUE?

F. SHOULD THIS COURT GRANT A NEW TRIAL, DUE TO THE JURY'S INCONSISTENT VERDICT?

 Checkers' Brief at 2-3 (capitalization in original). In their cross-appeal, the Burnleys raise the following issue for our review: Whether the trial court erred in molding the verdict to impose judgment for only one-third of the total verdict awarded against . . . Checkers, where the jury's verdict expressly [found] Checkers 100 percent liable for [the Burnleys'] damages as a matter of law made [sic] Checkers liable for the full amount of the jury's verdict? Burnleys' Brief at 10. We first address the issues raised in Checkers' appeal. In its first issue, Checkers challenges the trial court's denial of its motion for JNOV. Our standard of review of the denial of a JNOV is well-settled: Appellate review of a denial of JNOV is quite narrow. We may reverse only in the event the trial court abused its discretion or committed an error of law that controlled the outcome of the case. Abuse of discretion occurs if the trial court renders a judgment that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias[,] or ill-will. When reviewing an appeal from the denial of a request for [JNOV], the appellate court must view the evidence in the light most favorable to the verdict[-]winner and give him or her the benefit of every reasonable inference arising therefrom while rejecting all unfavorable testimony and inferences. . . . Thus, the grant of a [JNOV] should only be entered in a clear case and any doubts must be resolved in favor of the verdict[-]winner. Furthermore, [i]t is only when either the movant is entitled to judgment as a matter of law or the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant that an appellate court may vacate a jury's finding. - 10 - J-E01004-25 Phillips v. Lock, 86 A.3d 906, 919 (Pa. Super. 2014). Generally, when one corporation sells or transfers all of its assets to a successor corporation, the successor corporation does not acquire the liabilities of the transferor corporation merely because of its succession to the transferor's assets. See Dawejko v. Jorgensen Steel Co., 434 A.2d 106, 107 (Pa. Super. 1981). However, there are several well-recognized exceptions to the general rule regarding a successor corporation's non-liability following an asset purchase, including: (1) the successor corporation expressly or impliedly agrees to assume such liability; (2) the transaction amounts to a consolidation or merger; (3) the successor corporation is merely a continuation of the transferor corporation; or (4) the transaction is fraudulently entered into to escape liability. See id. In Dawejko, a three-judge panel of this Court adopted another exception to the general rule regarding a successor corporation's non-liability following an asset purchase, known as the "product line exception." The product line exception was first articulated by the Supreme Court of California in Ray v. Alad Corp., 560 P.2d 3 (Cal. 1977). Under the product line exception, "where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units in the same product line, even if previously manufactured and - 11 - J-E01004-25 distributed by the selling corporation or its predecessor." Dawejko, 434 A.2d at 110 (quoting Ramirez v. Amsted Industries, Inc., 431 A.2d 811, 825 (N.J. 1981)). After surveying case law from other jurisdictions, the Dawejko Court identified several factors discussed by other courts as relevant to the question of whether the product line exception should apply, including whether the successor corporation: purchased the goodwill and contract obligations of the transferor corporation; advertised itself as an ongoing enterprise; profited from and exploited all of the accumulated goodwill which the products have earned; continued to produce the same kind of product in essentially the same way, using the same equipment and designs; maintained the same product, name, management, personnel, physical location, property, and clients; solicited the predecessor's customers through the same sales representatives with no outward indication of a change in ownership; or continued the operations of the predecessor corporation while the predecessor corporation ceased its ordinary business operations. See id. at 108-09. Additionally, the Dawejko Court paid particular attention to the three factors identified by the California Supreme Court in Ray as justification for the product line exception:

(1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original - 12 - J-E01004-25 manufacturer's good will being enjoyed by the successor in the continued operation of the business. Dawejko, 434 A.2d at 109 (quoting Ray, 560 P.2d at 8-9). Notwithstanding its recognition of these various pertinent considerations, the Dawejko Court declined to adopt a finite set of factors which must be satisfied in order for the product line exception to apply, opting instead to frame the exception in general terms, stating: "[w]e . . . believe it better not to phrase the new exception too tightly. Given its philosophical origin, it should be phrased in general terms, so that in any particular case the court may consider whether it is just to impose liability on the successor corporation." Id. at 111. Ultimately, the Dawejko Court summarized the product line exception, to be applied in Pennsylvania, as follows: The various factors identified in the several cases discussed above will always be pertinent -- for example, whether[:] the successor corporation advertised itself as an ongoing enterprise; or whether it maintained the same product, name, personnel, property, and clients; or whether it acquired the predecessor corporation's name and good will, and required the predecessor to dissolve. Also, it will always be useful to consider whether the three-part test stated in [Ray] has been met. The exception will more likely realize its reason for being, however, if such details are not made part of its formulation. Dawejko, 434 A.2d at 111 (citations omitted). Notably, the Pennsylvania Supreme Court has not expressly adopted the product line exception or decided whether a jury or a judge should decide whether the product line exception applies. See Schmidt v. Boardman Co., - 13 - J-E01004-25 11 A.3d 924, 946 (Pa. 2011) (holding that because the appellant had waived the issue, it could not address the question of whether the product line exception should be maintained in Pennsylvania, or the question of whether application of the exception should be decided by the judge or the jury). 1 However, when passing upon the specific instruction provided by the trial court to the jury for it to decide whether to apply the product line exception, the ____ 1 In the instant matter, the trial court looked to our High Court's decision in Schmidt, and concluded that the jury instruction on the product line exception at issue in that case set forth six factors which "a trier of fact must consider." Trial Court Opinion, 7/10/23, at 8-9 (emphasis added). The trial court referred to those factors as "the Schmidt factors," and enumerated them as follows:

(1) whether the corporation advertised itself as an ongoing enterprise; (2) whether the corporation acquired the predecessor corporation's goodwill; (3) whether the corporation maintained the same name, clients, and product; (4) whether the corporation deliberately exploited the original manufacturer's established reputation; (5) the virtual

destruction of plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business; and (6) the successor's ability to assume the original manufacturer's risk spreading role and the fairness of requiring the successor to assume responsibility for defective products that were a burden attached to the original manufacturer's goodwill being enjoyed by the successor in the continued operation of the business. See id. at 8-9 (quoting Schmidt, 11 A.3d at 946). Notably, each of these factors was initially identified by the Dawejko Court. Moreover, because the Schmidt Court did not expressly adopt the product line exception, it repeatedly recognized Dawejko as "the seminal product[]line [exception] decision," and determined that the jury instruction was "entirely faithful to Dawejko," used "the operative language of Dawejko," and listed "the factors identified in Dawejko." Schmidt, 11 A.3d at 944-45. Thus, as these factors originate entirely from Dawejko, which remains the seminal product line exception case in this Commonwealth, we decline to refer to these factors as the Schmidt factors and, instead, refer to them as the Dawejko factors. We additionally emphasize that, pursuant to Dawejko, there is no finite set of factors which must be satisfied in order for the product line exception to apply. See Dawejko, 434 A.2d at 111. Thus, the exception, as adopted in Dawejko, is not limited to these six factors, nor are any factors mandatory, as incorrectly stated by the trial court. - 14 - J-E01004-25 High Court held that "under the most appropriate reconciliation of presently prevailing Superior Court precedent, the trial court did not err in its main instruction to the jury – under Dawejko - concerning the product-line exception." Id.2 As an en banc panel of this Court, we are not bound by a prior decision made by a three-judge panel of this same Court. See McGrath v. Bureau of Prof'l & Occupational Affairs, 173 A.3d 656, 661 n.7 (Pa. 2017) (holding that an en banc panel of an intermediate court is authorized to overrule a three-judge panel decision of the same court). Instead, we may make an independent determination regarding the issues presented and, accordingly, accept or reject the reasoning and rulings made by a prior three-judge panel. See id. As such, we may accept or reject the Dawejko Court's decision to adopt the product line exception in this Commonwealth. See id. Notwithstanding this latitude, however, we find no reason to overrule ____ 2 Despite the High Court's finding in Schmidt that the trial court did not err with respect to the content of the jury instruction on the product line exception, as well as the fact that the Court could not reach the question of whether the application of the product line exception should be decided by the judge or the jury, the Schmidt Court nevertheless commented in a footnote that the appellees' characterization of the exception as "'an equitable remedy' suggests that it might more appropriately be determined by a judge." Schmidt, 11 A.3d at 946 n.24. The High Court further observed that the "'philosophical origin' and the looseness engrafted on the exception by Dawejko, encompassing the task of balancing a litany of factors (as contrasted with deciding factual matters in the context of a clearly articulated framework), also appears to militate in favor of allocating the decision to a judge." Id. - 15 - J-E01004-25 Dawejko or displace the product line exception as part of the established jurisprudence in this Commonwealth. Accordingly, we hold that Dawejko continues to provide the controlling parameters of the product line exception, as adopted in this Commonwealth. Turning to the arguments presented on appeal, we initially address Checkers' issues. In its first issue, Checkers argues, without meaningful discussion or citation to pertinent legal authority, that it was entitled to JNOV because the Pennsylvania Supreme Court has not expressly adopted the product line exception to the general rule regarding successor liability following an asset purchase.3 We find no merit to this argument. This Court has consistently held that, as long as a decision of this Court has not been overturned by our Supreme Court, it remains binding precedent. See Marks v. Nationwide Ins. Co., 762 A.2d 1098, 1101 (Pa. Super. 2000). Thus, as Dawejko has not been overturned by our Supreme Court, it remained binding precedent throughout the lower court proceedings. The fact that our Supreme Court has

3 We note that, pursuant to our appellate jurisprudence, "the argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities." Estate of Lakatosh, 656 A.2d 1378, 1381 (Pa. Super. 1995); see also Pa.R.A.P. 2119(a). "This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority." Iron Age Corp. v. Dvorak, 880 A.2d 657, 665 (Pa. Super. 2005). Failure to cite relevant legal authority constitutes waiver of the claim on appeal. See Eichman v. McKeon, 824 A.2d 305, 319 (Pa. Super. 2003).

not independently adopted the product line exception does not detract from the fact that the trial court in the instant matter was bound to follow Dawejko. Accordingly, we find no merit to this argument. Checkers alternatively claims that it was entitled to JNOV because the Burnleys failed to prove that they had no remedy against the transferor corporation, IAT, which designed and/or manufactured the cable protector involved in Mrs. Burnley's fall. Checkers asserts that, pursuant to the APA, it purchased from IAT only those items related to the design, manufacture, distribution, and sale of cable protectors, and that IAT retained all product liability, all returns, and all warranty liability with respect to sales made by IAT. Checkers contends that it did not assume any liabilities that were caused by IAT's actions or inactions occurring prior to the execution of the APA in April 2015, including Mrs. Burnley's 2014 accident. Checkers further points out that, pursuant to the APA, IAT was not permitted to file for dissolution for at least two years, and that Checkers would continue to make payments to IAT for five years after the execution of the APA. Checkers claims that the 2018 deposition testimony of Philip Berardi, the corporate designee for IAT, establishes that IAT was still in business in 2018, and was distributing intelligent camera cranes. Checkers also points to the testimony of Erik York, the corporate designee for FallLine, that FallLine was able to recover money from IAT in 2015 or 2016. Checkers maintains that the APA, as well as the testimony of the corporate designees for IAT and

FallLine, indicate that IAT remained in business until at least 2018, was entitled to receive payments under the APA from Checkers through 2020, and specifically retained all product liability for products sold by IAT, such as the cable protector involved in Mrs. Burnley's accident. Checkers contends that the public policy behind the product line exception is to protect plaintiffs left without a remedy due to corporate purchases. Checkers argues that, because IAT continued to exist and the Burnleys simply failed to seek a recovery against that company, the main rationale for the application of the product line exception is absent. Checkers additionally contends that, because there was no evidence that Checkers knew or could have known of the manufacturing defect, the policy justification for the product line exception has less force, and the interests of justice, fairness, and considerations of public policy further weigh against the application of the product line exception. Finally, Checkers asserts that the trial court erred in permitting the jury to decide the issue of whether the product line exception should apply. Checkers observes that, although the trial court initially indicated that it would weigh, at least, the fairness factor in deciding whether the product line exception applied, it ultimately allowed the jury to make this determination. Checkers claims that the trial court's failure to make a firm decision as to who would decide whether the product line exception applied caused the parties to be prejudiced and the jurors to be confused, as they did not learn of the - 18 - J-E01004-25 concept of the product line exception until the trial court provided a single jury instruction and read a single jury interrogatory regarding this issue on the last day of trial. Checkers contends that the complex weighing of equitable factors involved in determining whether the exception should apply is a matter for a judge rather than a jury. The trial court considered Checkers' first issue and determined that it lacked merit. The court determined that the evidence was sufficient to support the jury's decision to apply the product line exception, explaining: First, the evidence was sufficient to show that Checkers was a "successor" to IAT[.] That is, that it had "acquire[d] all or substantially all of the manufacturing assets" of IAT. Although there was evidence that Checkers had acquired only certain IAT product lines, the testimony of Checkers' corporate designee that Checkers had purchased IAT's equipment, intellectual property, and customer lists was sufficient to allow the jury to make that finding. The evidence was also sufficient to show . . . "whether the corporation advertised itself as an ongoing enterprise . . . whether the corporation acquired the predecessor's [sic] corporation's goodwill . . . whether the corporation maintained the same name, clients, and product . . . [and] whether the corporation deliberately exploited the original manufacturer's established reputation." The jury heard the testimony of Checkers' corporate designee that Checkers had purchased all assets relating to IAT's cable protector business, that Checkers had continued to market its cable protectors using the "Firefly" brand and IAT's molds and logos, that Checkers announced that the purchase "[brought] together two leaders in the cable management industry," and that "Checkers continue[d] to market itself as an ongoing enterprise that manufactured and sold the Firefly product line." The Burnleys did not, on the other hand, present evidence sufficient to prove . . . "the virtual destruction of plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business." Uncontested evidence - 19 - J-E01004-25 showed that IAT continued to exist, do business as a manufacturer of intelligent camera cranes, and pay creditors for at least three years after it sold its cable protector business to Checkers (and at least two years after the Burnleys filed suit). IAT received a substantial payment from Checkers for the cable protector business, plus the right to a future stream of income, and there was no evidence that these proceeds were diverted or dissipated outside IAT. Most importantly, the Burnleys did not show that they had tried to seek compensation from IAT. It is difficult to see how a plaintiff can demonstrate the "virtual destruction of [its] remedies" without introducing evidence that it had pursued those remedies; the Burnleys certainly did not make that showing here. The evidence that the Burnleys point to on the issue of "virtual destruction of remedies" is not helpful to them. The representation in the APA that IAT did not have "insurance with respect to its properties, assets and operation of its [cable protector] business" as of April 1, 2015, without more, cannot be read to mean that IAT lacked insurance, at the relevant times, that would have covered liability for a product sold more than a year earlier. The APA also cannot be read to show that IAT did have insurance coverage at some point that ceased to exist because of the asset sale. Similarly, Mr. York's testimony as to what he saw in IAT's books in early 2014 is not sufficient to show that the sale to Checkers "virtually destroyed" the Burnleys' remedies. Mr. York's review occurred eighteen months before the substantial cash infusion that IAT received from Checkers and, possibly, before the significant shareholder investment disclosed in the APA. With respect to . . . "the successor's ability to assume the original manufacturer's risk-spreading role and the fairness of requiring the successor to assume responsibility for defective products that were a burden attached to the original manufacturer's goodwill being enjoyed by the successor in the continued operation of the business," the evidence was mixed. One policy justification for the product[]line exception (and, indeed, for strict liability in general) is that the company that purchases a product line and continues to manufacture it is better able than a consumer to identify defects in the product and guard against them. This policy justification seems logical in the case of a design defect; a purchasing company will be better able than a consumer to identify and correct such a defect. In this case, however, where the defect arose from a one-time manufacturing - 20 - J-E01004-25 error and there was no evidence that Checkers knew or could have known of that error, the policy justification has less force. A second policy justification is that the purchasing company enjoys the prior manufacturer's accumulated good[]will, and should also have to accept the burdens that go along with that good[]will. That policy justification does have some force in this case, where Checkers marketed its Firefly cable protectors as a continuation of IAT's products. Taking all . . . factors together, and viewing the evidence in the light most favorable to the verdict winners, as it must, this court cannot say that the jury's verdict was not supported by sufficient competent evidence. While the Burnleys' inability to prove that Checkers' purchase of IAT assets virtually destroyed their remedies certainly weakens their argument that the product[]line exception should apply, there was significant evidence to support the other factors . . .. Reasonable minds accordingly could disagree as to whether Checkers is entitled to relief. This court cannot second guess the jury's weighing of the various factors. Therefore, it did not err in denying Checkers' request for [JNOV]. Trial Court Opinion, 7/10/23, at 24-27 (citations, footnotes, and unnecessary capitalization omitted). The trial court additionally found no merit to Checker's claim that the judge, and not the jury, should have decided whether the product line exception applied. The trial court explained: At trial, [the Schmidt Court's] footnote, and the concerns it expresses, gave this court pause about whether it, or the jury, should decide the product[]line exception issue. [This court] concluded, however, that given the Superior Court's approval of the trial court's jury instruction in Schmidt, and taking into account the Burnleys' right to a jury trial, it should allow the jury to decide the issue. This decision was not an error of law or a palpable abuse of discretion. **** - 21 - J-E01004-25 Checkers further argues that even if this court's decision to submit the issue to a jury was proper, this court erred by postponing that decision until the end of trial. Checkers waived this issue by failing to raise it during the trial. Moreover, Checkers cannot show that it was prejudiced by the timing of this court's decision. The court announced the decision the day before closing arguments, giving the parties ample time to organize their presentations to the jury. Trial Court Opinion, 7/10/23, at 23 (unnecessary capitalization omitted). Based on our review, we conclude that the trial court did not err or abuse its discretion in denying Checkers' motion for JNOV. In challenging the trial court's denial of its motion for JNOV, the gravamen of Checkers' argument focuses on the first Ray factor, which involves a consideration of whether the successor corporation's acquisition of the predecessor corporation's assets caused the virtual destruction of the plaintiff's remedies against the original manufacturer. Checkers essentially argues that, because the trial court determined that the Burnleys failed to prove that their remedy against IAT was virtually extinguished following Checkers' acquisition of IAT's assets, Checkers was entitled to JNOV as a matter of law. Importantly, as explained above, the Dawejko Court declined to establish a finite set of factors that must be met in order to apply the product line exception, and specifically declined to make the Ray factors mandatory. Instead, the Dawejko Court opted to identify various considerations that are "pertinent" to this inquiry. Dawejko, 434 A.2d at 111. With respect to the Ray factors, the Dawejko Court stated that while "it will always be useful to consider whether the three-part test stated in [Ray] has been met[, t]he - 22 - J-E01004-25 exception will more likely realize its reason for being, however, if such details are not made part of its formulation." Id. Although the Pennsylvania Supreme Court did not expressly adopt the product line exception, it has nevertheless confirmed that none of the Ray factors is mandatory, noting that "[i]n fact, the Dawejko panel took pains to clarify that it was adopting the Ramirez test as the core, governing standard, subject to more flexible consideration of other relevant factors, including those identified in Ray." Schmidt, 11 A.3d at 944. Moreover, our Supreme Court expressly overruled this Court's decisions in Schmidt v. Boardman Co., 958 A.2d 498 (Pa. Super. 2008), and Hill v. v. Trailmobile, Inc., 603 A.2d 602 (Pa. Super. 1992), to the extent that those decisions misinterpreted Dawejko and improperly elevated the Ray factors to mandatory status. See Schmidt, 11 A.3d at 945 (holding that "the Schmidt panel's elevation of the Ray factors to mandatory status was based on a plain misreading of the seminal product[]line decision in Dawejko. Thus, the most appropriate approach to reconciling governing Superior Court precedent is to correct Hill's mistake and to revert to Dawejko").4 Based on this established precedent, we conclude that the trial court's concern that the Burnleys failed to present sufficient ___ 4 By implication, the Schmidt Court also overruled this Court's decision in Keselyak v. Reach All, Inc., 660 A.2d 1350, 1354 (Pa. Super. 1995), wherein a panel of this Court relied on federal caselaw to elevate the first Ray factor to mandatory status and to hold that a claimant's inability to recover from the original manufacturer is a prerequisite for use of the product line exception. - 23 - J-E01004-25 evidence for the jury to find in their favor on the first Ray factor is not dispositive, and does not provide a basis for reversal of the order denying Checker's motion for JNOV.5 With respect to Checkers' claim that the trial court erred in allowing the jury to decide the issue of whether to apply the product line exception, the only basis for its claim of error is our High Court's decision in Schmidt. As explained above, the Pennsylvania Supreme Court has not addressed the question of whether application of the product line exception is a matter for determination by the judge or the jury. Although the Schmidt Court included a footnote observing that the appellees' characterization of the exception as an "'equitable remedy' suggests that it might more appropriately be determined by a judge," and that the "'philosophical origin' and the looseness engrafted on the exception by Dawejko, encompassing the task of balancing a litany of factors (as contrasted with deciding factual matters in the context of a clearly articulated framework), also appears to militate in favor of ___ 5 Checkers directs this Court to decisions from other states and federal jurisdictions, including our federal counterparts in this Commonwealth, wherein the courts have refused to apply the product line exception when the plaintiff's remedy against the original manufacturer was not extinguished by the asset acquisition. However, Checkers reliance on those cases is unavailing, as they are not binding on this Court. See Willard v. Interpool, Ltd., 758 A.2d 684, 686 (Pa. Super. 2000) (explaining that, while decisions of the lower federal courts have a persuasive authority, they are not binding on Pennsylvania courts even where they concern federal questions); see also id. (explaining that decisions from other states with identical issues are not binding on Pennsylvania courts). - 24 - J-E01004-25 allocating the decision to a judge," those comments can only be regarded as dicta, given that the question was not before the Court. See Schmidt, 11 A.3d at 946 n.24.6 As a result, we are not bound by Schmidt on this issue. We additionally note that, in Dawejko, the jury was asked to decide whether the successor corporations, which had acquired the assets of the original product manufacturer, could be held liable under a theory of strict products liability. In adopting the product line exception, the Dawejko Court affirmed the trial court's denial of the successor corporations' motion for JNOV, and determined that, on the factual record before the Court, "the jury was entitled to find the facts as appellees have stated them." Dawejko, 434 A.2d at 112 (emphasis added). Importantly, in defining the parameters of the product line exception, the Dawejko Court had the opportunity to designate the inquiry as a question of law for a judge to decide. However, the Dawejko Court did not do so. Instead, it affirmed the decision by the jury to impose liability on the successor corporation based on the product line exception. See id.; see also Schmidt, 958 A.2d at 514 (affirming the trial court's denial of the successor corporation's motion for JNOV, and determining that "the ____ 6 Checkers also relies on the Third Circuit Court of Appeals' decision in McLaud v. Indus. Res, 715 Fed. Appx. 115, 119 (3rd Cir. 2017), wherein the Third Circuit looked to the dicta provided by our High Court in Schmidt, and concluded, based on such dicta, that the product line exception inquiry is a question of law for the judge to decide. As noted previously, while we may consider federal case law for its persuasive value, we are not bound to follow it. See Willard, 758 A.2d at 686. - 25 - J-E01004-25 evidence was sufficient to support the jury's finding that [a]ppellants were liable as the product[]line successor to [the predecessor corporation]" (emphasis added)). Thus, we discern no error by the trial court with respect to its decision to permit the jury to decide whether the product line exception should apply to Checkers.7 This Court's analysis is further cabined by our well-established standard of review, which requires us to view the evidence in the light most favorable to the Burnleys, as the verdict winners, and to give them the benefit of every reasonable inference arising therefrom while rejecting all unfavorable testimony and inferences. See Phillips, 86 A.3d at 919.8 As explained above, ____ 7 To the extent that Checkers claims that trial court erred by delaying its decision as to whether the judge or the jury would decide the application of the product line exception until the last day of trial, the trial court determined that the issue was waived because Checkers did not raise this objection at trial. See Trial Court Opinion, 7/10/23, at 23; see also Pa.R.A.P. 302(a) (providing that issues not raised in the trial court are waived and cannot be raised for the first time on appeal). Checkers does not acknowledge the trial court's determination that the issue is waived. Moreover, the record is clear that, commencing on the first day of trial, the trial court asked the parties for their views on whether the judge or the jury should determine and weigh the Dawejko factors, and informed the parties that it could hold the issue under advisement after no consensus could be reached. See N.T., 8/22/22, at 53- 54, 92-94. As the trial court further explained: "[t]hroughout the trial, this court made it clear to the parties that it had not yet decided which issues would go to the jury. Neither party objected to this[,] or told this court that it needed an earlier decision." Trial Court Opinion, 7/10/23, at 9-10. Thus, as Checkers did not raise this issue in the trial court, it is waived. 8 We note that the trial court erred by failing to view the evidence in the light most favorable to the Burnleys, and in failing to give them the benefit of every reasonable inference arising therefrom while rejecting all unfavorable (Footnote Continued Next Page) - 26 - J-E01004-25 the Dawejko Court identified several factors discussed by other courts as relevant to the question of whether the product line exception should apply. The first several factors identified by the Dawejko Court focus on the conduct of the successor corporation, including whether the successor corporation: purchased the goodwill and contract obligations of the transferor corporation; advertised itself as an ongoing enterprise; profited from and exploited all of the accumulated goodwill which the products have earned; continued to produce the same kind of product in essentially the same way, using the same equipment and designs; maintained the same product, name, management, personnel, physical location, property, and clients; solicited the predecessor's customers through the same sales representatives with no outward indication of a change in ownership; or continued the operations of the predecessor corporation while the predecessor corporation ceased its ordinary business operations. See Dawejko, 434 A.2d at 108-09. At trial, Checkers' corporate designee, Eaton, testified that, prior to Checkers' acquisition of IAT's Firefly product line, Checkers was a manufacturer of cable protectors and one of its competitors was the Firefly ____ testimony and inferences. See Phillips, 86 A.3d at 919. While the jury was free to weigh and balance the evidence adverse to the Burnleys when considering the Dawejko factors and determining whether the product line exception should apply to Checkers, the trial court was not permitted to do so when ruling on Checkers' motion for JNOV. See id. Thus, the trial court was required to reject all evidence and testimony that suggested that the Burnleys failed to satisfy the first Ray factor. Nevertheless, as this error did not control the outcome of the case, we deem the error harmless. See id. - 27 - J-E01004-25 cable protector. See N.T., 8/23/22, at 23-24. Eaton confirmed that, as part of the acquisition, Checkers acquired "all Firefly inventory[,] . . . all of IAT's equipment[,] . . . customers[,] . . . customer list and good will[,] . . . all of IAT's intellectual property[,] all of the molds for cable protectors[,] . . . all of the patents for cable protectors[,] . . . all of the trade shows and tradenames concerning Firefly[,] . . . [and] "purchased not only the brand name, [but] the registered trademark as well as the patents." Id. at 24-25, 26 (unnecessary capitalization omitted). Additionally, Eaton explained that as part of the acquisition, "100 percent [of the] shareholders of IAT would remain with Checkers to assist them in terms of consulting, sales, [and] working with them." Id. at 26. Moreover, Eaton indicated that "Checkers marketed itself as an ongoing enterprise that manufactured and sold cable protectors . . . [such that] if you want to buy a Firefly product, you can go online and buy one." Id. Eaton further testified that, pursuant to a non-compete agreement, "IAT had to cease and desist any involvement in manufacturing, marketing, or selling any cable protectors." Id. at 25. The jury was also presented with the APA, which included a non-compete clause that prohibited IAT from manufacturing, marketing, or selling cable protectors for a period of ten years following the acquisition. See APA, 4/1/15, at 9. Eaton confirmed that Checkers' issued a press release on its website which announced that "Checkers . . . has acquired Firefly Cable Protectors, innovators in cable management industry . . . [and that t]his acquisition - 28 - J-E01004-25 further complements Checkers['] . . . offering and better positions the company in the cable protector market. . .." N.T., 8/23/22, at 27-28. The press release additionally stated: "[t]his acquisition brings together two leaders in the cable management industry and allows [Checkers] to offer our customers . . . the most innovative cable protectors on the market." Id. at 29. Eaton explained that, after the acquisition, Checkers "continued to sell . . . Firefly cable protectors with the Firefly on it and the IAT [logo stamped] on it." Id. at 30. Eaton testified that "the Firefly brand was so prominent that Checkers actually has sales brochures just dealing with the Firefly brand." Id. Eaton indicated that, as of the time of trial in this matter, Checkers was still manufacturing cable protectors using molds with the Firefly trademark and the IAT logo. Id. at 30-32. In fact, Eaton stated that "every product that is sold with Firefly has the IAT [stamped] on the product." Id. at 32. Viewing this evidence and testimony in the light most favorable to the Burnleys as the verdict winners, and giving them the benefit of every reasonable inference arising therefrom while rejecting all unfavorable testimony and inferences, we conclude that the jury was presented with sufficient evidence to find the initial Dawejko factors were present, including: that Checkers, as the successor corporation, purchased the goodwill and customer list of IAT; that Checkers advertised itself as an ongoing enterprise with respect to the Firefly product line; that Checkers profited from and - 29 - J-E01004-25 exploited all of the accumulated goodwill which the Firefly products had earned; that Checkers continued to produce the same Firefly product in essentially the same way, using the same equipment, molds, and designs; that Checkers maintained the same product, product name, management, personnel, and clients; that Checkers solicited IAT's customers; and that Checkers continued IAT's operations with respect to the Firefly product line while IAT ceased all business operations with respect to the manufacture, marketing, and selling of any cable protectors. See Dawejko, 434 A.2d at 108-09. As for the remaining Dawejko factors, as taken from Ray, the jury was asked to consider whether the acquisition by Checkers of the Firefly product line resulted in: (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's goodwill being enjoyed by the successor in the continued operation of the business. See Dawejko, 434 A.2d at 109. Once again, pursuant to our JNOV standard of review, we may only consider the evidence which was favorable to the Burnleys when considering these factors, and must reject all unfavorable testimony and inferences. See Phillips, 86 A.3d at 919. - 30 - J-E01004-25 The record reflects that the jury was provided with sufficient evidence to determine whether the successor corporation's acquisition of the product line in question resulted in the virtual destruction of the Burnleys' remedies against IAT, as the original manufacturer. See Dawejko, 434 A.2d at 109. Pursuant to the APA, as of April 2015, IAT had indebtedness of more than $558,888.00, including inter alia, a judgment lien of $15,558 that remained unpaid since June 2012, a $85,000 commercial debt, a $40,000 capital loan from a relative of IAT's owners, and $418,330.00 in paid-in capital owed to shareholders. See APA, 4/1/15, at Schedule 4.10-Indebteness. Additionally, FallLine's designee, Erik York, indicated that FallLine had considered buying the Firefly product line in 2014, but after conducting due diligence and reviewing IAT's books, he determined that IAT had no assets other than the Firefly product line, which consisted of the inventory, equipment, patents, and trademarks associated with the Firefly brand. See N.T., 8/23/22, at 64-65,

67. York additionally testified that IAT owed FallLine $13,000, and that IAT
recovered only $6,000 of that debt through a collection agency in 2015 or 2016. See id. at 88. Viewing this evidence and testimony in light most favorable to the Burnleys, we conclude that such evidence and testimony was sufficient to permit the jury to reasonably infer that: IAT was burdened with indebtedness of more than $558,888.00 and could not satisfy its existing debts; that IAT had not been able to pay a judgment lien of $15,558 that had been pending for three years; that FallLine had been unable to collect on the - 31 - J-E01004-25 $13,000 it was owed by IAT and had to resort to a collection agency, through which it was ultimately only able to recover $6,000; and that, following Checkers' purchase of the Firefly product line, IAT was left with no assets to compensate the Burnleys for losses caused by a defective Firefly cable protector. We further conclude that the jury was presented with sufficient evidence to determine the successor's ability to assume the original manufacturer's risk-spreading role. See Dawejko, 434 A.2d at 109. Checkers' corporate designee, Eaton, testified that, "[i]f a customer would contact Checkers with a Firefly product that was defective or a problem," Checkers "would address that problem" not just within "the manufacturer warranty frame," but "within any timeframe." N.T., 8/23/22, at 39. From this testimony, the jury could reasonably infer that Checkers had the ability to assume IAT's risk-spreading role as the original product manufacturer based on Checkers' willingness to address any problems or defects with Firefly products, including those that were manufactured and distributed by IAT or were otherwise outside the manufacturer warranty period. Finally, the jury was presented with sufficient evidence to determine the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's goodwill being enjoyed by the successor in the continued operation of the business. See Dawejko, 434 A.2d at 109. As explained above, Eaton - 32 - J-E01004-25 confirmed that Checkers issued a press release on its website which announced that "Checkers . . . has acquired Firefly Cable Protectors, innovators in cable management industry . . . [and that t]his acquisition further complements Checkers['] . . . offering and better positions the company in the cable protector market. . .." N.T., 8/23/22, at 27-28. The press release additionally stated: "[t]his acquisition brings together two leaders in the cable management industry and allows [Checkers] to offer our customers . . . the most innovative cable protectors on the market." Id. at
29. Eaton testified that "Checkers marketed itself as an ongoing enterprise
that manufactured and sold cable protectors . . . [such that] if you want to buy a Firefly product, you can go online and buy one." Id. at 26. Eaton testified that "the Firefly brand was so prominent that Checkers actually has sales brochures just dealing with the Firefly brand." Id. Eaton indicated that, as of the time of trial in this matter, Checkers was still manufacturing cable protectors using molds with the Firefly trademark and the IAT logo, and that that "every product that is sold with Firefly has the IAT [stamped] on the product." Id. at 30-32. We conclude that this testimony provided the jury with sufficient evidence from which it could reasonably infer that: there was a tremendous amount of goodwill associated with Firefly cable protectors; the popularity and

demand for Firefly cable protectors was so great that Checkers had to create a separate brochure solely for Firefly products; that Checkers sought to exploit the goodwill associated with the Firefly product line by - 33 - J-E01004-25 issuing a press release announcing its purchase of the Firefly product line; that Checkers marketed its acquisition of the Firefly product line as an ongoing business and allowed customers to purchase Firefly cable protectors on its website; and that, based on these considerations, it would not be unfair to require Checkers to assume the responsibility for defective Firefly products manufactured by IAT because such a burden necessarily attached to the accumulated goodwill for the Firefly product line being enjoyed by Checkers in the continued operation of that product line. In sum, we conclude that the evidence was sufficient to support a determination by the jury that each of the Dawejko factors was satisfied such that the product line exception should apply, and Checkers should be found liable to the Burnleys under the exception. We do not find any basis in the record to reach a contrary conclusion that Checkers was entitled to judgment as a matter of law or that the evidence was such that no two reasonable minds could disagree that judgment should have been rendered for Checkers. See Lock, 86 A.3d at 919. As such, we affirm the trial court’s denial of Checkers’ motion for JNOV. Thus, Checkers’ first issue merits no relief. In its second issue, Checkers challenges the trial court’ denial of its motion for mistrial based on the court’s ruling to admit the portion of the APA which indicated that IAT had no insurance as of the date of the execution of the APA on April 1, 2015. Our standard of review regarding a trial court’s denial of a motion for a new trial is limited: “[t]he power to grant a new trial - 34 - J-E01004-25 lies inherently with the trial court and we will not reverse its decision absent a clear abuse of discretion or an error of law which controls the outcome of the case.” Kaplan v. O'Kane, 835 A.2d 735, 737 (Pa. Super. 2003) (citation omitted). Further, the admission of evidence is within the sound discretion of the trial court and will not be reversed absent a clear abuse of that discretion. See Cooke v. Equitable Life Assurance Society of the United States, 723 A.2d 723, 729 (Pa. Super. 1999). Rule 401 of the Pennsylvania Rules of Evidence provides that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Pa.R.E. 401. “All relevant evidence is admissible, except as otherwise provided by law.” Pa.R.E. 402. Generally, a trial judge should admit all relevant evidence unless a specific rule bars its admission. See Valentine v. Acme Mkts., 687 A.2d 1157, 1160 (Pa. Super. 1997). “The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa.R.E. 403. Pennsylvania Rule of Evidence 411 provides that “[e]vidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully.” Pa.R.E. 411. Rule 411 is consistent with the general rule in Pennsylvania that evidence of - 35 - J-E01004-25 insurance is irrelevant and prejudicial and justifies the grant of a mistrial. See Dolan v. Carrier Corp., 623 A.2d 850, 853 (Pa. Super. 1993). However, the mere mention of the word insurance does not necessitate a new trial unless the aggrieved party can demonstrate prejudice. See Allied Elec. Supply Co. v. Roberts, 797 A.2d 362, 364 (Pa. Super. 2002). Moreover, Rule 411 includes an exception to the general rule and provides that “the court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice or proving agency, ownership, or control.” Pa.R.E. 411. Checkers asserts that the trial court abused its discretion by permitting into evidence the portion of the APA which disclosed that IAT “currently had no insurance with respect to its properties, assets, and operation of its [cable protector] [b]usiness,” as of the time of the execution of the APA on April 1, 2015. Checkers’ Brief at 31 (quoting APA, 4/1/15, at Section 4.12). Checkers asserts that the Burnleys’ counsel attempted to ask Justin Lytle, a Checkers’ representative, to read into evidence this portion of the APA, which reflected that IAT lacked insurance at the time of the execution of the APA. According to Checkers, defense counsel immediately objected to the introduction of this evidence at sidebar, and also requested a mistrial, which the trial court   denied.9 Checkers claims that the introduction of this evidence was irrelevant and highly prejudicial because it distracted the jury from the essential issues it was to resolve and provided an improper basis upon which the jury could make its decision. Checkers maintains that the issue of whether IAT had insurance at the time of the execution of the APA has no bearing on the first Ray factor relating to whether the APA resulted in the virtual destruction of the Burnleys’ remedies against IAT, and its admission led the jury to improperly determine that the Burnleys had no remedy as to IAT. The trial court considered Checker’s second issue and determined that it lacked merit. The court initially concluded that evidence of IAT’s insured status on April 1, 2015, was not determinative of the first Ray factor pertaining to whether the APA virtually extinguished the Burnleys’ remedies against IAT, stating: . . . The representation in the APA that IAT did not have “insurance with respect to its properties, assets and operation of

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9 Checker further claims that defense counsel requested a curative instruction, which the trial court declined to give at the time this testimony was elicited. See Checkers’ Brief at 31; see also N.T., 8/29/22, at 80. However, Checkers did not raise any objection to the trial court’s ruling on its request for a limiting instruction in its concise statement. See Concise Statement, 3/2/23, at 2. Instead, Checkers merely challenged the trial court’s decision to overrule its objection to the testimony and its denial of Checkers’ motion for mistrial. See id. Accordingly, we deem any challenge to the trial court’s decision not to provide a limiting instruction as waived. See Pa.R.A.P. 1925(b)(4)(vii) (providing that issues not included in the concise statement are waived); see also Newman Dev. Group of Pottstown, LLC v. Genuardi's Family Mkt., Inc., 98 A.3d 645, 665 n.24 (Pa. Super. 2014) (en banc) (holding that an issue not included in a concise statement, or fairly subsumed therein, is waived).   its [cable protector] business” as of April 1, 2015, without more, cannot be read to mean that IAT lacked insurance, at the relevant times, that would have covered liability for a product sold more than a year earlier. The APA also cannot be read to show that IAT

did have insurance coverage at some point that ceased to exist because of the asset sale. Trial Court Opinion, 7/10/23, at 25. The trial court additionally reasoned: [T]his [c]ourt did not abuse its discretion in permitting [admission of] the insurance provision in the APA. Checkers opened the door to this evidence by using the APA as an exhibit and soliciting broad-ranging testimony about its other provisions; evidence of the insurance provision was appropriate to give a more complete story of the transaction. The testimony did not violate [Rule] 411, because evidence of insurance was not introduced to prove "whether [IAT or Checkers] acted negligently or otherwise wrongfully." Finally, the evidence was not harmful or prejudicial to Checkers. Id. at 27. In addressing this issue, we initially observe that Rule 411 prohibits the admission of evidence of liability insurance for purpose of proving a party "acted negligently or otherwise wrongfully." Pa.R.E. 411. Here, IAT was not a party to the litigation. Moreover, the evidence of IAT's lack of insurance as of April 1, 2015, was not admitted for the purpose of proving that any party to the litigation acted negligently or wrongfully more than seven months prior to the execution of the APA. Stated differently, the evidence was not admitted for the purpose of proving that IAT, or even Checkers, acted negligently or wrongfully. See id. - 38 - J-E01004-25 Further, Rule 411 expressly provides that evidence of insurance may be admitted for other purposes. See id. Here, the trial court reasoned that this provision in the APA was appropriate to give a more complete story of the transaction. See Trial Court Opinion, 7/10/23, at 27. In our view, the information that IAT would have no insurance as of the date of the APA was relevant to other Dawejko factors, including whether IAT, as the predecessor corporation, ceased its ordinary business operations as a result of the asset transaction. See Dawejko, 434 A.2d at 108-09. Thus, this evidence of IAT's insurance status as of the date of the asset purchase transaction was permitted to be introduced for another purpose. See Pa.R.E. 411. Nonetheless, we agree with the trial court that this information was of little relevance with respect to the first Ray factor regarding whether the asset transaction virtually extinguished the Burnley's remedies against IAT. Whether IAT had insurance at the time of the execution of the APA on April 1, 2015, was not determinative of whether IAT had a liability insurance policy in place on September 26, 2014, the date of Mrs. Burnley's accident, which may have provided coverage for the Burnleys' injuries and damages. While we acknowledge that there was a potential for the jury to misunderstand the significance, or lack thereof, of the absence of insurance for IAT as of April 1, 2015, we find no clear abuse of discretion by the trial court in denying Checker's motion for mistrial on this basis. Although the court declined to provide a limiting instruction at that time, nothing prevented - 39 - J-E01004-25 Checkers from requesting a limiting instruction at a later time, nor defense counsel from explaining to the jury in closing arguments that the absence of insurance on April 1, 2015, did not mean that Checkers did not have liability insurance in place on September 26, 2014, which could have provided the Burnleys with a remedy against IAT. Moreover, given that there are numerous Dawejko factors that the jury was required to consider, none of which are mandatory, and that the challenged evidence was relevant to at least one other such factor, we cannot conclude that the mere potential for the jury to misinterpret the challenged evidence as to another such factor "control[ed] the outcome of the case." Kaplan, 835 A.2d at 737. Indeed, Checkers can only speculate that the jury misinterpreted this information, or that the absence of such information would have resulted in a different outcome at trial, such as the jury finding that none of the remaining Dawejko factors had been satisfied. As such, Checkers has not convinced this Court that, but for the admission of the provision in the APA that IAT had no insurance as of April 1, 2015, the jury would have found that the product line exception did not apply and entered a verdict in favor of Checkers. Thus, as we discern no clear abuse of discretion by the trial court in denying Checkers' motion for mistrial, its second issue merits no relief. In its third issue, Checkers argues that the trial court abused its discretion by permitting the testimony of FallLine's corporate designee, York, that he had considered purchasing all of IAT's assets in 2014 or 2015 and that - 40 - J-E01004-25 he determined IAT's only assets at that time consisted of the Firefly cable protector product line. As indicated above, the admission of evidence is within the sound discretion of the trial court and will not be reversed absent a clear abuse of that discretion. See Cooke, 723 A.2d at 729. It is axiomatic that an objection to the admission of evidence is waived if not timely raised at trial. See Pa.R.E. 103(a) (providing that a party may claim error in admission of evidence only when that party makes a timely and specific objection); see also Parr v. Ford Motor Co., 109 A.3d 682, 709 (Pa. Super. 2014) (holding that the failure to make a contemporaneous objection waives an issue on appeal). Further, an evidentiary ruling must not only be erroneous; it must also be harmful. See Cummins v. Rosa, 846 A.2d 148, 150 (Pa. Super. 2004). An evidentiary ruling that does not affect the verdict will not be disturbed. See id. Checkers asserts that York's testimony was irrelevant to the issue of IAT's remaining assets at the time of the execution of the APA and was highly prejudicial to Checkers. According to Checkers, York was not involved in the APA between Checkers and IAT and had no personal knowledge as to the assets involved in that agreement. Checkers argues that York's testimony served only to prejudice Checkers by allowing the jury to rely upon his statements to speculate that IAT had no assets after the execution of the APA and that the Burnleys had no viable remedy against IAT as of April 2015. Checkers contends that York's testimony should have been excluded since any - 41 - J-E01004-25 probative value it had was outweighed by the unfair prejudice to Checkers and the potential to mislead the jury. The trial court considered Checkers third issue and determined that it lacked merit. The court reasoned: [T]his court did not abuse its discretion in overruling Checkers' objection to Mr. York's testimony about his review of IAT's books. Mr. York gave [this] testimony without objection; Checkers' counsel did not object until the Burnleys' counsel began asking follow[-]up questions, and did not ask this Court to strike the previous responses. N.T.[, 8/23/22,] at 64-65. Accordingly, this objection was waived. Moreover, Mr. York's testimony was relevant to the product[]line exception . . . and was not prejudicial. Trial Court Opinion, 7/10/23, at 27-28 (unnecessary capitalization omitted). Our review of the record confirms that Checkers' counsel made no objection to the subject testimony. York was asked several questions about the potential purchase of all of IAT's assets and he confirmed that the only assets which IAT had consisted of the Firefly product line. See N.T., 8/23/22, at 64-65. Specifically, York stated, “[IAT] wanted too big of a number - - to buy their assets, which their assets were just the cable protector. That’s all they were doing. That - - was the entire company of Firefly. It was just the cable protectors.” Id. York went on to testify that “there [were no] assets that IAT had other than the Firefly line, the equipment, the patents, [and] trademarks.” Id. at 65. No objection was made to this line of inquiry or to York’s responses. - 42 - J-E01004-25 After a brief sidebar, the questioning of York resumed. Checkers’ counsel then objected to a subsequent question to York which elicited essentially the same response that he had already provided regarding the absence of any assets owned by IAT other than the Firefly product line. See id. at 66-67. Specifically, York testified that “[IAT did not] have any assets other than the Firefly brand, all of the equipment, the inventory, the patents, the trademarks.” Id. at 67. However, Checkers’ counsel objected to this testimony solely on the basis that the question had been “[a]sked and answered.” Id. at 67. The trial court overruled the objection. Id. Notably, Checkers made no objection to this testimony on the basis that it was irrelevant or prejudicial. The only relevancy objection made by Checkers’ counsel was in response to a subsequent question posed to York: “[w]hen FallLine went to purchase - - or did the due diligence in purchasing the assets of IAT, was it important for FallLine to know what assets IAT had?” N.T., 8/23/22, at 66. The trial court overruled this relevancy objection. Thereafter, York testified “yes . . . when purchasing a company, you want to know all the assets and you want to know everything about that company. And Firefly’s assets were the - - the cable protector and their patents and things . . . that go along with that cable protector.” Id. at 67. It is clear that Checkers now seeks to rely on its relevancy objection to the subsequent questioning of York as a basis to challenge the initial - 43 - J-E01004-25 questions posed to York—to which Checkers made no relevancy or prejudice objection. This it cannot do. Thus, as no relevancy or prejudice objection was made to any of the initial testimony by York that there were no assets that IAT had other than the Firefly line, any challenge to that testimony based on relevancy or prejudice is waived. See Pa.R.E. 103(a); see also Parr, 109 A.3d at 709.10 Accordingly, Checkers’ third issue merits no relief. In its fourth issue, Checkers contends that the trial court abused its discretion by denying its requests for a continuance of the trial. Our review of a trial court’s decision to grant or deny a request for continuance is well-settled: The trial court is vested with broad discretion in the determination of whether a request for a continuance should be granted, and an appellate court should not disturb such a decision unless an abuse of that discretion is apparent. An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless ____ 10 In any event, the trial court deemed the challenged testimony to be relevant to the product line exception, and further determined that it was not prejudicial. See Trial Court Opinion, 7/10/23, at 27-28. On the record before us, we discern no abuse of discretion by the trial court in reaching this determination. The viability of IAT as a corporation following the sale of its assets to Checkers was entirely relevant to the central question in the litigation; namely, whether Checkers could be found liable under the product line exception. Specifically, it was relevant to the Dawejko factor concerning whether the sale virtually extinguished the Burnleys' remedies against IAT. Thus, to the extent that York's challenged testimony had any tendency to make that fact more or less probable, the trial court did not abuse its discretion by admitting it as relevant evidence. See Pa.R.E. 401; see also Valentine, 687 A.2d at 1160. Moreover, as Checkers has failed to convince us that the admission of this particular testimony affected the verdict, we decline to disturb the trial court's ruling. See Cummins, 846 A.2d at 150. - 44 - J-E01004-25 the record discloses that the judgment exercised was manifestly unreasonable, or the results of partiality, prejudice, bias or ill-will. Baysmore v. Brownstein, 771 A.2d 54, 57 (Pa. Super. 2001) (citations omitted). The coordinate jurisdiction rule prohibits a judge from overruling the decision of another judge of the same court, under most circumstances. See Ryan v. Berman, 813 A.2d 792, 794 (Pa. 2002). Departure from the rule is allowed only in exceptional circumstances, such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. See id. Checkers argues that the trial court abused its discretion by denying its motion for extraordinary relief and its motions in limine seeking a continuance of the August 22, 2022 trial date based on newly disclosed evidence. Checkers asserts that, one month prior to trial, the Burnleys provided supplemental discovery responses in which they indicated that Mrs. Burnley was terminated from her new employment at Organon as of June 29, 2022. Checkers also points to the Burnleys' disclosure on July 22, 2022, that Mrs. Burnley was scheduled to undergo surgery for the implantation of a spinal cord stimulator eleven days prior to trial. Checkers asserts that Mrs. Burnley's termination from her employment for Organon had a significant impact on her claim for future economic damages, as she had been working for her prior employer, - 45 - J-E01004-25 Janssen Pharmaceuticals, for many years without any wage loss. Checkers further asserts that the surgery had a great impact on Mrs. Burnley's claims for future medical and wage loss as well as non-economic damages, and defense experts did not have the opportunity to re-examine Mrs. Burnley before or after this new development. Checkers contends that the admission of the Burnleys' last-minute evidence and the trial court's failure to grant a continuance resulted in great prejudice to Checkers, as evidenced by the $2.4 million award for future wage losses and the $2.7 million award for future medical benefits.11 With respect to the motion for extraordinary relief seeking a continuance based on the late disclosures, we discern no abuse of discretion by Judge Carpenter in denying that motion. As explained by Judge Hangley: Checkers filed a motion for extraordinary relief on July 26, 2022 asking for an emergency continuance of the August 22[, 2022] trial date. . . . Checkers repeated this request in a motion in limine filed on August 3, 2022 and, in a separate motion in limine, asked [the trial court] to sanction the Burnleys for the late

11 Checkers additionally claims that: (1) the Burnleys failed to timely disclose that Mr. Burnley lost his job at Amtrak in 2022, and that

they would be claiming that his job loss was due to Mrs. Burnley's accident; and (2) that the trial court should not have permitted the Burnleys to show to the jury graphic photographs of Mrs. Burnley's spinal cord stimulator surgery. Notably, in its concise statement, Checkers confined its fourth issue to the denial of its motion for extraordinary relief and its motions in limine. See Concise Statement, 3/2/23, at 3. However, our review of Checkers' motion for extraordinary relief and its continuance-related motions in limine discloses that Checkers did not raise these additional claims in those filings. Thus, Checkers failed to preserve these additional claims for our review. See Pa.R.A.P. 1925(b)(4)(vii) (providing that issues not raised in the concise statement are waived). - 46 - J-E01004-25 disclosure by barring evidence on the employment and surgery issues. . . . On August 19, 2022, [Judge] Carpenter entered an order requiring Mrs. Burnley to produce medical records from the spinal cord stimulator placement before trial and to appear for a Zoom deposition, limited to the topics of [her] termination from her employment and her surgery for the spinal cord stimulator. The order also directed Checkers to submit for signature a subpoena for Mrs. Burnley's employment records. On August 24, [2022,] Judge Carpenter entered an order formally denying the motion for extraordinary relief and referring to her August 19 order. At argument of the continuance related motions in limine, Checkers' counsel told [Judge Hangley] that that he had received the medical records and some, but not all, of the employment records, and had deposed Mrs. Burnley. [Judge Hangley] denied relief, finding that Judge Carpenter had adequately addressed the late-disclosure issue. Trial Court Opinion, 7/10/23, at 5-6 (citations and unnecessary capitalization omitted). Our review of the record confirms that prior to trial, Checkers' counsel informed Judge Hangley on the record that he had deposed Mrs. Burnley, received her updated medical records, received the employment records from Organon, from which she was terminated due to her accident-related injuries, and prior, but not the most recent employment records from Janssen Pharmaceuticals, from which she resigned. See N.T., 8/22/22, at 14-15. Given that Mrs. Burnley resigned from Janssen Pharmaceuticals, Judge Hangley reasoned that any missing employment records from that employer were not relevant unless Mrs. Burnley had the same problems pre-accident as she did post-accident. See id. at 18. Moreover, because Checkers was permitted to conduct pretrial discovery on the termination and surgery issues - 47 - J-E01004-25 and confirmed to the trial court that it otherwise obtained the testimony and documentation that it needed, we simply cannot conclude that the record discloses that the judgment exercised by Judge Carpenter was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. See Baysmore, 771 A.2d at 57. With respect to Judge Hangley's subsequent denial of Checkers' motions in limine seeking a continuance of the trial or the preclusion of any evidence related to Mrs. Burnley's employment termination or surgery for the implantation of a spinal cord stimulator, the judge determined that her ruling was required by the coordinate jurisdiction rule: Here, Judge Carpenter did not abuse her discretion in denying Checkers' motion for extraordinary relief. It was within Judge Carpenter's discretion to determine that to the extent the Burnleys' late disclosures prejudiced Checkers, her remedial discovery order could address that prejudice. This trial judge properly declined to reconsider Judge Carpenter’s decision; it was not permitted to do so under the coordinate jurisdiction rule. Trial Court Opinion, 7/10/23, at 29 (unnecessary capitalization omitted). Based on our review, we discern no error or abuse of discretion by Judge Hangley in denying Checkers’ motions in limine. The sole issue raised in those motions was the same issue raised in the motion for extraordinary relief; namely, that Checkers was prejudiced by the late disclosures that Mrs. Burnley had been termination from her job at Organon and would be undergoing surgery for the implantation of a spinal cord stimulator. In both its motion for extraordinary relief and its motions in limine, Checkers claimed, as a basis for - 48 - J-E01004-25 relief, that it was entitled to obtain additional discovery on these issues. See Motion for Extraordinary Relief, 7/26/22, at unnumbered 3; see also Motion in Limine for Emergency Continuance, 8/3/22, at 5; Motion in Limine to Preclude Evidence, 8/3/22, at 4. Judge Carpenter permitted the requested discovery but denied a continuance. As such, the coordinate jurisdiction rule prohibited Judge Hangley from overruling the decision of Judge Carpenter denying the motion for extraordinary relief on the continuance issue. See Ryan, 813 A.2d at 794 (holding that, pursuant to the coordinate jurisdiction rule, a later motion should not be entertained or granted when a motion of the same kind has previously been denied). Moreover, Checkers has pointed to no exceptional circumstances or intervening changes in the controlling law, facts, or evidence which would warrant deviation from the rule. See id. Therefore, Checkers’ fourth issue merits no relief. In its fifth issue, Checkers contends that the trial court abused its discretion by denying its request to submit its proposed verdict sheet with special interrogatories directed to the jury. Generally, a trial judge may grant or refuse a request for special findings on the basis of whether such would add to the logical and reasonable understanding of the issues. See Fisch's Parking v. Indep. Hall Parking, 638 A.2d 217, 223 (Pa. Super. 1994). We will not disturb a trial court’s decision to grant or refuse the request absent an abuse of discretion. See id. - 49 - J-E01004-25 Checkers argues that its proposed verdict sheet addressed the analysis required to determine whether to apply the product line exception. Checkers maintains that the concept of the product line exception is complex and involves numerous factors. Checkers asserts that the jury could have benefited from a special interrogatory that set forth all of the elements to be weighed in deciding the issue of whether Checkers was liable pursuant to the product line exception. Checkers contends that “merely asking the jury, on the verdict sheet, whether Checkers was a successor corporation and whether the product line exception applied, was confusing to the jurors and led to an improper verdict to the detriment of Checkers.” Checkers’ Brief at 40 (unnecessary capitalization omitted). The trial court considered Checkers’ fifth issue and determined that it lacked merit. The court reasoned: Checkers argues that even if this Court properly submitted the product-line exception to the jury, Checkers is entitled to a new trial because this court did not use Checkers’ proposed verdict sheet. On this proposed verdict sheet, Checkers listed a number of factors—including whether Checkers “acquired IAT’s goodwill,” “maintained the same name, clients, and product as IAT” and “deliberately exploited IAT’s established reputation”—and instructed the jury to cease deliberations if it found that the Burnleys had failed to prove any one of these factors. See Proposed Verdict Sheet[, 8/29/22, at 2-3]. This court did not err in disregarding this submission, which did not conform with the law set forth in Schmidt. Moreover, given the fact that none of the factors Checkers listed were mandatory, this court determined that it was not necessary for the jury to make findings about them and that overwhelming the jury with factual questions might confuse it. This decision was not an abuse of discretion. Trial Court Opinion, 7/10/23, at 23 (unnecessary capitalization omitted). - 50 - J-E01004-25 We discern no abuse of discretion by the trial court in rejecting Checkers' proposed verdict sheet. As explained above, the Pennsylvania Supreme Court clarified in Schmidt that none of the factors identified by the Dawejko Court as relevant to the product line exception inquiry is mandatory, noting that "[i]n fact, the Dawejko panel took pains to clarify that it was adopting the Ramirez test as the core, governing standard, subject to more flexible consideration of other relevant factors, including those identified in Ray." Schmidt, 11 A.3d at 944. Indeed, our Supreme Court expressly overruled this Court's decisions in Schmidt, 958 A.2d 498, and Hill, 603 A.2d 602, to the extent that those decisions misinterpreted Dawejko and improperly elevated the Ray factors to mandatory status. See Schmidt, 11 A.3d at 945. Here, Checkers' proposed verdict sheet sought to instruct the jury to cease deliberations and "return to the [c]ourtroom," if it found that the Burnleys had failed to prove by a preponderance of the evidence any one of the following five factors: (1) "Checkers advertised itself as an ongoing enterprise of . . . [IAT];" (2) "Checkers acquired IAT's goodwill;" (3) "Checkers maintained the same name, clients, and product as IAT;" (4) "Checkers deliberately exploited IAT's established reputation;" and (5) "Checkers' acquisition of the Firefly line from IAT cause[d] the virtual destruction of [the Burnleys'] remedies against IAT." Proposed Verdict Sheet, 8/29/22, at 2-3. Thus, the proposed verdict sheet purported to instruct the jury that the Burnleys were required to prove five of the Dawejko factors by a - 51 - J-E01004-25 preponderance of the evidence, and that if the Burnleys failed to prove any one of these five factors by a preponderance of the evidence, then the jury must cease deliberations and return to the courtroom. See id. As explained above, none of the factors identified by the Dawejko Court as relevant to the product line exception inquiry is mandatory. Accordingly, the proposed verdict sheet, which sought to elevate five of the Dawejko factors to mandatory status, provided a patently incorrect statement of the law which would have misled the jury. See Schmidt, 11 A.3d at 945. Therefore, we discern no abuse of discretion by trial court in refusing to submit it to the jury. In its final issue, Checkers claims that it was entitled to JNOV because the verdict was inconsistent. Preliminarily, we must determine whether Checkers preserved the issue for our review. The issue of waiver presents a question of law, and, as such, our standard of review is de novo, and our scope of review is plenary. See Stapas v. Giant Eagle, 197 A.3d 244, 248 (Pa. 2018); see also Pa.R.A.P. 302(a) (providing that issues not raised in the trial court are waived and cannot be raised for the first time on appeal). A party waives post-trial relief based on inconsistent verdicts by failing to object at trial to the verdict sheet that permitted the inconsistent verdicts or by not objecting to the alleged inconsistency before the jury's discharge. See Straub v. Cherne Industries, 880 A.2d 561, 566-68 (Pa. 2005) (reversing JNOV based on the theory that the verdict on one claim precluded - 52 - J-E01004-25 liability on another claim, because defendant did not object to the verdict sheet or to verdict when rendered); see also Bert Co. v. Turk, 257 A.3d 93, 112 (Pa. Super. 2021) (finding waiver of a challenge based on inconsistent verdicts where the appellant neither objected when the jury returned an allegedly inconsistent verdict nor requested that the trial court send the jury back for further deliberations); Picca v. Kriner, 645 A.2d 868, 871 (Pa. Super. 1994) (holding that when a party fails to object to an inconsistent verdict before the jury is discharged, it constitutes waiver). Here, the trial court considered Checkers' sixth issue and determined that the issue is waived. The court reasoned: It is difficult to reconcile the jury's responses to questions 5 and 6 on the verdict sheet (in which the jury found that Lawall and Evan Andrews Productions were negligent and that this negligence caused harm to Mrs. Burnley) and question 7 (in which the jury assigned 0% liability to these defendants). However, Checkers' counsel did not raise the inconsistency issue before the jury was dismissed; this deprived the jury of the opportunity to revisit its responses. Therefore, Checkers waived this issue. Trial Court Opinion, 7/10/23, at 28 (unnecessary capitalization omitted). Our review of the record confirms that Checkers failed to lodge any objection to the verdict as inconsistent prior to the discharge of the jury. See N.T., 8/31/22, at 16-19. Accordingly, Checkers failed to preserve this issue for our review. Having determined that Checkers is not entitled to relief on any of its issues, we now turn to the sole issue raised in the Burnleys' cross-appeal. Therein, the Burnleys contend that, because the jury found Checkers to be - 53 - J-E01004-25 100% liable and all other defendants 0% liable, the trial court erred by failing to enter judgment against Checkers for the entire amount of the jury's verdict. Once again, we must determine whether Checkers preserved the issue for our review. Pennsylvania Rule of Civil Procedure 227.1 governs post-trial relief and requires parties to file post-trial motions in order to preserve issues for appeal. The Rule provides in relevant part that, after trial and upon the written motion for post-trial relief filed by any party, the court may, inter alia, direct the entry of judgment in favor of any party; affirm, modify or change the decision; or enter any other appropriate order. See Pa.R.Civ.P. 227.1(a). The Rule additionally provides that post-trial relief may not be granted unless the grounds for relief were: (1) raised in pretrial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and (2) are specified in the post-trial motion. See Pa.R.Civ.P. 227.1(b). Further, "[t]he motion shall state how the grounds were asserted in pre-trial proceedings or at trial" and "a ground may not serve as the basis for post-trial relief unless it was raised in pre-trial proceedings or at trial." Pa.R.Civ.P. 227.1(b)(2). If a party has filed a timely post-trial motion, any other party may file a post-trial motion within ten days after the filing of the first post-trial motion. Id. If an issue has not been raised in a post-trial motion, it is waived for appeal purposes. See Lane Enterprises, Inc. v. L.B. Foster Co., 710 A.2d - 54 - J-E01004-25 54 (Pa. 1998); see also Bd. of Supervisors of Willistown Twp. v. Main Line

Gardens, Inc., 155 A.3d 39, 44 (Pa. 2017) (holding that any grounds not specified in a post-trial motion are deemed waived unless leave is subsequently granted upon cause shown to specify additional grounds). The importance of filing post-trial motions cannot be overemphasized, nor can the filing requirement be disregarded as a mere technicality because post-trial motions serve an important function in the adjudicatory process by affording the trial court the opportunity to correct asserted trial error and also clearly and narrowly framing issues for appellate review. See Diamond Reo Truck Co. v. Mid-Pacific Indus., 806 A.2d 423, 428 (Pa. Super. 2002). The Burnleys do not dispute that they failed to file a post-trial motion raising any challenge to the verdict entered on August 31, 2022. However, they claim that they could not file a timely post-trial motion challenging the molded verdict because the molded verdict was not entered by the trial court until September 8, 2022, and was not served on the parties until September 12, 2022, which was more than ten days after the verdict was entered. The Burnleys additionally argue that this Court should not find waiver because the issue was raised in their brief in opposition to Checkers' motion for post-trial relief. The trial court considered the Burnleys' issue and determined that the issue is waived. The court reasoned: This court apportioned the verdict in an order docketed September 8, 2022. The Burnleys did not challenge this order in - 55 - J-E01004-25 a post-trial motion. Accordingly, any objection to the apportionment is waived. . . . Trial Court Opinion, 7/10/23, at 30 (unnecessary capitalization omitted). Here, in order to preserve their challenge to the trial court's order molding the verdict, the Burnleys were required to file a post-trial motion raising their specific claims of error. They did not do so. Moreover, despite the late filing and service of the molded verdict, the Burnleys had the opportunity to file a cross-motion for post-trial relief challenging the molded verdict within ten days after the filing of Checkers' post-trial motion on September 12, 2022. See Pa.R.C.P. 227.1(b)(2). Thus, even if the Burnleys did not receive the molded verdict until September 12, 2022, they could have filed a post-sentence motion challenging the molded verdict as late as September 22, 2022. See id. However, they failed to do so. Accordingly, as the Burnleys failed to raise this issue in a post-sentence motion, they failed to preserve it for our review. Judgment affirmed. Panella, P.J.E., and Dubow, J., Join this Opinion. Date: 3/5/2026 - 56 -

KING, concurring.

J-E01004-25 2026 PA Super 43

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

v. : LOEWS HOTEL, PHILADELPHIA :

HOTEL OPERATING COMPANY, INC., : No. 370 EDA 2023

TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE

MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : APPEAL OF: CHECKERS INDUSTRIAL : PRODUCTS, LLC : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

J-E01004-25 Appellants : v. : : No. 485 EDA 2023 LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257

BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,

McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J.

CONCURRING OPINION BY KING, J.: FILED MARCH 5, 2026

I agree with the Lead Opinion's decision to affirm in this case and echo the points of departure from the Lead Opinion addressed in Judge Beck's -2- J-E01004-25 Concurring Opinion. I write separately to note my agreement with Judge Bowes, to the extent that she advocates for the wholesale rejection of the product line exception by our Supreme Court or by this Court en banc, where the issue of the continued applicability of the exception is properly preserved for review. As well-articulated by Judge Bowes in her Dissenting Opinion, adoption of the product line exception can have a chilling effect on businesses, and "in no way serves the policy goal of encouraging modified behavior by the tortfeasor." (See Dissenting Opinion at 18-20). As my colleagues have noted in the Concurring Opinion and Dissenting Opinion, however, Checkers waived any challenge to the continued viability of the product line exception in Pennsylvania. That challenge aside, I am constrained to agree with the Lead Opinion's decision to affirm for the reasons set forth therein, subject to the points of departure outlined in Judge Beck's Concurring Opinion. Therefore, I respectfully concur in the result reached by the Lead Opinion. -3-

BECK, concurring.

J-E01004-25 2026 PA Super 43

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF
BURNLEY, H/W : PENNSYLVANIA
v. : LOEWS HOTEL, PHILADELPHIA :
HOTEL OPERATING COMPANY, INC., : No. 370 EDA 2023
TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : APPEAL OF: CHECKERS INDUSTRIAL : PRODUCTS, LLC : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257 J-E01004-25
DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF
BURNLEY, H/W : PENNSYLVANIA
Appellants : v. : : No. 485 EDA 2023 LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257
BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,
McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J.
CONCURRING OPINION BY BECK, J.: FILED MARCH 5, 2026
-2- J-E01004-25 I agree with the learned Lead Opinion that the trial court's decision in this matter should be affirmed. I write separately to address two points of departure. First, the Lead Opinion correctly finds meritless Checkers' claim that the product line exception to the general rule of no successor liability is inapplicable in Pennsylvania because our Supreme Court has not expressly adopted it. See Lead Op. at 16-17. A three-judge panel of this Court adopted the exception nearly half a century ago, rendering it binding precedent on the court below. See Dawejko v. Jorgensen Steel Co., 434 A.2d 106 (Pa. Super. 1981). Although the Lead Opinion further recognizes that this

Court en banc is not bound by a prior decision of a three-judge panel, it goes on to "hold that Dawejko continues to provide the controlling parameters of the product line exception as adopted in this Commonwealth," finding "no reason to overrule Dawejko or displace the product line exception as part of the established jurisprudence in this Commonwealth." Lead Op. at 15-16. At oral argument before the Court en banc, however, Checkers expressly disclaimed that it was arguing the product line exception does not apply in Pennsylvania. Furthermore, my review of the parties' briefs reveals that there is no advocacy either for or against our acceptance of the product line exception or the test espoused in Dawejko.1 As such, I respectfully

1 The parties were provided the opportunity to file supplemental or substituted briefs following this Court's en banc certification. See Order, 11/15/2024. For reasons unknown, both sides simply resubmitted the briefs they initially filed before the three-judge panel originally assigned to hear the matter. In (Footnote Continued Next Page) -3- J-E01004-25 disagree with the Lead Opinion that we should make any statement concerning our acceptance of Dawejko. The continued vitality of Dawejko—including the parameters and propriety of the product line exception in Pennsylvania— are not before this Court for decision.2 Instead, in my view, this Court should proceed as we would with any unraised or unpreserved issue and simply review the applicability of the product line exception to the facts of the case, as advocated by the parties. My second point of departure is based upon the Lead Opinion's treatment of Checkers' contention that the judge, not the jury, should have been tasked with deciding the question of successor liability. In raising this claim of trial court error, Checkers asserts that the trial court should have granted its post-trial motion for judgment notwithstanding the verdict ("JNOV") on this basis. Checkers' Brief at 27-28. The Lead Opinion decides this issue on its merits, finding that Checkers is not entitled to relief. Lead Op. at 24-26. The grant of JNOV, however, is appropriate only in two circumstances: "one, the movant is entitled to judgment as a matter of law, and/or two, the

their brief before this Court, the Burnleys' sole argument in support of our acceptance of the product line exception is that a "three-judge panel of this Court is powerless to overrule an earlier three-judge panel's precedential holding on an issue of law, such as whether the product line exception to successor liability should be recognized under Pennsylvania law." The Burnleys' Brief at 28 (citations omitted). 2 Our sister courts in other jurisdictions have taken a number of different approaches to the product line exception to successor liability. See generally 18 A.L.R.6th 629 (originally published in 2006). -4- J-E01004-25 evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant." Rohm & Haas Co. v. Cont'l Cas. Co., 781 A.2d 1172, 1176 (Pa. 2001). Checkers' claim here implicates neither scenario, as it argues simply that "the complex weighing of equitable factors involved in determining whether the exception applies should be decided by a [j]udge rather than a jury." Checkers' Brief at 28.3 This is not a question of evidentiary or legal insufficiency, but of the correct procedure trial courts must follow in deciding the applicability of the product line exception to successor liability. Thus, if Checkers was entitled to relief here, the appropriate remedy would be a new trial, not JNOV. See Matthews v. Batroney, 220 A.3d 601, 604 (Pa. Super. 2019) (recognizing that the grant of a new trial is warranted where a mistake occurred at trial— be it factual, legal, or discretionary—and the mistake prejudiced the affected party). As Checkers failed to raise a request for a new trial in either its post- trial motion4 or brief before this Court, I would find its argument waived. See ____ 3 Although Checkers includes a statement at the conclusion of its argument in this regard that "the exception does not apply" and thus its request for JNOV should have been granted, it makes no substantive argument in support as it relates to this issue. Instead, the issue raised and argued was that our Supreme Court previously considered the possibility that the product line exception may constitute an "equitable remedy" that should be decided by a judge, not a jury, and the trial court erred by submitting the question to the jury on that basis. See Checkers' Brief at 27 (quoting Schmidt v. Boardman Co., 11 A.3d 924, 946 n.24 (Pa. 2011)); see also Pa.R.Civ.P. 1038. 4 In its post-trial motion, Checkers asserted that it was entitled to JNOV because "the trial court erred in failing to rule upon the legal issue as to the (Footnote Continued Next Page) -5- J-E01004-25 Lanning v. West, 803 A.2d 753, 766-67 (Pa. Super. 2002) (where appellant raised a claim that can only be remedied by the grant of a new trial, but appellant sought JNOV for the claimed error before the trial court and on appeal, the claim is waived); see also Bank of Am., N.A. v. Scott, 271 A.3d 897, 910 n.7 (Pa. Super. 2022) (finding appellant's failure to request a new trial in its post-trial motion waived the claim on appeal). I therefore respectfully concur in the result reached by the Lead Opinion. Dubow, J., and King, J., join this Concurring Opinion. ____ application of the product line exception and, instead, allow[ed] the jury to decide the issue." Checkers' Post-Trial Motion, 9/12/2022, ¶ 15 (unnecessary capitalization omitted). -6-

BOWES, dissenting.

J-E01004-25 2026 PA Super 43

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v. : LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL :

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DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

Appellants : J-E01004-25 v. : LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL :

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BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,

McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J.

DISSENTING OPINION BY BOWES, J.: FILED MARCH 5, 2026

After careful study, I cannot join the Lead Opinion's decision to affirm the viability of the product line exception to the rule that a company acquiring the assets of another does not ipso facto become burdened with the seller's liabilities, as was pronounced in Dawejko v. Jorgensen Steel Co., 434 A.2d -2- J-E01004-25 106, 107 (Pa.Super. 1981). I must agree with Judge Beck that Checkers waived for appellate review the issues of whether we should continue to recognize the exception and, if so, whether its applicability is a question for the judge or jury. See Concurring Opinion (Beck, J.) at 4-6. Nonetheless, I would vacate the judgment and verdict against Checkers, and hold that the product line exception is unavailable to plaintiffs who, like the Burnleys, fail to establish that the successor company's asset acquisition caused the injured party to be left without a remedy.1 I also write separately to advocate for the wholesale rejection of the product line exception, by our Supreme Court or this Court en banc when the issue is properly presented, for the reasons detailed below. I. A reiteration of the relevant history of this case I begin by reviewing the basic history of this case. Mrs. Burnley was injured in September 2014 when she tripped on a cable protector device in the ballroom of Loews Hotel in Philadelphia. The apparatus was from the Firefly product line, which was owned by IAT, was manufactured by FallLine from molds supplied by IAT, and was rented by FOH Productions for use at the event in question. In April 2015, IAT and Checkers entered into an asset

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1 As I would reverse the judgment against

Checkers on this basis, I would not reach the other issues presented in these appeals, including the one addressed by President Judge Lazarus in her concurring and dissenting opinion, namely that a new trial is warranted by the trial court's handling of the admission of evidence of insurance. -3- J-E01004-25 purchase agreement ("APA") through which Checkers purchased IAT's cable protector assets. IAT agreed not to dissolve for at least two years nor to compete with Checkers in the cable protection industry. IAT expressly retained all existing liabilities, which included indebtedness of more than $500,000.2 In exchange, Checkers agreed to pay IAT an initial lump sum of $160,000 followed by a varying percentage of the net sales of Firefly-branded products for five years, i.e., until 2020. The Burnleys initiated this action shortly before the expiration of the statute of limitations in September 2016. They stated negligence claims against the hotel and related defendants, one of whom later joined FOH Productions as an additional defendant. The Burnleys also pled negligence and strict liability claims against Checkers and other entities. Checkers joined ____ 2 The APA guaranteed that IAT had no known claims or inquiries, or indebtedness other than specified. See APA, 4/1/15, at ¶¶ 4.8, 4.10. Regarding insurance, the APA provided: [IAT] currently has no insurance with respect to its properties, assets and operation of its [cable protector b]usiness, and to the extent of any past or current insurance policy, there are no claims by [IAT] pending under any such policies and [IAT] has not been informed that any coverage has been questioned, denied[,] or disputed by the underwriters of such policies with respect to any such claims. Id. at ¶ 4.12. President Judge Lazarus details how, at trial, the Burnleys introduced this aspect of the APA to suggest that there was no IAT insurance policy from which they could recover, but Checkers was denied a limiting instruction and forbidden from exploring whether IAT subsequently obtained insurance. See Concurring and Dissenting Opinion (Lazarus, P.J.) at 4-5. -4- J-E01004-25 FallLine and IAT, which was still in existence, as additional defendants. IAT was dismissed as a defendant when its preliminary objections to personal jurisdiction were sustained. After all the joinders and dismissals concluded, the Burnleys were left with six defendants: the hotel and two others accused of negligently creating the condition that caused Mrs. Burley's fall; and three strict liability defendants, namely Checkers, FallLine, and FOH Productions. The Burnleys settled with all but Checkers, which proceeded to trial conceding that the Firefly product in question had a manufacturing defect. Specifically, the combination of the type of molds supplied to FallLine by IAT, and the particular material FallLine poured into them, resulted in misaligned parts that did not fit securely when FallLine assembled them. A total of approximately fifty defective cable protecters were sold, including the one on which Mrs. Burnley tripped due to the defect. While IAT and FallLine knew of the defect before they shipped to FOH Productions the unit that caused Mrs. Burnley's injury, there was no evidence that Checkers was informed of the manufacturing defect before it acquired the Firefly product line from IAT. Nor did Checkers at any point use the molds and material to manufacture any misaligned products. Checkers defended the case by, inter alia, disputing that it was a successor corporation for purposes of the product line exception.

However, upon being charged as to the applicable law, the jury concluded that Checkers -5- J-E01004-25 was liable under that theory. It proceeded to find that Checkers, FOH Productions, and FallLine were strictly liable for the defective Firefly protector, but assigned 100% of the liability to Checkers and not to any of the settled defendants. II. Principles underlying strict products liability Prior to delving into the law concerning corporate successor liability, I recap the foundational principles of strict products liability. Products liability claims, like all tort actions, “lie for breaches of duties imposed by law as a matter of social policy.” Tincher v. Omega Flex, Inc., 104 A.3d 328, 382 (Pa. 2014) (cleaned up). “The duty in strict liability pertains to the duty of a manufacturer and of suppliers in the chain of distribution to the ultimate consumer.” Id. at 383. In accordance with § 402A of the Restatement (Second) of Torts, “those who sell a product (i.e., profit from making and putting a product in the stream of commerce) are held responsible for damage caused to a consumer by the reasonable use of the product.” Id. at 382. See also Roverano v. John Crane, Inc., 226 A.3d 526, 542 (Pa. 2020) (“[A] person or entity engaged in the business of selling a product has a duty to make and/or market the product—which is expected to and does reach the user or consumer without substantial change in the condition in which it is sold—free from a defective condition unreasonably dangerous to the consumer or the consumer’s property.” (cleaned up)). -6- J-E01004-25 In § 402A cases, “the tortious conduct at issue is not the same as that found in traditional claims of negligence and commonly associated with the more colloquial notion of ‘fault.’” Id. (cleaned up). Instead, the duty is based upon a balancing of the interests of the respective parties. As our High Court explained by reference to the comments to § 402A: A seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that public has a right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods; that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and that consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper persons to afford it are those who market the products. Tincher, 104 A.3d at 383 (cleaned up). That duty extends to “anyone who enters into the business of supplying human beings with products which may endanger the safety of their persons and property,” whether that be the designer or manufacturer of the product or an entity that sells or leases the product to the consumer. See Francioni v. Gibsonia Truck Corp., 372 A.2d 736, 738 (Pa. 1977) (cleaned up). In deciding whether any particular entity in the supply chain is liable for the marketing of a defective product, the court considers: (1) “the availability of some entity for redress;” (2) “whether applying strict liability would provide an incentive to safety;” (3) “whether the supplier is in a better position than -7- J-E01004-25 the consumer to prevent the circulation of defective products;” and (4) “whether the supplier of the product can distribute the cost of compensating for injuries resulting from defects by spreading the charges therefor.” Cafazzo v.

Cent. Med. Health Servs., Inc., 668 A.2d 521, 525-27 (Pa. 1995) (holding policy reasons for strict liability were not present to justify imposing liability upon medical service providers for defective prosthetic device). In sum, it is the policy of Pennsylvania that, among parties that all may have acted reasonably and exercised due care, those that earned profits through the business of placing products into the hands of consumers are most properly shouldered with the cost of any harm caused by defects in those products. In this regard, the law imposes liability without negligence or fault, but not liability in the absence of a recognized legal duty. II. Corporate successor liability A. The historical rule of non-liability and its well-settled exceptions Traditionally, "[a]s a general principle of corporation law, a purchaser of a corporation's assets does not, for such reason alone, assume the debts of the selling corporation, unlike a purchaser of the corporation's stock." Campbell v. WeCare Organics LLC, 333 A.3d 683, 688 (Pa.Super. 2025) (cleaned up). As such, the liability of any given company for breaching its duty to make or sell a safe product does not pass with the sale of the company's assets. The policy reasons for the general rule are obvious: it -8- J-E01004-25 encourages and facilitates investment and asset transfers by eliminating the burden of unanticipated liabilities. There are a number of generally-accepted variances from the general rule. Our Supreme Court has recognized exceptions where:

(1) the purchaser expressly or implicitly agreed to assume

liability, (2) the transaction amounted to a consolidation or a de facto merger, (3) the purchasing corporation was merely a continuation of the selling corporation, (4) the transaction was fraudulently entered into to escape liability, or (5) the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation. Fizzano Bros. Concrete Products, Inc. v. XLN, Inc., 42 A.3d 951, 954 n.2 (Pa. 2012) (cleaned up). The reasons for holding the successor liable in each of these enumerated circumstances are likewise patent: the general rule is founded upon a bona fide, arms-length transaction, not a use of the corporate form or formalities to avoid legitimate debts. See, e.g., 15 William Meade Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 7124.10 ("The exception is designed to prevent a situation whereby the specific purpose of acquiring assets is to place those assets out of reach of the predecessor's creditors."). B. Creation and application of the product line exception In the 1970s, a small number of courts in our sister states began enlarging successor liability upon perceiving that "[s]ometimes in cases of strict tort liability the general rule seems to lead to an unjust result." -9- J-E01004-25 Dawejko, 434 A.2d at 107. The expansion was implemented by various courts through what was in effect a broadening of the third existing exception. Some directly proceeded under the guise of loosening the definition of a "mere continuation" by jettisoning the requirement that the successor have a common identity of officers, directors, and stock, and looking instead at whether there was a continuity in "nature of the business operations." Id. at 108 (citing, inter alia, Andrews v. John E. Smith's Sons Co., 369 So.2d 781, 785 (Ala. 1979)). The continuity of enterprise approach is followed in Alabama, Alaska, and Michigan. See Asher v. KCS Int'l, Inc., 659 So. 2d 598, 600 (Ala. 1995); Savage Arms, Inc. v. W. Auto Supply Co., 18 P.3d 49, 58

(Alaska 2001); Turner v. Bituminous Cas. Co., 244 N.W.2d 873, 881-82 (Mich. 1976)). Other courts adopted a new exception that focused upon whether the successor utilized the acquired assets to continue producing the same product line as the one which caused the injuries in question. The two most notable decisions for purposes of this discussion were Ray v. Alad Corporation, 560 P.2d 3 (Cal. 1977), and Ramirez v. Amsted Industries, Inc., 431 A.2d 811 (N.J. 1981). In Ray, the plaintiff sued the successor to a manufacturer of specialty "Alad" ladders for injuries caused by a defective unit. The offending ladder was made by the predecessor company five years after the successor acquired the original Alad Corporation's assets and the original Alad dissolved. As this Court summarized, "the successor corporation continued to manufacture the - 10 - J-E01004-25 predecessor corporation's product line (ladders), using the same equipment and designs, employing the same personnel, and soliciting the predecessor's customers through the same sales representatives, with no outward indication of a change of ownership." Dawejko, 434 A.2d at 109. With none of the traditional exceptions to the rule of non-liability applicable to the facts of the case, the Ray Court deemed adherence to the general rule to be unjust and contrary to the overriding purpose of strict liability, namely "to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves." Ray, 560 P.2d at 8 (cleaned up). Therefore, the California Supreme Court adopted the product line exception, which imposed liability on the successor where three factors were present:

(1) the virtual destruction of the plaintiff's remedies against the
original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being enjoyed by the successor in the continued operation of the business. Id. at 9. The Supreme Court of New Jersey in Ramirez recognized the product line exception and "substantially" adopted the test articulated in Ray. See Ramirez, 431 A.2d at 812. The Ramirez plaintiff was injured in 1975 by a Johnson machine punch press that had been manufactured in the late 1940s. - 11 - J-E01004-25 Between the time of the manufacture and the injury, the Johnson company assets, including the manufacturing plant, inventory, equipment, intellectual property, pending contracts, and the exclusive right to use the Johnson trade name, had been sold twice, ultimately to Amsted in 1962. The original Johnson company was dissolved in 1965 with Amsted as the only shareholder. Upon discerning that none of the usual exceptions to the rule of successor non-liability pertained to the facts of the case, the Ramirez Court considered both expansion of mere continuation exception and adoption of the product line exception. It ultimately opted for the latter in accordance with Ray and determined that the Ray factors precipitated Amsted's liability for its predecessor's press. In particular, the Court first found that "the plaintiff's potential remedy against Johnson, the original manufacturer of the allegedly defective press, was destroyed by the purchase of the Johnson assets, trade name

and good will, and Johnson's resulting dissolution," and "there was continuity in the manufacturing of the Johnson product line throughout the history of these asset acquisitions." Id. at 820. Second, because "Amsted acquired the Johnson trade name, physical plant, manufacturing equipment, inventory, records of manufacturing designs, patents and customer lists" and it "also sought the continued employment of the factory personnel that had manufactured the Johnson presses" for both its predecessors, "Amsted had virtually the same capacity as Johnson to estimate the risks of claims for - 12 - J-E01004-25 injuries from defects in previously manufactured presses for purposes of obtaining liability insurance coverage or planning self-insurance." Id. at 821- 22 (cleaned up). Finally, by acquiring all the assets of the Johnson product line, "and by holding itself out to potential customers as the manufacturer of the same line of Johnson power presses, Amsted benefited substantially from the legitimate exploitation of the accumulated good will earned by the Johnson product line." Id. at 822. Although the Ramirez Court founded its ruling on the three elements outlined in Ray, it stated New Jersey's product line exception as follows: where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor. Ramirez, 431 A.2d at 825. In addition to California and New Jersey, appellate courts in Mississippi, New Mexico, and Washington have adopted the product line exception. See Huff v. Shopsmith, Inc., 786 So. 2d 383, 388 (Miss. 2001); Garcia v. Coe Mfg. Co., 933 P.2d 243, 248-50 (N.M. 1997); Martin v. Abbott Labs., 689 P.2d 368, 388 (Wash. 1984). Thus, courts adopting the product line exception to the rule of successor non-liability focused upon the policy underlying strict liability concerning "the protection of otherwise defenseless victims of manufacturing defects and the - 13 - J-E01004-25 spreading throughout society of the cost of compensating them." Ray, 560 at 8 (cleaned up). See also Ramirez, 431 A.2d at 823 (citing "the basic social policy, now so well-entrenched in our jurisprudence, that favors imposition of the costs of injuries from defective products on the manufacturing enterprise and consuming public rather than on the innocent injured party"). Although the successor breached no duty and played no part in contributing to the consumer's injury, "the successor is positioned to assess the risks before purchasing the assets, and to then decide whether to assume the potential burden associated with its acceptance of the predecessor's goodwill by continuing to produce the same product line." Garcia, 933 P.2d at 249. For these reasons, the courts adopting the exception deemed it fair to impose liability on the successor when that company played a significant role in causing the plaintiff's inability to recover. C. The argument for rejecting the product line exception and adhering to the Lead Opinion view The deliberate erosion of the general rule that liability does not follow assets, be it by more liberal application of the mere continuation exception to impose liability where there is a continuity of enterprise, or by recognition of the distinct product line exception, remains the minority view. It has been rejected by appellate courts in favor of retaining only the traditional exceptions in Arizona, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New York, - 14 - J-E01004-25 North Dakota, Ohio, South Dakota, Texas, Utah, Vermont, Virginia, and Wisconsin.3 Our sister states have offered sundry reasons for declining to embrace the new exception. Primarily, courts observed that the product line exception is inconsistent with the foundational premise of strict liability, namely that responsibility for injuries caused to innocent consumers by defective products rests with the entities who breached their duty to place on the market products that are safe for their intended use. See Tincher, 104 A.3d at 383 ("A seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public ____ 3 See Winsor v. Glasswerks PHX, L.L.C., 63 P.3d 1040, 1049 (Ariz. Ct. App. 2003); Johnston v. Amsted Indus., Inc., 830 P.2d 1141, 1144 (Colo. App. 1992); Bernard v. Kee Mfg. Co., Inc., 409 So.2d 1047, 1050–51 (Fla. 1982); Domine v. Fulton Iron Works, 76 Ill.App.3d 253, 257, 395 N.E.2d 19, 23 (Ill. App. Ct. 1979); Guerrero v. Allison Engine Co., 725 N.E.2d 479, 487 (Ind. Ct. App. 2000); DeLapp v. Xtraman, Inc., 417 N.W.2d 219, 222– 23 (Iowa 1987); Pearson ex rel. Trent v. Nat'l Feeding Sys., Inc., 90 S.W.3d 46, 52 (Ky. 2002); Nissen Corp. v. Miller, 594 A.2d 564, 573 (Md. 1991); Guzman v. MRM/Elgin, 567 N.E.2d 929, 931 (Mass. 1991); Niccum v. Hydra Tool Corp., 438 N.W.2d 96, 99–100 (Minn. 1989); Young v. Fulton Iron Works Co., 709 S.W.2d 927, 940 (Mo. Ct. App. 1986); Jones v. Johnson Mach. & Press Co. of Elkhart, Ind., 320 N.W.2d 481, 484 (Neb. 1982); Simoneau v. S. Bend Lathe, Inc., 543 A.2d 407, 409 (N.H. 1988); Semenetz v. Sherling & Walden, Inc., 851 N.E.2d 1170 (N.Y. 2006); Downtowner, Inc. v. Acrometal Products, Inc., 347 N.W.2d 118, 124–25 (N.D. 1984); Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co., 861 N.E.2d 121, 130 (Ohio 2006); Hamaker v. Kenwel-Jackson Mach., Inc., 387 N.W.2d 515, 521 (S.D. 1986); Griggs v. Capitol Mach. Works, Inc., 690 S.W.2d 287, 292–93 (Tex. App. 1985); Tabor v. Metal Ware Corp., 168 P.3d 814, 817 (Utah 2007); Ostrowski v. Hydra-Tool Corp., 479 A.2d 126, 127 (Vt. 1984); Harris v. T.I., Inc., 413 S.E.2d 605, 609–10 (Va. 1992); Fish v. Amsted Indus., Inc., 376 N.W.2d 820 (Wis. 1985). - 15 - J-E01004-25 who may be injured by it; . . . that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them[.]" (cleaned up)). These courts opine that the argument that successor liability furthers the goal of protecting defenseless consumers "overly simplifies the underlying principles of strict liability." Guzman v. MRM/Elgin, 567 N.E.2d 929, 932 (Mass. 1991). "Strict liability is not a no-fault system of compensation. Rather, its goal is to place responsibility for a defective product on the manufacturer who placed that product into commerce." Id. (cleaned up). See also Domine v. Fulton Iron Works, 395 N.E.2d 19, 23 (Ill. App. Ct. 1979) ("The cornerstone of strict liability rests upon the defendant's active participation in placing the allegedly defective product into commerce[.]"). This duty is tied to the fact that the company that put the defective product on the market profited from its sale to consumers. See Tincher, 104 A.3d at 382 ("[T]hose who sell a product (i.e., profit from making and putting a product in the stream of commerce) are held responsible for damage caused to a consumer by the reasonable use of the product." (emphasis added)). Yet the product line exception consigns accountability for a defective product upon an entity that did not create or otherwise contribute any risk of harm from the product, did not represent that the product was safe, did not solicit use of the product, and never had the ability to eliminate the risk by increasing the safety of the product. See Johnston v. Amsted Indus., Inc., - 16 - J-E01004-25 830 P.2d 1141, 1144 (Colo. App. 1992) (collecting cases). As such, the exception punishes a company that did not have, let alone breach, any duty vis-à-vis the product and consumer in question. As one Court explained: Most emphatically, then, the rationale of the product line theory— that it serves to advance the social policies underlying strict products liability—assuredly cannot find a juridical basis in the theory of products-liability tort actions, for that theory and cause of action, and the underlying social policies, expressly disclaim imposing a duty upon one who has no ability to control the circumstances and events which preceded a specific plaintiff's injury. Nor can the product line theory find a basis in traditional tort law which requires (1) the imposition of a legal duty to conduct oneself in a manner that does not pose an unreasonable risk of harm to others, and (2) a breach of that duty by the one upon whom it is imposed by law. Griggs v. Capitol Mach. Works, Inc., 690 S.W.2d 287, 292–93 (Tex. App. 1985) (cleaned up). See also Hamaker v. Kenwel-Jackson Mach., Inc., 387 N.W.2d 515, 521 (S.D. 1986) ("[I]t would be liability without duty which cannot be reconciled with our adoption of the rule of strict liability in tort [pursuant to § 402A]."). Turning to the justification that the successor profited from its predecessor's goodwill, courts have noted that the value of the goodwill that the successor acquired for use in continuing the product line is a remote benefit that "was considered and negotiated for at the time of the sale and constituted part of the sale price. To hold the successor liable for defects in products manufactured by the predecessor would be forcing the successor to pay twice for goodwill." Semenetz v. Sherling & Walden, Inc., 7 N.Y.3d 194, 200–01, 851 N.E.2d 1170, 1174 (N.Y. 2006) (cleaned up). Further, the - 17 - J-E01004-25 successor is double-paying for an asset that has a decreased value through no fault of its own because the acquired good reputation of the product line "is tarnished whenever defective products manufactured by the predecessor are discovered, lowering the value of the goodwill paid for by the successor." Timothy J. Murphy, A Policy Analysis of a Successor Corporation's Liability for its Predecessor's Defective Products when the Successor Has Acquired the Predecessor's Assets for Cash, 71 Marq. L. Rev. 815, 835 (1988). Under the product line exception, the successor is thus charged with responsibility "not for something it has done, but rather because it may be able to afford liability." Fish v. Amsted Indus., Inc., 376 N.W.2d 820, 827 (Wis. 1985). This approach in no way serves the policy goal of encouraging modified behavior by the tortfeasor. The unfortunate fact that the injured consumer may not be able to recover from the responsible party, which is cited by courts as a reason for adopting the product line exception, is a mere statement of a predicament, not a reason for making the successor pay. See Guzman, 567 N.E.2d at 931 ("[T]he plaintiff's lack of a remedy against the original manufacturers is not a justification for imposing liability on another absent fault and causation."); Downtowner, Inc. v. Acrometal Products, Inc., 347 N.W.2d 118, 123 (N.D. 1984) ("[T]hat an injured party has lost his remedy against the original corporation and has no one to sue but the successor . . . is not a justification, it is the problem."). - 18 - J-E01004-25 Additionally, adoption of the exception has a chilling effect on business. As the High Court of New York Court explained: Importantly, the product line exception threatens economic annihilation for small businesses. Because small businesses have limited assets, they face potential financial destruction if saddled with liability for their predecessors' torts. This threat would deter the purchase of ongoing businesses that manufacture products and, instead, force potential sellers to liquidate their companies. As the Florida Supreme Court has observed, 90% of the nation's manufacturing enterprises are small businesses, and if small manufacturing corporations liquidate rather than transfer ownership, the chances that the corporations will be replaced by other successful small corporations are decreased. Semenetz, 851 N.E.2d at 1174 (cleaned up) (citing Bernard v. Kee Mfg. Co., Inc., 409 So.2d 1047 (Fla. 1982)). Further, it is not at all clear that the successor will be in a position to spread the economic risk of injuries because "[i]t is one thing to assume that a manufacturer can acquire insurance against potential liability for its own products and another to assume it can acquire such insurance for the products made by a different manufacturer." Id. (cleaned up) (quoting Fish, 376 N.W.2d at 828). One commentator offered the following reasoning: First, it is implausible that the successor corporation will be able to obtain the necessary insurance coverage. Unlike the multimillion dollar corporation, which can self-insure, the smaller manufacturer must obtain commercial insurance. Yet, it is quite probable that an insurance company will not insure against risk of accidents induced by articles that were placed in the market before the successor acquired the business. One possible reason could be that the successor's exposure to liability from the predecessor's products, coupled with potential liability from its currently distributed products, would place the successor's level of risk at an unacceptable high ranking. An insurance company will not insure an entity with an extremely high level of risk - 19 - J-E01004-25 because it would upset the equilibrium at which an insurance company operates. Second, if insurance coverage were available to the successor corporation, it would not be affordable. It is axiomatic that if the commercial insurer were to provide the necessary insurance coverage, the successor's premium would reflect the increased exposure to risk. Coupled with the dramatic increase in insurance premiums . . ., the availability of affordable insurance for the small manufacturer is nearly nonexistent. In a competitive market, if the successor manufacturer were to invest in insurance coverage for its currently distributed products —and the products distributed by its predecessor—it would not be able to competitively price its goods. The successor is left with no alternative but to forsake insurance, thereby precluding its ability to spread the risk of accident costs. Carol A. Rogala, Nontraditional Successor Product Liability: Should Society Be Forced to Pay the Cost?, 68 U. Det. L. Rev. 37, 57–58 (1990) (footnotes omitted). See also Semenetz, 851 N.E.2d at 1174 ("[S]mall manufacturers have a difficult problem obtaining products liability insurance and find it impossible to cover the risks by raising prices because they have to compete with large manufacturers who can keep the price down." Id. (cleaned up)). Finally, many courts declining to adopt the product line exception opined that such a "radical change from existing law implicating complex economic considerations" was "better left to be addressed by the Legislature" than by the Courts. Id. at 1175 (cleaned up). See also, e.g., Winsor v. Glasswerks PHX, L.L.C., 63 P.3d 1040, 1049 (Ariz. Ct. App. 2003) (holding that expanding scope of corporate liability was a question for the legislature); Pearson ex rel. Trent v. Nat'l Feeding Sys., Inc., 90 S.W.3d 46, 52 (Ky. 2002) (same); Niccum v. Hydra Tool Corp., 438 N.W.2d 96, 99–100 (Minn. - 20 - J-E01004-25 1989) (same). For corporate law is what the exception modifies, not tort law. See Manh Hung Nguyen v. Johnson Mach. & Press Corp., 433 N.E.2d 1104, 1109 (Ill. App. Ct. 1982) ("Strict liability law has no principles to determine successor corporate liability."). For these reasons, were this Court writing on a clean slate, or had Checkers not waived the argument that this Court should reverse its adoption in this jurisdiction, I would reject the product line exception as an additional exemption from the general rule that the purchaser of assets of one corporation does not acquire the liabilities of the seller. I would maintain the five traditional exceptions to that rule and leave it to our General Assembly to create any new ones if it deems it necessary as a matter of social and economic policy. III. The product line exception in Pennsylvania. Of course, we are not today deciding the issue in the first instance. Although our High Court has yet to rule upon whether to expand successor liability for defective products, Pennsylvania joined the minority camp by this Court's recognition of a form of the product line exception in Dawejko. A. Pennsylvania currently employs a vague "just under the circumstances of the case" product line exception In Dawejko, a three-judge panel of this Court approved the Ramirez formulation of the new exception to the rule of non-liability, declining "to phrase the new exception too tightly . . . , so that in any particular case the court may consider whether it is just to impose liability on the successor - 21 - J-E01004-25 corporation." Dawejko, 434 A.2d at 111. This Court highlighted the following factors that "will always be pertinent" to deciding whether the successor is properly held to account for its predecessor's defective product: "whether the successor corporation advertised itself as an ongoing enterprise; or whether it maintained the same product, name, personnel, property, and clients; or whether it acquired the predecessor corporation's name and good will, and required the predecessor to dissolve." Id. (cleaned up). The Court continued by observing that, "[a]lso, it will always be useful to consider whether the three-part test stated in Ray . . . has been met."4 Id. Applying its new rule to the case before it, the Dawejko Court affirmed a jury verdict against ACCO, the corporation that purchased the assets of Mansaver Industries, which had in 1957 manufactured the lifting machine that injured the plaintiff in 1972. The Court concluded that ACCO was properly ____ 4 To reiterate, those factors are:

(1) the virtual destruction of the plaintiff's remedies against the

original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being enjoyed by the successor in the continued operation of the business. Ray, 560 P.2d at 9. - 22 - J-E01004-25 held responsible for the plaintiff's 1972 injury based upon the following facts of record: After transferring its assets to ACCO, in 1964, Mansaver Industries, Inc., of New Haven, Connecticut, went out of business. The assets transferred included Mansaver's trademark and good will. The record includes a four[-]page manual regarding the "Mansaver standard headroom sheet lifter (hand-operated)." This was issued October 1, 1974, and was revised September 27, 1976. It bears the name "ACCO Industrial Lifters Division" on three of its pages; the third page, "Operating Instructions," is evidently carried over from the original manual, for it is identified as from "New Haven, Connecticut." Id. at 112 (cleaned up). From this, the jury permissibly found that not only did [ACCO] purchase the assets of Mansaver Industries, Inc. of New Haven, Conn., but it continued to operate the business, manufacturing and selling the identified product as its assignor corporation had done. In acquiring the goodwill of Mansaver Industries, Inc. of New Haven, Conn., [ACCO] clearly evinced the intention to continue the business as it had existed. . . . That course of action shows a desire to capitalize o[n] the past performance and business carried on by the old corporation. Id. (cleaned up). Notably absent from this discussion was any analysis of the evidence as to the first Ray factor, namely that ACCO acquired virtually all of Mansaver Industries' assets and that acquisition caused the destruction of the plaintiff's remedies against Mansaver Industries. The import of the Ray factors in the application of the product line exception was at issue in this Court's subsequent decision in Hill v. Trailmobile, Inc., 603 A.2d 602 (Pa.Super. 1992). In that case, this Court characterized Dawejko as holding that the product line exception "may only be applied when [the three Ray factors] have each been established[.]" Id. - 23 - J-E01004-25 at 606 (emphasis in original). Yet, the Hill Court also acknowledged Dawejko's refusal to state the exception in specific rather than general terms. Id. The Hill opinion suggested that the other considerations discussed in Dawejko pertained to the decision of whether it was fair in the particular circumstances of each case in which the Ray elements were all present to impose successor liability. Id. In other words, threshold proof of all the Ray factors was necessary to entitle a plaintiff to recover from a successor, but other considerations might nonetheless reveal it to be unjust to hold the successor liable despite the satisfaction of Ray. Ultimately, the Hill Court declined to extend the product line exception to allow a defendant to obtain indemnification from a co-defendant, deeming the case before it "particularly inappropriate" because the Hill plaintiff, in contrast with the Dawejko plaintiff, "had causes of action in strict liability against multiple defendants." Id. at 607. This Court and federal courts applying Pennsylvania law after Hill operated under the assumption that the Ray factors were mandatory. See, e.g., Keselyak v. Reach All, Inc., 660 A.2d 1350, 1354 (Pa.Super. 1995) ("[S]ince the sale of the utility manufacturing line did not destroy any remedies against [the predecessors], the argument of appellants that the trial court erred in granting summary judgment in favor of [the successor] must be rejected as meritless."); Forrest v. Beloit Corp., 278 F.Supp.2d 471, 477 (E.D. Pa. 2003) ("Plaintiff cannot successfully invoke the product line - 24 - J-E01004-25 exception because he has a potential remedy against the original manufacturer."). Indeed, even before Hill was decided, the United States Court of Appeals for the Third Circuit predicted that the Pennsylvania Supreme Court would not apply the product line exception "where the claimant had a potential remedy against the original manufacturer, but failed to exercise all available means to assert his or her claim." Conway v. White Trucks, A Div. of White Motor Corp., 885 F.2d 90, 95 (3d Cir. 1989). See also LaFountain v. Webb Indus. Corp., 951 F.2d 544, 548 (3d Cir. 1991) (same). It appeared that we were poised to get a definitive ruling about the applicability of the product line exception in this jurisdiction when our Supreme Court granted allocatur in Schmidt v. Boardman Co., 11 A.3d 924 (Pa. 2011), on the issue of, inter alia, "whether this Court should adopt the product line exception to the general rule of successor non-liability in strict products liability actions, and, if so, on what terms[.]" Id. at 927 (cleaned up). Alas, the appellant in Schmidt, like Checkers here, waived its challenge to "the viability of the product-line exception" by not raising it in the trial court or this Court. Id. at 942. Accordingly, our High Court assumed for the purposes of disposing of the appeal that the exception was recognized in Pennsylvania. The Court then examined its contours as elucidated by the appealed-from panel decision in Schmidt. In particular, this Court had synthesized Dawejko and Hill thusly: - 25 - J-E01004-25 [I]n Hill, this Court concluded that a plaintiff needs to provide evidence sufficient to establish the requirements of the three Ray factors in order for liability to attach to a successor under the product line exception. Therefore, as the only stated mandatory requirements of the product line exception in Pennsylvania, the three Ray factors are our central focus. If a plaintiff adduces enough evidence to fulfill these factors, we will then analyze the Ramirez test and the various factors stated in Dawejko to determine whether the jury, on balance, was provided with sufficient evidence to find that it is just to impose liability on the successor corporation. Schmidt v. Boardman Co., 958 A.2d 498, 507 (Pa.Super. 2008) (cleaned up). This Court also held that, in determining whether the successor acquired virtually all the predecessor's assets, "only those assets that are directly related to the product line at issue are relevant," and evidence of other available assets of the predecessor were properly excluded. Id. at 517. After noting the awkwardness of "address[ing] the boundaries of the product-line exception, where [it] have not yet decided on developed reasoning whether to adopt it in the first instance," our Supreme Court proceeded to clear up the confusion manifest in the opinions of this Court and the trial court "which ar[ose] from inconsistencies in the Superior Court's application of the exception it has adopted." Schmidt, 11 A.3d at 944. The Court ruled that Dawejko and Hill were irreconcilable, and that "the Schmidt panel's elevation of the Ray factors to mandatory status was based on a plain misreading of the seminal product-line decision in Dawejko." Id. at 945. On this issue, the Court concluded that "the most appropriate approach to reconciling governing Superior Court precedent is to correct Hill's mistake and - 26 - J-E01004-25 to revert to Dawejko." Id. As to the evidentiary issue, the Court found "untenable" the bright-line rule that only assets related to the product line in question were relevant to the consideration, observing: It is impossible, for example, to say with confidence that a sale of a portion of a company's assets caused the virtual destruction of a plaintiff's remedies if the fact finder does not know the full range of those assets in the first instance, and how the majority of them were disposed of by the manufacturer. Id. at 945–46. In the end, the Schmidt Court took care to be clear that its ruling was neither an endorsement of the product line exception or Dawejko's formulation of it: [W]e take this opportunity to highlight several other matters which are not resolved by our present opinion. First, as noted, the case is not a suitable vehicle in which to resolve foundational concerns pertaining to Pennsylvania's strict products liability regime. The question of whether the product line exception should be maintained in Pennsylvania is waived, and, thus, our consideration of it is postponed. The issue of whether a determination of product line successor status is for the judge or the jury is not before us. . . . It is likewise beyond the scope of this appeal to engage in the fact-specific, sufficiency-like assessment concerning Dawejko's application in this case . . . . We hold only that, under the most appropriate reconciliation of presently prevailing Superior Court precedent, the trial court did not err in its main instruction to the jury—under Dawejko— concerning the product line exception. Id. at 946 (cleaned up). Such is the state of Pennsylvania law concerning the product line exception to the rule against successor liability. - 27 - J-E01004-25 B. I would rule in the case sub judice that the first Ray factor is mandatory. As it stands, the controlling precedent as to the product line exception is the pronouncement of a three-judge panel of this Court in Dawejko that a successor's liability for its predecessor's defective product is a nebulous weighing of certain enumerated factors, all of which are relevant but none of which is definitive, to arrive at what is a just result. Within the limits of issue preservation and waiver doctrine, this Court now sits with the ability to reconsider that holding, as our Supreme Court in Schmidt did not endorse the Dawejko formulation on its merits, and "[a]n en banc panel of an intermediate court is authorized to overrule a three-judge panel decision of the same court." Commonwealth v. Rosario, 294 A.3d 338, 352 (Pa. 2023) (cleaned up)). In light of this authority, constrained by Checkers' waiver of the argument that we should reject the product line exception in toto as is detailed in Judge Beck's concurrence, it is my view that this Court should today hold that the product line exception cannot be utilized to impose liability upon a successor corporation unless the plaintiff proves that the successor deprived the plaintiff of a remedy from the manufacturer of the defective product through the act of acquiring virtually all the predecessor's assets. As discussed above, the Ramirez formulation of the exception, adopted by Dawejko, does not require proof that the successor's acquisition caused "the virtual destruction of the plaintiff's remedies against the original - 28 - J-E01004-25 manufacturer," i.e., establishment of the first Ray factor. See Ray, 560 P.2d at 9. However, the exception as stated by Ramirez becomes applicable in situations "when one corporation acquire[d] all or substantially all the manufacturing assets of another corporation[.]" Ramirez, 431 A.2d at 825. In other words, under both Ray and Ramirez, a successor is not liable to a plaintiff for injuries caused by a product manufactured by its predecessor unless it bought the predecessor's whole business. As the Supreme Court of Washington, which adopted the Ray formulation, explained: The policy justifications for our adoption of the product line rule require the transfer of substantially all of the predecessor's assets to the successor corporation as a prerequisite to imposing liability on the successor. Two compelling rationales are inherent in this requirement. First, in keeping with the social policies underlying strict product liability, the product line rule is one of necessity. Absent such a rule, the injured plaintiff is left without meaningful remedy. Second, elemental fairness demands that there be a causal connection between the successor's acquisition and the unavailability of the predecessor. Thus, the product line rule strikes a balance between the necessity of compensating the injured plaintiff and the fairness of requiring causation on the part of the defendant. When . . . there has been no complete transfer of assets, the element of necessity is not present as the plaintiff may look to the original manufacturer; and further, [when] the sale of the product line has no connection to [the predecessor's] present financial condition [of a pending bankruptcy]. Hall v. Armstrong Cork, Inc., 692 P.2d 787, 791 (Wash. 1984). To the extent that Dawejko abandoned that sine qua non of the product line exception in favor of a nebulous fairness test to be decided on a case-by- case basis by the jury, I would, unlike the Lead Opinion, grant Checkers' - 29 - J-E01004-25 request that we "elevate the first Ray factor to mandatory status." Lead Opinion at 23. C. Application of the modified exception in the instant case mandates a finding that Checkers is not liable as product line successor to IAT As the Lead Opinion describes at length, the evidence at trial, viewed in the light most favorable to the Burnleys as verdict-winners, sufficed to sustain the finding that Checkers was liable as a successor under the Dawejko formulation. See Lead Opinion at 27-34. As I see it, given its nebulous fairness judgment call that does not require proof of any critical element or elements, it is hard to imagine an assailable jury assignment of liability pursuant to Dawejko in any case in which a company acquired the product line through an asset purchase. However, if the first Ray factor is a critical element, as I maintain should be the case, then Burnleys' evidence unquestionably fell short. The trial court explained: The Burnleys did not . . . present evidence sufficient to prove "the virtual destruction of plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business." Uncontested evidence showed that IAT continued to exist, do business as a manufacturer of intelligent camera cranes, and pay creditors for at least three years after it sold its cable protector business to Checkers (and at least two years after the Burnleys filed suit). IAT received a substantial payment from Checkers for the cable protector business, plus the right to a future stream of income, and there was no evidence that these proceeds were diverted or dissipated outside IAT. Most importantly, the Burnleys did not show that they had tried to seek compensation from IAT. It is difficult to see how a plaintiff can demonstrate the virtual destruction of [his or her] remedies - 30 - J-E01004-25 without introducing evidence that it had pursued those remedies; the Burnleys certainly did not make that showing here. The evidence that the Burnleys point to on the issue of virtual destruction of remedies is not helpful to them. The representation in the APA that IAT did not have insurance with respect to its properties, assets and operation of its cable protector business as of April 1, 2015, without more, cannot be read to mean that IAT lacked insurance, at the relevant times, that would have covered liability for a product sold more than a year earlier. The APA also cannot be read to show that IAT did have insurance coverage at some point that ceased to exist because of the asset sale. Similarly, [the] testimony [of FallLine's president Eric York] as to what he saw in IAT's books in early 2014 is not sufficient to show that the sale to Checkers virtually destroyed the Burnleys' remedies. Mr. York's review occurred eighteen months before the substantial cash infusion that IAT received from Checkers and, possibly, before the significant shareholder investment disclosed in the APA. Trial Court Opinion, 7/10/23, at 24-25 (cleaned up). The Burnleys argue that they satisfied their burden by proving IAT's dearth of assets other than the Firefly line at the time of her injury, the lack of assets or insurance at the time the APA was executed, and the fact that IAT was left insolvent with more than $500,000 in debt when it sold the assets to Checkers. See Burnleys' brief at 35-37. They further claim that it is of no moment that IAT was still in business in 2018, asserting that "[w]hat is relevant is whether Checkers purchased all assets of IAT during the period of time in which plaintiffs could have sued IAT." Id. at 37. The Burnleys' position is inconsistent and logically flawed. First, their view of what timeframe is important is capricious, pointing alternatively to the time of the injury, the time of the APA, and the aftermath of the APA, and - 31 - J-E01004-25 ultimately suggesting that the fact that the asset sale occurred during the two- year statute of limitations was determinative. The Burleys' argument fails to appreciate that the question is whether they produced evidence to establish that IAT was unavailable to provide a remedy due to Checkers' acquisition of the assets, not to focus upon a static snapshot of IAT's bleak economic situation at certain points well before the statute expired. The fact that IAT was still in business in 2018, manufacturing a different product and still entitled to monthly earnings payments from Checkers, evinces that, regardless of the status of its financials when Mrs. Burley tripped on IAT's product or immediately following the execution of the APA, IAT was an entity that the Burnleys could have timely sued, and that it had acquired new assets other than those sold to Checkers. Moreover, the Burleys' allegations regarding IAT's solvency do not support their conclusion that the product line exception is the necessary and appropriate justification for holding Checkers liable in this case. If, as the Burnleys suggest, IAT had become insolvent after the asset sale because Checkers paid inadequate consideration, the Burnleys could have sought to hold Checkers liable through other established exceptions to the rule of successor nonliability. See Fizzano Bros., 42 A.3d at 954 n.2 (indicating that the exceptions recognized by our Supreme Court impose liability upon a successor where "the transaction was fraudulently entered into to escape - 32 - J-E01004-25 liability," or if "the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation"). On the other hand, if IAT was insolvent despite Checkers paying fair value for the Firefly assets, then Checkers' acquisitions of those assets was not the cause of IAT's supposed inability to provide a remedy. As a California Court applying Ray aptly observed, “a causation element is necessary to ensure a plaintiff does not actually gain a windfall defendant not otherwise available.” Stewart v. Telex Commc’ns, Inc., 1 Cal.App.4th 190, 200, 1 Cal.Rptr.2d 669, 676 (Cal. App. 1991). See also Downtowner, 347 N.W.2d at 123 (observing that the successor “was not responsible for the destruction of the plaintiffs’ remedy, where [the predecessor] had been threatened with foreclosure and was in receivership”). In my view, the circumstances of this case do not, on a fundamental level, justify imposition of successor liability on Checkers. “The product-line exception is a remedy which was created to afford relief to plaintiffs, victims of manufacturing defects who, due to the sale or transfer of the manufacturing corporation, otherwise would have no avenue of redress for injuries caused by defective products.” Hill, 603 A.2d at 607 (emphasis altered). Accord Cafazzo, 668 A.2d at 525 (stating primarily “the availability of some entity for redress” in listing the considerations governing whether an actor in the supply chain is responsible for a defective product). - 33 - J-E01004-25 The Burnleys are not plaintiffs left to shoulder the cost of injuries caused by a defective product because the company responsible sold all the assets available to satisfy a judgment. The circumstances of this case are a far cry from the those detailed above in Ray and Ramirez. The Burnleys are plaintiffs who sought to recover, and did recover, from five other defendants, one of which (FallLine) was the company that manufactured and assembled the defective product that caused Mrs. Burnley to trip and fall. The product line exception is a last-ditch effort to ensure that an injured party is not left to bear the full economic cost of her injury. It is not a tool for plaintiffs to forgo pursuit of a remedy against the predecessor tortfeasor in favor of a deeper pocket. See Keselyak, 660 A.2d at 1353–54 (affirming grant of summary judgment for successor where the plaintiff had causes of action against viable, insured companies from which product line originated); LaFountain, 951 F.2d at 548 (“[T]he existence of a potential remedy against the actual manufacturer destroys the basis for invoking the product line exception.”). Stated plainly, the certified record reveals that the aims of neither strict liability nor the product line exception are furthered by requiring Checkers to pay for injuries to the Burnleys that it had no role in causing. IV. Conclusion In sum, it is my position that Dawejko was wrongly decided and Pennsylvania should join the majority of jurisdictions in rejecting its expansion - 34 - J-E01004-25 of successor liability. Since we cannot achieve that result in this case due to Checkers’ failure to preserve the issue, I would herein limit the abrogation of Dawejko to making the first Ray factor mandatory. Applying that standard, I would hold that Checkers is entitled to judgment notwithstanding the verdict because the Burnleys failed to establish that Checkers’ acquisition of IAT’s assets left them without redress. On the contrary, the certified record shows not only that IAT was available for the Burnleys to pursue as a defendant, but that they in fact recovered from two other companies that also breached their duty to manufacture and sell a safe product. Checkers caused the Burnleys no harm and cannot be held accountable for their injuries. This resolution of the appeal would render the remainder of the parties’ issues moot. 5 For these reasons, I respectfully dissent from the Lead Opinion’s decision to affirm the judgment against Checkers. ____ 5 One of these issues is whether the question of successor liability is for the court or the jury to decide. Despite the mootness of this matter, I observe that we have viewed the applicability of the traditional exceptions to the rule against successor nonliability as a question for the jury where: (1) there is sufficient evidence to support an exception, and (2) there are disputes of fact relevant to the exception's applicability. See, e.g., Sehl v. Vista Linen Rental Serv. Inc., 763 A.2d 858, 863–64 (Pa.Super. 2000) (ruling that the trial court correctly charged the jury on successor liability based upon an alleged asset transfer without adequate consideration, but did not err in declining to instruct the jury on other exceptions because there was "insufficient evidentiary foundation to support instructions on those exceptions"). See also Bird Hill Farms, Inc. v. U.S. Cargo & Courier Serv., Inc., 845 A.2d 900, 903–04 (Pa.Super. 2004) (holding that the trial court properly decided at summary judgment whether the successor implicitly agreed to assume the predecessor's lease where the pertinent facts were not in dispute). - 35 -

LAZARUS, concurring in part and dissenting in part.

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DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

v. : LOEWS HOTEL, PHILADELPHIA :

HOTEL OPERATING COMPANY, INC., : No. 370 EDA 2023

TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : APPEAL OF: CHECKERS INDUSTRIAL : PRODUCTS, LLC : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257 J-E01004-25

DANA BURNLEY AND RALPH : IN THE SUPERIOR COURT OF

BURNLEY, H/W : PENNSYLVANIA

Appellants : v. : : No. 485 EDA 2023 LOEWS HOTEL, PHILADELPHIA : HOTEL OPERATING COMPANY, INC., : TWELFTH STREET HOTEL : ASSOCIATES, AUDIO VISUAL : SERVICES GROUP, INC. D/B/A PSAV : PRESENTATION SERVICES, LAWALL : COMMUNICATIONS, CHECKERS : INDUSTRIAL PRODUCTS, CHECKERS : SAFETY GROUP, CHECKERS : INDUSTRIAL SAFETY PRODUCT, : FIREFLY CABLE PROTECTORS, : LINEBACKER CABLE MANAGEMENT : AND ASCENDANT

VENTURES, INC. : v. : INDUSTRY ADVANCED : TECHNOLOGIES, INC., ASCENDANT : VENTURES, INC., FALLINE : CORPORATION, FOH PRODUCTIONS, : EVAN ANDREWS, EVAN ANDREWS : DESIGN AND ALLEN PRICE, PRICE : PRODUCTIONS, LLC AND : CHRISTOPHER HASSFURTHER : Appeal from the Judgment Entered January 10, 2023 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 160901257

BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,

McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J. CONCURRING AND DISSENTING OPINION BY LAZARUS, P.J.:

FILED MARCH 5, 2026

-2- J-E01004-25 I note my concurrence and dissent because I must respectfully disagree with the Lead Opinion's analysis that Checkers Industrial Products, LLC (Checkers), is not entitled to a new trial based on the Appellees' (Burnleys or Plaintiffs) trial references to the insurance provision in the Asset Purchase Agreement (APA). I would find that Checkers suffered prejudice resulting in reversible error, requiring a new trial, when the trial court: (a) admitted the minimally relevant insurance evidence in the APA, while (b) denying Checkers' requested limiting instruction on the limited purpose for which the insurance evidence was admissible, and (c) deeming inadmissible otherwise relevant contextualizing evidence. The trial court's actions thus compounded the prejudice and contributed to the admitted evidence misleading the jury. See Walsh v. Wilkes-Barre, 64 A. 407, 408 (Pa. 1906) (reversing trial court and ordering mistrial where improper remark calling attention to insurance, which was manifestly prejudicial to defendant, was immaterial and irrelevant in trial, effect of remark would increase amount of verdict by invoking antagonism to corporations, and where trial judge declined to provide jury with requested limiting instruction). I also note my agreement with Judge Beck's Concurring Opinion with respect to the Lead Opinion's discussion regarding the continued vitality of Dawejko. In my opinion, Judge Beck makes a valid point, particularly since Checkers does not address that issue in its appellate brief and expressly disclaimed it at oral argument before the Court en banc. See Concurring Opinion, at 3. -3- J-E01004-25 Preliminarily, I agree with the Lead Opinion that the trial court correctly determined that it was for the jury to decide the applicability of the product line exception to successor liability. In making that determination, the jury could consider several factors, including whether the successor corporation, Checkers, caused the virtual destruction of the Plaintiffs' remedies against the original manufacturer, Industry Advanced Technologies, Inc. (IAT). On cross- examination and re-cross examination of Justin Lytle, a Checkers representative, the Burnleys elicited testimony that there is a statement in the APA that IAT "currently has no insurance." N.T. Trial (Jury) Volume V, 8/29/22, at 83-84, 86. When the Burnleys cross-examined Lytle on this statement, Checkers:

(1) immediately objected to any reference to the APA's insurance provision;

(2) requested a mistrial at sidebar when the court denied the objection; and

(3) requested a limiting or curative instruction. The following exchange

occurred regarding Checkers' request for a curative instruction: THE COURT: Now, your motion for a mistrial is denied. You may request a corrective instruction. I am concerned that—I just don't know whether the fact that the company is representing it doesn't have insurance now because it didn't have insurance when the accident happened or that that insurance—how that insurance would work. If you want to get a corrective instruction on— [CHECKERS' COUNSEL]: I request one, yes. THE COURT: Okay. Tell me what you want. [CHECKERS' COUNSEL]: This representation is being made as of the date this agreement was signed in April 2015. There is no information about prior applicable insurance or -4- J-E01004-25 subsequent applicable insurance, Judge. In fact, we have information that there was subsequent applicable insurance. [THE COURT]: I can't say that— Id. at 80 (emphasis added). The trial court declined to give any curative instruction at that time and allowed trial to resume. See id. at 83-84. On re- direct examination, Checkers attempted to contextualize the relevance of the APA's insurance provision, but the trial court sustained the Burnleys' objection to the question of whether Lytle was aware if IAT has insurance that it acquired subsequent to the insurance that is discussed in the APA. Id. at 85. On re-cross examination of Lytle, the Burnleys again elicited testimony that the APA provides that IAT "currently has no insurance." Id. at 86. The applicable standard of review for a trial court's decision to grant or deny a new trial is for an abuse of discretion. See Nigra v. Walsh, 797 A.2d 353, 355 (Pa. Super. 2002). We review the trial court's decision to admit evidence for an abuse of discretion. See Fid. Nat'l Title Ins. Co. v. Suburban West Abstractors, 852 A.2d 318, 321 (Pa. Super. 2004). "An erroneous evidentiary ruling does not warrant a new trial unless it was harmful or prejudicial to the complaining party." Flenke v. Huntington, 111 A.3d 1197, 1200 (Pa. Super. 2015) (citation and quotation marks omitted). "Generally[,] for the purposes of this evidentiary rule, 'prejudice' means an undue tendency to suggest a decision on an improper basis." Henery v. Shadle, 661 A.2d 439, 444 (Pa. Super. 1995) (citation omitted). -5- J-E01004-25 A reference at trial to insurance that invites the jury to arrive at a verdict on false grounds requires a new trial. See Hollis v. United States Glass Co., 69 A. 55, 55 (Pa. 1908). Indeed, "[w]here . . . the injection of insurance was done directly, deliberately[,] and by design by counsel for the Plaintiff and it reasonably appears that it was prejudicial to the Defendant, a new trial should be granted." Trimble v. Merloe, 197 A.2d 457, 459 (Pa. 1964). Our Supreme Court has explained that, because fact-finders might punish parties for the insurance-related decisions they make, Pennsylvania law protects litigants from this risk. See Price v. Guy, 735 A.2d 668, 672 (Pa. 1999) ("Just as a jury is more likely to attach liability to a defendant covered by insurance who will not suffer financially from a plaintiff's verdict, so too is a jury less likely to award damages to a plaintiff who it views as having bargained away its right to non-economic damages in exchange for having obtained less expensive insurance coverage."). However, the mere mention of the word ["]insurance["] by a witness during trial does not necessitate a new trial. There must be some indication that the defendant was prejudiced. The defendant is not prejudiced and a mistrial is not required where the reference to insurance is ambiguous and does not disclose that the defendant is himself insured. Phillips v. Schoenberger, 534 A.2d 1075, 1078 (Pa. Super. 1987) (citations, quotation marks, and brackets omitted). Whether the prejudice suffered warrants “a new trial requires a determination based upon an assessment of the circumstances under which the [prejudice occurred] and the precaution taken by the court and counsel to prevent . . . a prejudicial effect.” Siegal v. -6- J-E01004-25 Stefanyszyn, 718 A.2d 1274, 1277 (Pa. Super. 1998). “It is the duty of the trial judge to take affirmative steps to attempt to cure harm, once [prejudice at trial] has been objected to.” Id. When evidence is admissible for a limited purpose, the party against whom the evidence is to be used is entitled to a limiting instruction, if so requested. See Nigro v. Remington Arms Co., 637 A.2d 983, 992 (Pa. Super. 1993); see also Pa.R.E. 105; Price, 735 A.2d at 672 (“The purpose of jury instructions is to keep jurors focused on resolving factual disputes based on the governing law rather than on their own ideas of how best to balance the equities. By allowing jurors to consider the extent to which parties have elected to insure themselves, trial courts afford jurors the opportunity to determine the issue of liability in accordance with their own notions of fairness, cost allocation, and risk management, rather than in accordance with the law on which they have been instructed.”). Here, the fact that the APA stated that IAT had no insurance at the time of the document’s execution is only minimally relevant to the question of whether the Burnleys have other remedies available to them from IAT or whether IAT has other applicable insurance covering the Burnleys’ injuries. Prejudice resulted when the court declined to provide a requested limiting instruction to the jury that would have explained the limited value and limited purpose for which the APA’s insurance evidence could be considered. See Nigro, supra; Pa.R.E. 105. See also Deeds v. Univ. of Pa. Med. Ctr., 110 A.3d 1009, 1013-14 (Pa. Super. 2015) (reversing and remanding for new trial -7- J-E01004-25 where references to collateral source were not accompanied by contemporaneous limiting instruction). This prejudice was compounded and magnified when the court prevented Checkers from clarifying for the jury whether there exists any other applicable insurance, perhaps acquired by IAT after the execution of the APA. On this record, I would conclude that the trial court’s rulings tended to mislead the jury on the relevance and weight that should be afforded the admitted APA insurance testimony, which, in turn, prejudiced Checkers. See N.T. Trial (Jury) Volume V, 8/29/22, at 85; see Henery, supra. Further, although the APA’s statement regarding a lack of insurance is about IAT, and not Checkers, the Burnleys sought to admit this evidence for the purpose of establishing successor liability against Checkers and the witness testifying was a Checkers representative. In my view, where the jury’s inquiry was to determine successor liability as between IAT and Checkers, and ultimately found against Checkers, on this record, it is uncertain whether the jury’s verdict reflects improper considerations such as confusion of the parties or a desire to punish Checkers for acquiring the Firefly brand of cable protectors with the knowledge that the brand was not insured. See Price, supra at 671-72. I would find that the logic of Price is directly applicable to this case insofar as a jury is less likely to find in favor of a party who it views as having bargained away its rights. Id. at 672. Accordingly, I would conclude that the court’s evidentiary rulings invited the jury to render a verdict on false grounds, see Hollis, supra, and caused the jury to be -8- J-E01004-25 misled from the relevant inquiry of whether IAT has insurance coverage in effect and applicable to the alleged injury, and not whether IAT had insurance in effect at the time of the APA's execution. Thus, I would vacate the judgment and remand for a new trial. McLaughlin, J., Joins this Concurring and Dissenting Opinion. Sullivan, J., Concurs in the Result. -9-

SULLIVAN, dissenting.

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BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., DUBOW, J.,

McLAUGHLIN, J., KING, J., SULLIVAN, J., BECK, J., and LANE, J.

DISSENTING STATEMENT BY SULLIVAN, J.: FILED MARCH 5, 2026

-2- J-E01004-25 I respectfully dissent from the lead opinion. Like President Judge Lazarus, I believe the trial court committed reversible error by admitting evidence concerning whether IAT had insurance. Further, the trial court's refusal to give a limiting instruction compounded the trial court's error and compels the grant of a new trial. I agree with Judges Beck, Bowes, and King that the Appellant waived its claims relating to the product line exception and whether a judge or jury determines the existence of successor liability. For those reasons, I respectfully dissent. President Judge Lazarus concurs in the result. -3-