

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased

**IN THE INDIANA COURT OF APPEALS
CAUSE NO.: 23A-CT-02059**

HARJIT KAUR, Individually, and As the Special Administrator of the Estate of HARVAIL SINGH DHILLON, Deceased,)	
)	
)	Appeal from the Hamilton Superior Court No. 4
Appellant,)	
Plaintiff below,)	Trial Court Cause No. 29D04-2212-CT-010006
vs.)	
)	
AMAZON, INC., a corporation;)	The Honorable J. Richard Campbell, Judge
AMAZON.COM, INC., a corporation;)	
AMAZON LOGISTICS, INC., a corporation;)	
AMAZON.COM SERVICES, LLC., MQJ1, a limited liability company;)	
CF MOUNT COMFORT DST, a limited liability company, ICI)	
TRANSPORT, LLC., a limited liability company; and)	
WILLIAM McPHEARSON, an individual.)	
)	
Appellees,)	
Defendants below.)	

APPELLANT’S AMENDED CONSOLIDATED BRIEF

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I. Statement of Issues

1. Under the allegations in the Amended Complaint, are there any circumstances where Amazon and Mount Comfort could be held liable for their conscious decision to continue to use signs they knew were incomplete, confusing, and dangerous to guide incoming truck drivers Amazon invited onto their premises to make deliveries?

II. Statement of the Case

This wrongful death action arises from an incident on October 20, 2022, in which the Decedent, Harvail Singh Dhillon (hereinafter, “Harvail” or “Decedent”) was killed after exiting the truck he was driving while attempting to enter a fulfillment center operated, maintained, controlled, and managed by employees and/or agents of Defendant Amazon.com, Inc. and its subsidiaries, in order to make a delivery of goods to the fulfillment center.¹ (Appellant’s App. Vol. II, pp. 27-30). The Plaintiff, as administrator of Harvail’s estate and on her own behalf as Harvail’s widow, brought this wrongful death action on December 21, 2022 against the Amazon Defendants, among others, alleging that Amazon negligently designed, maintained, and controlled the entrance to its fulfillment center and had actual knowledge that the confusing layout of the fulfillment center’s entrances was routinely endangering arriving truck drivers by causing them to become confused and exit their trucks on County Road 300 North immediately outside the fulfillment center’s entrance. (Appellant’s App. Vol. II, pp. 27-30, 33-36).

On February 22, 2023, the Amazon Defendants moved to dismiss the Plaintiff’s Complaint,

¹ For the purposes of the Motion for Judgment on the Pleadings giving rise to this appeal, the parties have not distinguished between Defendants Amazon, Inc.; Amazon.com, Inc.; Amazon Logistics, Inc.; and Amazon.com Services, LLC, MQJ1, and have collectively referred to them as either “Amazon” or the “Amazon Defendants.”

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased arguing that Amazon owed no duty of care to Harvail because Harvail had not yet entered Amazon's premises when he was killed. (Appellant's App. Vol. II, pp. 7, 143-56). The Plaintiff filed a Response in Opposition to the Motion to Dismiss on March 8, 2023 arguing that allegations in the Complaint sufficiently stated a claim that Amazon had breached its well-settled duty to provide a safe means of ingress for Harvail as its business invitee under Indiana law. (Appellant's App. Vol. II, pp. 8, 157-67). The Amazon Defendants filed a Reply in Support of the Motion to Dismiss on March 10, 2023. (Appellant's App. Vol. II, pp. 8, 168-76). After the Motion to Dismiss was fully briefed, the Trial Court's magistrate, the Honorable Erin M. Weaver, heard oral argument on the Motion to Dismiss on March 13, 2023. (Appellant's App. Vol. II, pp. 8, 177). Later that day, Magistrate Weaver entered an Order granting the Motion to Dismiss and dismissing Plaintiff's claims against the Amazon Defendants with prejudice. *Id.* The March 13, 2023 Order provided no explanation of the basis or reasoning for granting the Motion to Dismiss. (Appellant's App. Vol. II, p. 177). On March 20, 2023, the Plaintiff filed her Amended Complaint and a Motion to Correct Error, asserting that Trial Rule 12(B) required the Trial Court's dismissal of the Plaintiff's claims against the Amazon Defendants to be *without* prejudice. (Appellant's App. Vol. II, pp. 8, 178-80). The Trial Court granted the Motion to Correct Error on March 23, 2023, modifying the March 20, 2023 order *nunc pro tunc* to clarify that the dismissal was without prejudice and deeming the Amended Complaint lawfully filed as a matter of right. (Appellant's App. Vol. II, pp. 8, 181).

On May 10, 2023, the Amazon Defendants filed a Trial Rule 12(C) Motion for Judgment on the Pleadings and Memorandum of Law in support thereof, arguing again that the allegations in the Amended Complaint did not establish a duty owed by the Amazon Defendants to Harvail, and further arguing that any alleged negligence by Amazon could not have proximately caused

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Harvail's death. (Appellant's App. Vol. II, pp. 10, 45-68). The Plaintiff filed her Response in Opposition to the Motion for Judgment on the Pleadings on May 26, 2023, again arguing that the Amended Complaint sufficiently alleged that Amazon had breached its well-settled duty to provide a safe means of ingress for Harvail as its business invitee under Indiana law and further arguing that Amazon had assumed a duty to direct incoming truck traffic by virtue of posting signs prohibiting trucks from using the first two entrances to its facility when arriving from the west. (Appellant's App. Vol. II, pp. 10, 69-95). The Amazon Defendants filed a Reply in Support of their Motion for Judgment on the Pleadings on June 9, 2023. (Appellant's App. Vol. II, pp. 10, 96-117).

On June 9, 2023, Defendant CF Mount Comfort DST ("Mount Comfort") filed a Brief in Support of its Motion for Judgment on the Pleadings, arguing that the allegations in the Amended Complaint did not establish a duty owed by Mount Comfort to Harvail. (Appellant's App. Vol. II, p. 11; Appellant's Supp. App. Vol. II, pp. 8-19). On June 14, 2023, Mount Comfort filed its Trial Rule 12(C) Motion for Judgment on the Pleadings. (Appellant's App. Vol. II, p. 12; Appellant's Supp. App. Vol. II, pp. 5-7).² The arguments presented in Mount Comfort's Motion for Judgment on the Pleadings and supporting Brief were essentially identical to those made by the Amazon Defendants in their Motion for Judgment on the Pleadings, with the exception that unlike the Amazon Defendants, Mount Comfort did not argue that it was entitled to judgment on the pleadings on the issue of proximate cause. (Appellant's Supp. App. Vol. II, pp. 5-19). The Plaintiff

² Although not relevant to any of the issues before the Court, the record is unclear as to why Mount Comfort's Motion for Judgment on the Pleadings was filed five days after the Brief in support of the same.

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased filed a Response in Opposition to Mount Comfort's Motion for Judgment on the Pleadings on June 21, 2023. (Appellant's App. Vol. II, p. 13; Appellant's Supp. App. Vol. II, pp. 20-31). Mount Comfort filed a Reply in Support of its Motion for Judgment on the Pleadings on June 30, 2023. (Appellant's App. Vol. II, p. 13; Appellant's Supp. App. Vol. II, pp. 32-36).

The Trial Court heard oral arguments on the Amazon Defendants' Motion for Judgment on the Pleadings on June 12, 2023, and took the matter under advisement. (Appellant's App. Vol. II, p. 11). On June 23, 2023, the Trial Court entered an Order granting the Amazon Defendants' Motion for Judgment on the Pleadings and finding that "the Amazon Defendants did not owe a duty under Indiana law." (Appellant's App. Vol. II, pp. 12, 18-21). The Plaintiff filed a Motion to Reconsider on June 30, 2023, and the Court denied said Motion on July 12, 2023. (Appellant's App. Vol. II, pp. 14, 118-23). On July 19, 2023, the Plaintiff filed a Motion to Certify the Trial Court's June 23, 2023 Order for Interlocutory Appeal, which the Trial Court denied via an Order issued August 4, 2023. (Appellant's App. Vol. II, pp. 14, 182-88). On August 10, 2023, the Plaintiff filed a Motion to Reconsider the Trial Court's denial of her Motion to Certify, which was joined by Defendants ICI Transport, LLC and William McPhearson on August 11, 2023. (Appellant's App. Vol. II, pp. 14-15, 189-95). On August 18, 2023, the Plaintiff filed a Request to Enter Final Judgment on the Trial Court's Order Granting the Amazon Defendants' Motion for Judgment on the Pleadings. (Appellant's App. Vol. II, pp. 15, 196-99). The Trial Court granted the Plaintiff's August 18, 2023 Request and entered final judgment on Amazon's Motion for Judgment on the Pleadings pursuant to Trial Rule 54(B) on August 28, 2023. (Appellant's App. Vol. II, pp. 16, 25). The Plaintiff filed her Notice of Appeal on September 5, 2023. (Appellant's App. Vol. II, p. 16).

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The Trial Court held a hearing and heard oral arguments on Mount Comfort's Motion for Judgment on the Pleadings on August 21, 2023. (Appellant's App. Vol. II, pp. 15-16). On October 17, 2023, the Trial Court granted Mount Comfort's Motion for Judgment on the Pleadings, expressly noting that "the same reasoning [as that by which it granted the Amazon Defendants' Motion for Judgment on the Pleadings] applies to Mount Comfort, the landowner." (Appellant's App. Vol. II, p. 16; Appellant's Supp. App. Vol. II, pp. 2-4).

III. Statement of Facts

Defendants Amazon, Inc.; Amazon.com, Inc.; Amazon Logistics, Inc.; and Amazon.com Services, LLC, MQJ1 (collectively, "Amazon" or the "Amazon Defendants") operate, maintain, control, and manage a fulfillment center known as "MQJ1" (hereinafter, the "Fulfillment Center") located at 4412 West County Road 300 North, in Greenfield, Indiana. (Appellant's App. Vol. II, pp. 27-28). Mount Comfort owns the Fulfillment Center. (Appellant's App. Vol. II, pp. 28-29). Drivers approaching the Fulfillment Center from the west encounter two main entrances to the Fulfillment Center along the north side of County Road 300 North before passing the Fulfillment Center altogether. (Appellant's App. Vol. II, pp. 29, 33, 37-38). Small signs indicating commercial trucks are not permitted to use these entrances were placed on Amazon's premises at both of these entrances. *Id.* At all relevant times prior to and including October 20, 2022, there was no signage posted at either of these two main entrances to inform incoming truck drivers as to where they were expected to enter the Fulfillment Center's premises. *Id.*

At least as early as September 2, 2022, Amazon had *actual knowledge* that the confusing layout and inadequate signage at its Fulfillment Center's entrances was routinely endangering arriving truck drivers by causing them to become confused and exit their trucks on County Road

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300 North immediately outside the fulfillment center's entrance. (Appellant's App. Vol. II, pp. 28-30, 33-36). Specifically, Amazon was aware that on September 2, 2022, Mahari Oukbu, a truck driver arriving to the Fulfillment Center to make a delivery of goods as a business invitee of Amazon, had been struck by a passing pickup truck and critically injured after becoming confused about how to enter the Fulfillment Center at the exact same location that Harvail was struck and killed. (Appellant's App. Vol. II, pp. 33-34). Mr. Oukbu had encountered the two entrances bearing no-truck signs. He exited his truck on County Road 300 North to try to discern how he was supposed to enter the Fulfillment Center, as Amazon had provided him with no person to contact for guidance. *Id.* Shortly after Mr. Oukbu was struck, an Amazon employee who had witnessed Mr. Oukbu's injuries told investigating police officers that **Amazon sees lost truck drivers get out of their trucks at that spot every day.** (Appellant's App. Vol. II, p. 35). Further, the driver who struck Mr. Oukbu told Greenfield Police that "you see these truck drivers all the time stopping and getting out here." (Appellant's App. Vol. II, p. 34). Mount Comfort likewise had actual or constructive knowledge of this dangerous condition. (Appellant's App. Vol. II, p. 17).

Despite having this actual knowledge that the confusing layout and signage at its Fulfillment Center was routinely endangering arriving truck drivers and had already caused one such arriving truck driver to be critically injured, *Amazon and Mount Comfort did absolutely nothing to remedy this known hazard.* (Appellant's App. Vol. II, pp. 35-36). Tragically, but unsurprisingly, this dangerous condition claimed another victim on October 20, 2022, when the Decedent in this action, Harvail Singh Dhillon (hereinafter, "Harvail" or "Decedent"), was struck and killed by a westbound fuel tanker truck after Harvail exited his truck *in the very same spot* where Mr. Oukbu was struck and critically injured just 48 days earlier. (Appellant's App. Vol. II,

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Harvail had arrived to Amazon's MQJ1 Fulfillment Center in his semi-tractor trailer in the pre-dawn darkness at approximately 6:40 a.m. to deliver a load of goods to the Fulfillment Center as an independent contractor for Amazon. (Appellant's App. Vol. II, p. 29). Just like Mr. Oukbu, Harvail was traveling from the west and parked his truck in the middle of County Road 300 North near the second entrance to the fulfillment center, which was marked with a no-truck sign. (Appellant's App. Vol. II, pp. 29-30, 37). Harvail had not been instructed on how to enter Amazon's facility and had only been given an address and time to deliver the goods. (Appellant's App. Vol. II, pp. 29-30). Harvail exited his truck, presumably to try to determine how to enter Amazon's facility,³ and was struck and killed by a passing vehicle in the exact same spot Mahari had been struck 48 days earlier. (Appellant's App. Vol. II, pp. 29-30, 33).

Amazon and Mount Comfort had adequate means to improve the visibility and clarity of the signage at the entrances to the MQJ1 Fulfillment Center when they first learned that truck drivers were becoming confused and stopping and exiting their trucks in the road outside the fulfillment center long before Harvail's death but failed to do so until after they learned of Harvail's death. (Appellant's App. Vol. II, pp. 37, 39).

³ While the Amended Complaint does not expressly state that the reason Harvail exited his vehicle was to try to determine how to enter Amazon's facility, such an inference is reasonable based on the totality of the circumstances alleged in the Amended Complaint, and the Trial Court was therefore required to draw that inference when considering Amazon's Motion for Judgment on the Pleadings. *See, e.g., Veolia Water Indianapolis, LLC v. Nat'l Tr. Ins. Co.*, 3 N.E.3d 1, 5 (Ind. 2014) (A court considering a motion for judgment on the pleadings "should not only consider the pleadings in the light most favorable to the plaintiff, but also draw every reasonable inference in favor of the non-moving party.").

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IV. Summary of Argument

More than a month before Harvail Singh Dhillon was killed while attempting to enter Amazon's Fulfillment Center to make a delivery, Amazon and Mount Comfort had actual and constructive knowledge that the confusing layout and signage at the entrance to the Fulfillment Center was causing arriving delivery truck drivers to become confused and exit their trucks onto County Road 300 North *every day*. Indiana law recognizes a duty owed by a business to exercise reasonable care to protect invitees even beyond the boundaries of its premises where the business' use of its own premises creates a danger to those outside the premises, and where the business is aware that its invitees customarily use the areas outside the premises in connection with the invitation. *See Ember v. B.F.D., Inc.*, 490 N.E.2d 764, 772-73 (Ind. Ct. App. 1986) and *Lutheran Hosp. v. Blaser*, 634 N.E.2d 864, 868-73 (Ind. Ct. App. 1994).

Although the Trial Court based its judgment on *Precedent Partners v. Hulen*, 863 N.E.2d 328, 332-33 (Ind. Ct. App. 2007), that case is inapplicable to the facts alleged in the Amended Complaint here. There was no connection between the defendants' conduct or use of their premises and the plaintiff's injuries in *Precedent Partners*. Conversely, in this case, the dangerous condition that foreseeably resulted in Harvail's death was directly created by Amazon's use of its premises, and Amazon had actual knowledge of both the dangerous condition and the daily endangerment of its business invitees as a result thereof. Mount Comfort also had actual or constructive knowledge of the dangerous condition and the resulting daily endangerment of invitees arriving to the premises.

Further, by placing "no-truck" signs on its premises at the first two entrances to its fulfillment center when approaching from the west, Amazon and Mount Comfort assumed a duty

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The Judgments on the Pleadings below were reached without properly drawing all reasonable inferences in favor of Harvail's estate as required under Trial Rule 12(C), and instead relied improperly on inconsistent alternative allegations in the Amended Complaint to refute the allegations against Amazon and Mount Comfort. These fundamental errors require reversal of the Judgment on the Pleadings below and remand to the Trial Court for further proceedings.

V. Argument

A. Standard of Review

Indiana appellate courts review a trial court's ruling on an Indiana Trial Rule 12(C) motion *de novo*, accepting as true the material facts alleged in the Complaint and basing the ruling solely on the pleadings. *Veolia Water Indianapolis, LLC v. Nat'l Tr. Ins. Co.*, 3 N.E.3d 1, 5 (Ind. 2014). Judgment on the pleadings under Trial Rule 12(C) may only be granted or affirmed "where it is clear from the face of the complaint that ***under no circumstances could relief be granted.***" *Id* (emphasis added). Where, as in this case, "a Trial Rule 12(C) motion for judgment on the pleadings essentially argues that the complaint fails to state a claim upon which relief can be granted, [appellate courts] treat it as a Trial Rule 12(B)(6) motion." *Reo Holdings Series 3 v. Trowbridge*, 184 N.E.3d 718 (Ind. Ct. App. 2022). As such, the Court "should not only consider the pleadings in the light most favorable to the plaintiff, but also draw ***every reasonable inference*** in favor of

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased the non-moving party.” *Veolia Water Indianapolis*, 3 N.E.3d at 5 (emphasis added). By this standard, a motion for judgment on the pleadings may be granted *only* if it is apparent that the facts alleged in the complaint are incapable of supporting relief *under any set of circumstances*. *Id.*, citing *Town of Plainfield v. Town of Avon*, 757 N.E.2d 705, 709-710 (Ind. Ct. App. 2001). Stated differently, a motion for judgment on the pleadings must be denied if the Complaint states “any allegations whatsoever upon which relief could have been granted.” *Mart v. Hess*, 703 N.E.2d 190, 193 (Ind. Ct. App. 1998), citing *Barth Electric Co. v. Traylor Bros., Inc.*, 553 N.E.2d 504, 505-506 (Ind. Ct. App. 1990).

It is axiomatic that the principles of notice pleading are utilized in Indiana. *See Grzan v. Charter Hosp. of N.W. Ind.*, 702 N.E.2d 786, 793 (Ind. Ct. App. 1998). Ind. Trial Rule 8(F) provides that “all pleadings shall be so construed as to do substantial justice, lead to disposition on the merits, and avoid litigation of procedural points.” *Id.* at 794. Notice pleading is designed to “discourage battles over mere form of statement that have occurred either to delay trial on the merits or to prevent a party from having a trial because of mistakes in statement.” *Id.*, citing *Miller v. Memorial Hosp. of South Bend*, 679 N.E.2d 1329, 1332 (Ind. 1997). Under Indiana’s notice pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case. *ARC Const. Mgmt., LLC v. Zelenak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012); *see also Miller*, 679 N.E.2d at 1332 (emphasis added). Instead, a plaintiff “essentially need only plead the operative facts involved in the litigation.” *See Miller*, 679 N.E.2d at 1332 citing *State v. Rankin*, 294 N.E.2d 604, 606 (Ind. 1973).

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B. Amazon owed a duty to protect its invitees from foreseeable harm arising from the dangerous condition it created, even before those invitees entered its premises.

It is well settled under Indiana law that an invitor owes its business invitees a duty of reasonable care to provide a safe and suitable means of ingress and egress to its business premises. *See, e.g., Lutheran Hosp. v. Blaser*, 634 N.E.2d 864, 869 (Ind. Ct. App. 1994) (“an invitor’s duty to exercise reasonable care includes a duty to provide a safe and suitable means of ingress and egress, and may extend to warning of or protection from a danger that originates from third persons.”). This duty is not limited to invitees on the premises but extends to invitees who are not yet on the premises if such invitees may nonetheless be endangered by conditions on the premises. *See Ember v. B.F.D., Inc.*, 490 N.E.2d 764, 772 (Ind. Ct. App. 1986) (“when the activities conducted on the business premises affect the risk of injury off the premises, the landowner may be under a duty to correct the condition or guard against foreseeable injuries.”). Further, “the owner of land adjacent to a highway owes the duty to the traveling public to prevent injury to travelers upon the highway from any unreasonable risks created by the property’s dangerous condition which the landowner knew or should have known about.” *Holiday Rambler Corp. v. Gessinger*, 541 N.E.2d 559, 562 (Ind. Ct. App. 1989).

In this case, Amazon owed all these duties to Harvail, an independent contractor invited to Amazon’s Greenfield fulfillment center. The Amended Complaint properly asserts allegations which, when taken as true as required on a Rule 12(C) motion, more than adequately support the inference that Amazon breached these duties and thereby proximately caused Harvail’s death. Specifically, the Plaintiff alleges that Amazon’s confusing and defective signage and lack of lighting on its premises created a dangerous condition that Amazon *knew* was causing confused

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased truck driver invitees traveling from the west to stop and get out of their trucks in the middle of the road at or near the spot where Harvail was killed *every day*. (Appellant's App. Vol. II, pp. 35-38). Further, Despite Amazon's *actual knowledge* of this dangerous condition created by the confusing and defective signage and lack of lighting on its property, Amazon failed to warn its invitees of this latent peril. *Id.*

The facts of *Lutheran Hospital* are particularly instructive in this case. In *Lutheran Hospital*, the defendant hospital had actual or constructive knowledge that pedestrian invitees were regularly crossing the street mid-block instead of at a marked crosswalk to reach the hospital, and walking through a public right-of-way marked "exit" to travel between their cars and the hospital. 634 N.E.2d at 869-70. The pedestrians were doing so because the layout and signage at the hospital's entrance and parking lot were inadequate and confusing, such that "visual cues draw pedestrians to cross mid-block at the circular drive." *Id.* The hospital also knew or should have known that each night, three or four cars mistakenly turned into the "exit" right-of-way, while others began to do so before realizing their mistake and changing course. *Id.* This was also the result of the hospital's confusing layout and signage:

To approaching vehicles on Fairfield Avenue, this sign, the driveway and guardhouse appear as part of the parking lot's entrance. However, the Fairfield Avenue "entrance" is for delivery trucks only, and is an "exit" for automobiles. An automobile driver cannot tell that this is an "exit" until he is alongside it or starting to turn into the driveway.

Id. When Joy Blaser, a pedestrian invitee of the hospital, was struck by a car and injured while she was outside the hospital's premises and attempting to enter the hospital via the *public right of way* serving as the "exit," this Court held that Lutheran Hospital owed her a duty of care to protect her from precisely such an incident:

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From this evidence, the factfinder could infer that automobiles were turning into the “exit” driveway of the parking lot with the mistaken idea that it was an entrance, and pedestrians were crossing mid-block on Fairfield Avenue and walking into the “exit” driveway towards their cars. This funnelling of pedestrian and vehicular traffic into the drive way of the parking lot created a dangerous condition that Lutheran was either cognizant of or should have reasonably foreseen. The accident which occurred, that is, Blaser struck from behind by an automobile turning into the parking lot “exit” while she was walking on its drive way, was precisely the result of the dangerous condition which Lutheran should have foreseen. Thus, this accident was sufficiently foreseeable to require Lutheran to protect its invitees from such an unfortunate mishap.

Id.

The Plaintiff’s allegations in the Amended Complaint in this case paint a nearly identical picture. Just like Lutheran Hospital, Amazon knew or should have known that drivers approaching to enter its premises were becoming confused and were unable to tell that what appeared to be an entrance was actually an exit until they were right next to it. (Appellant’s App. Vol. II, pp. 33-36). Further, just as Lutheran Hospital’s confusing visual cues drew pedestrians to enter through the “exit” right of way, Amazon’s confusing layout and signage drew arriving truck drivers to exit their trucks “in hopes of learning where and how to enter this fulfillment center.” (Appellant’s App. Vol. II, pp. 35-36). Finally, even more so than Ms. Blaser’s injuries, Harvail’s death was entirely foreseeable to Amazon, as another delivery driver had been struck and nearly killed at the *exact same spot* in the *exact same manner* less than two months earlier. (Appellant’s App. Vol. II, pp. 33-34).

This Court in *Ember* further explained the rule that an owner or occupier of land owes a duty to those in “adjoining areas which harbor a dangerous condition created by the owner's special benefit or use of such areas.” 490 N.E.2d at 773. Citing cases from other jurisdictions extending liability beyond a business’ premises under such circumstances, this Court explained that “[i]f

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these cases severed liability at the business' front door, a business invitor could invade the public streets for its economic benefit while simultaneously absolving itself from liability otherwise imposed just a few feet away under identical circumstances." *Id.* By the same token, because Amazon knew its truck driver invitees were routinely exiting their vehicles on the road immediately outside the entrance to its facility due to the confusing layout and signage preventing them from entering the facility, it cannot escape liability based solely on the fact that Harvail was killed on the road a few feet beyond the boundaries of Amazon's premises.

The Trial Court nonetheless distinguished *Lutheran Hospital*, holding that:

In *Lutheran Hospital*, the hospital's use of their premises proximately caused the plaintiffs' injuries. The hospital had allowed pedestrians and automobiles to use the "exit" driveway of its parking lot as an entrance without adequate safeguards or warnings. There are no such allegations in the case here.

(Appellant's App. Vol. II, p. 21). However, this Court in *Lutheran Hospital* held that

'A duty of reasonable care may be extended beyond the business premises when it is reasonable for invitees to believe that the invitor controls premises adjacent to his own **or where the invitor knows his invitees customarily use such adjacent premises in connection with the invitation.**' . . . Because Lutheran knew the manner in which its invitees, both pedestrians and drivers, customarily used the driveway of the "exit" in connection with its invitation, it is under a duty to correct the dangerous conditions and guard against foreseeable injuries.

634 N.E.2d at 870 (citing *Ember*, 490 N.E.2d at 772) (emphasis added). In other words, Lutheran Hospital owed a duty because it knew pedestrians and drivers were using the exit driveway as an entrance to the parking lot and failed to rectify the confusing layout and signage that had led them to do so – not because it affirmatively allowed them to do so.⁴ By the same token, the Amended

⁴ Amazon has repeatedly argued that the duty recognized in *Lutheran Hospital* was based on the hospital's alleged control over the area beyond its premises where Ms. Blaser was injured. As the above-quoted language shows, the duty arose not from any alleged control, but from the hospital's

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Complaint alleges that Amazon knew incoming delivery drivers were exiting their trucks on County Road 300 North when attempting to enter its fulfillment center, yet failed to rectify the confusing layout and signage that led them to do so. As such, the allegations in the Amended Complaint support a finding of the same duty that this Court recognized under the nearly identical factual circumstances of *Lutheran Hospital*.

C. *Precedent Partners v. Hulen* is inapplicable because Amazon’s affirmative negligent conduct and control over the actions of its invitees created a known danger that foreseeably resulted in Harvail’s death.

Rather than follow this Court’s holding in *Lutheran Hospital*, the Trial Court incorrectly analogized this case to *Precedent Partners v. Hulen*, 863 N.E.2d 328, 332-33 (Ind. Ct. App. 2007), a case which is neither factually nor procedurally akin to this one. (Appellant’s App. Vol. II, p. 19-21). In *Precedent Partners*, a young girl was riding her bicycle through a newly developed subdivision, when she was struck by a pickup truck driven by a contractor who had been performing work on one of the homes in the subdivision. The girl’s parents sued the subdivision’s developer and homeowners’ association, asserting that they were negligent because “(1) the median impeded motorist’s views of the roadway; (2) the defendants failed to construct a separate entrance for ‘construction traffic;’ and (3) the defendants failed to erect signs warning of ‘construction traffic.’” 863 N.E.2d at 330-31. After both sides were allowed to engage in discovery, this Court held there was no evidence a hazardous condition existed or that the injuries were caused by the landowner’s conduct or any hazard on its premises. *Id.* at 332-33. The designated evidence showed nothing unusual or dangerous. *Id.* There was no connection between

knowledge that its invitees were customarily using the off-premises exit drive in a way that endangered pedestrians like Ms. Blaser.

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased the pickup truck driver and the HOA or Precedent Partners. *Id.* The injured girl was not an invitee of the defendants. *Id.* In short, there was no causal connection between the HOA or Precedent Partners and the girl's injuries, nor was there any foreseeable danger against which the HOA or Precedent Partners were required to protect the girl. *Id.* Ultimately, based on these facts, this Court found that summary judgment for the defendants in *Precedent Partners* was proper because the plaintiff "*failed to establish that Precedent . . . caused, created, or had notice of an allegedly dangerous or hazardous condition.*" *Id.* at 333 (emphasis added). The injured girl was not an invitee of either defendant, and "[t]he designated evidence [did] not show that anything Precedent or the Association did on the property they owned or over which they had any control created a hazardous condition that caused the accident." *Id.* at 332.

That is not the case here. Specifically, the Amended Complaint alleges that Amazon's confusing and defective signage and lack of lighting on its premises created a dangerous condition that Amazon *knew* was endangering its truck driver invitees *every day*. (Appellant's App. Vol. II, pp. 35-38). Further, the Amended Complaint notes that Harvail's death was entirely foreseeable to Amazon, as another delivery driver had been struck and nearly killed at the *exact same spot* in the *exact same manner* less than two months earlier. (Appellant's App. Vol. II, pp. 33-34). In short, the Amended Complaint alleges that Amazon created a dangerous condition that foreseeably resulted in Harvail's death, precisely the types of causal connections and foreseeable dangers that were lacking in *Precedent Partners*.

In *Precedent Partners*, this Court found that "The law does not impose a duty on a business to guard against injury to the public from the negligent **acts of someone over whom the business has no control** and which injury occurs off the business premises." 863 N.E.2d at 330-31 (citing

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Snyder Elevators, Inc. v. Baker, 529 N.E.2d 855, 859 (Ind. Ct. App. 1988) (emphasis added).

“Precedent and Meadows did not have control over the intersection sufficient to impose a duty under premises liability.” *Id* at 331. In the present case, the allegations of the Amended Complaint and the reasonable inferences to be drawn therefrom show that Amazon did in fact exercise control over truck drivers arriving to its premises on County Road 300 North by virtue of its no-truck signs that prevented eastbound truck drivers from turning left to enter its premises at the first two entrances.

Further, unlike in *Precedent Partners*, where the Court found that “Neither Precedent Partners nor the Association was accountable for the conduct of Guardado (defendant driver) and neither controlled the premises where the accident occurred,” the same cannot be said for this case. The Amended Complaint alleges that Amazon’s signage was placed specifically to affect the conduct of travelers on the roadway. The Amended Complaint further alleges that the signage directly influenced the conduct of Harvail, who otherwise would not have exited his truck but for the confusing nature of the signage. (Appellant’s App. Vol. II, p. 37).

Because the Plaintiff in this case alleged that Amazon created and had actual knowledge of a hazardous condition at the entrance to its fulfillment center, and further had actual knowledge that its invitees were customarily using the area immediately outside its premises in a way that foreseeably exposed them to these dangers, *Precedent Partners* is inapplicable. The outcome of Amazon’s motion should instead be governed by *Ember*, *Lutheran Hospital*, and *Holiday Rambler*, each of which held that a landowner who creates and/or has knowledge of a dangerous condition owes a duty to warn or protect those who might be injured by that dangerous condition, regardless of whether the injury might occur on or off the defendant’s premises.

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D. Amazon gratuitously assumed and breached a duty of care by its use of improper and incomplete signage to direct truck driver invitees, like Harvail, on where to enter the premises to deliver goods.

In addition to the duty that arises where the use of a defendant's property creates a danger to those off the premises, "Indiana recognizes the gratuitous assumption of duty by one who, through affirmative conduct or agreement, assumes and undertakes a duty to act." *Ember*, 490 N.E.2d at 766 (holding pub gratuitously assumed a duty to patrons off-premises by patrolling surrounding areas and circulating flyers to call the pub about off-premises disturbances). Such affirmative conduct creates the requisite special relationship between the parties and the corresponding duty to act in the manner of a reasonably prudent person. *Id.* The question of whether a defendant's conduct was sufficient to assume a duty of care is a question for a jury, not one to be disposed of before discovery can even be commenced. *Id.* ("the actor's affirmative conduct and representations must be evaluated by a jury to determine whether a duty was gratuitously assumed.").

In *Arnold v. F.J. Hab, Inc.*, 745 N.E.2d 912, 915 (Ind. Ct. App. 2001), a patron of a nightclub was injured on a public sidewalk outside the nightclub when she was struck by a car exiting the nightclub's parking lot across the street. 745 N.E.2d at 913. While the nightclub did not direct patrons to specific parking spaces and its security officer testified that the nightclub "did not conduct any traffic control, per se," the nightclub's staff did advise drivers not to park inside the throughway of the parking lot or block the entrances and exits of the parking lot. *Id.* This Court held that this was sufficient to present a question for the jury as to whether the nightclub had assumed a duty of care to control the parking lot traffic for the protection of its patrons, and reversed the trial court's summary judgment order on the plaintiff's theory of assumed duty. 745

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased N.E.2d at 916.

Like the nightclub in *Arnold*, Amazon, by virtue of its “no-truck” signs, instructed invitees as to where they were not permitted to enter its facility. By doing so, Amazon assumed a duty to exercise reasonable care in directing incoming truck traffic arriving to its facility. As was the case in *Arnold*, the existence and extent of this duty is a question for the jury, not for judgment as a matter of law by the Court. *Id.* at 915-16 (“the existence and extent of such duty are ordinarily questions for the trier of fact”). These allegations in the Amended Complaint properly allege the assumption and breach of a gratuitous duty to properly guide truck drivers Amazon invited onto its premises.

E. The Trial Court failed to draw reasonable inferences in the Plaintiff’s favor.

In its June 23, 2023 Order granting Amazon’s Motion for Judgment on the Pleadings, the Trial Court stated that the Amended Complaint contained “no allegations that the Decedent ever entered Amazon’s premises or even attempted to enter the premises.” (Appellant’s App. Vol. II, p. 19). However, the Amended Complaint includes allegations that Harvail, on the date of his death, was contracted by Defendant, Amazon Inc., to drop off products and goods at the Amazon fulfillment center and provided the address, that Harvail was traveling to Amazon’s facility, hauling a load of property to be delivered to Amazon’s fulfillment center, when he stopped and exited his truck immediately outside the second entrance to Amazon’s facility after encountering a no-truck sign posted at both entrances. (Appellant’s App. Vol. II, pp. 27, 29-30, 33, 39). While these allegations certainly support a reasonable inference that the Decedent was attempting to enter Amazon’s premises at the time he was struck and killed, the Trial Court offered no explanation as

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased to why it did not draw such an inference as required on a Motion for Judgment on the Pleadings. *See Veolia Water Indianapolis*, 3 N.E.3d at 5 (trial court evaluating Rule 12(C) motion must “not only consider the pleadings in the light most favorable to the plaintiff, but also draw *every reasonable inference* in favor of the non-moving party.”).

Further, the Trial Court stated in its June 23, 2023 Order that the “Decedent, however, decided to park his semi-tractor trailer **beside** the public highway, County Road West 300 North.” (emphasis added). To the contrary, the Amended Complaint alleges that the Decedent “stopped his semi-tractor trailer, **on** County Road 300 North.” (Appellant’s App. Vol. II, p. 29) (emphasis added). This distinction is significant, as Harvail may have had an opportunity to safely exit his truck if there had been an opportunity for him to pull off to the side of the road. Instead, as alleged in the First Amended Complaint, Harvail was essentially stranded in the middle of County Road 300 North without the ability to perform a U-turn.

Because the Trial Court failed to draw all of these reasonable inferences in favor of the non-moving party, its Order granting Amazon’s Motion for Judgment on the Pleadings must be reversed.

F. The Judgment erroneously relied on inconsistent alternative allegations in the Amended Complaint instead of drawing all reasonable inferences in favor of the Plaintiff.

In explaining its decision to hold that Amazon owed no duty to Harvail, the Trial Court asserted that “Amazon had no duty to guard against injury to the Decedent from the negligent acts of someone over whom Amazon had no control and when the injury occurred off Amazon’s premises.” (Appellant’s App. Vol. II, p. 21). However, this improperly assumes that William McPherson, the driver who struck the Decedent, was negligent. While the Plaintiff alleged that

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Mr. McPherson was negligent in her Amended Complaint, this does not foreclose the possibility that Mr. McPherson was exercising all due care and was nonetheless unable to avoid striking the Decedent after Amazon's negligence caused him to become stranded in the roadway. *See Scott County Family YMCA, Inc. v. Hobbs*, 817 N.E.2d 603, 606 (Ind. Ct. App. 2004) (noting that "the Indiana Rules of Trial Procedure contemplate and authorize inconsistent, alternative claims").

An alternative allegation against one defendant cannot serve to defeat an inconsistent alternative allegation against another defendant. *Id.* Thus, in ruling on Amazon's motion, the Trial Court was required to presume that Mr. McPherson was *not* negligent. *Id.*; *see also Veolia Water Indianapolis, LLC*, 3 N.E.3d at 5 (noting that a court considering a motion for judgment on the pleadings "should not only consider the pleadings in the light most favorable to the plaintiff, but also draw every reasonable inference in favor of the non-moving party."). To hold otherwise would doom claims against multiple defendants under Indiana's Comparative Fault Act, as each defendant could simply claim that the allegations against the other defendants relieve it of liability.

In reality, the allegations in the Amended Complaint demonstrate that these invited, confused truck drivers and westbound motorists were foreseeably brought together by the acts of Amazon, not by sheer happenstance or the negligence (if any) of westbound motorists alone. This Court addressed and rejected a similar argument by the defendant in *Lutheran Hospital*, holding that:

the evidence is not that an automobile acting in an unusual or extraordinary manner hit Blaser, but rather, that an automobile turned into the driveway of the "exit" just like other vehicles did each day and hit a pedestrian who crossed mid-block and walked onto the driveway of the "exit," just as pedestrians did each day. The occurrence was in the ordinary and normal course of events, an incident to the ordinary operation of an automobile, and thus, not [unforeseeable].

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Lutheran Hospital, 634 N.E.2d at 870. Because Amazon created conditions which it knew led its invitee truck drivers to exit their trucks onto County Road 300 North *every day*, its argument likewise must fail.

G. As the owner of the Fulfillment Center, Mount Comfort owed Harvail the same duty as Amazon did.

All of the above-referenced allegations and arguments establishing a duty owed to Harvail by Amazon apply equally to Mount Comfort, as the owner of the Fulfillment Center. Mount Comfort's Motion for Judgment on the Pleadings relied on the same arguments made by Amazon, and the Trial Court expressly noted that it was granting Mount Comfort's motion for the same reasons it granted Amazon's Motion for Judgment on the Pleadings. (Appellant's Supp. App. Vol. II, pp. 2-4). The Amended Complaint sets forth a count against Mount Comfort incorporating by reference each and every allegation against Amazon, and alleges that Mount Comfort, by and through its contractors, agents, and employees, created the hazardous condition, knew or should have known of the existence of the hazardous, and nonetheless failed to remedy the hazardous condition or warn Harvail of the hazard. (Appellant's App. Vol. II, pp. 41-42). For the purposes of this appeal, the analysis of Mount Comfort's duty is identical to the analysis of Amazon's duty.

It is of course possible that Mount Comfort's knowledge of the hazardous condition may differ from Amazon's knowledge. However, because this action has not yet reached the discovery stage, it is not yet possible to determine the precise extent of Mount Comfort's knowledge (or Amazon's knowledge for that matter). For this reason, the Court must presume for the purpose of this appeal and the Motions for Judgment on the Pleadings that Mount Comfort also had actual knowledge of the hazardous condition. *See Veolia Water Indianapolis, LLC*, 3 N.E.3d at 5 (noting

Amended Consolidated Brief of Appellant, Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased that a court considering a motion for judgment on the pleadings “should not only consider the pleadings in the light most favorable to the plaintiff, but also draw every reasonable inference in favor of the non-moving party.”). Accordingly, the Amended Complaint properly asserts allegations establishing that Mount Comfort owed a duty to Harvail.

VI. Conclusion

For the reasons stated herein, Appellant Harjit Kaur, individually and as the Special Administrator of the Estate of Harvail Singh Dhillon, respectfully requests that this Court reverse the Trial Court’s entries of judgment on the pleadings for the Amazon Defendants and Mount Comfort, and remand this matter to the Trial Court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to Rules 24 and 68(F) of the Indiana Rules of Appellate Procedure, a copy of the foregoing has been served via E-Service through the Indiana E-Filing System, on February 19, 2024, to:

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