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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,	)	APPEAL FROM THE HAMILTON SUPERIOR COURT NO. 4
Appellant/Plaintiff,	)	Trial Court Cause No. 29D04-2212-CT-010006
v.	)	
AMAZON, INC., et al,	)	
Appellees/Defendants.	)	The Honorable J. Richard Campbell, Presiding Judge

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BRIEF OF APPELLEES AMAZON LOGISTICS, INC., AMAZON, INC., AMAZON.COM, INC., and AMAZON.COM SERVICES, LLC, MQJI

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I. STATEMENT OF ISSUES

In the pre-dawn morning hours of October 20, 2022, Harvail Singh Dhillon ("Dhillon"), a tractor-trailer driver, approached an Amazon fulfillment center located in Greenfield, Indiana, to make a delivery. He stopped his truck in the middle of the county road in front of the Amazon facility, exited the cab, started walking across the road, and within seconds was struck and killed by an oncoming motorist. Appellant Harjit Kaur, individually and on behalf of Dhillon's estate (the "Estate"), sued the motorist, the motorist's employer, Amazon, and the landowner in Hamilton Superior Court. The trial court granted Amazon's motion for judgment on the pleadings, finding that Amazon owed no duty to Dhillon under the facts alleged as a matter of law. The Estate now appeals.

The specific issue raised on appeal is: Whether the trial court correctly determined the Estate's Amended Complaint fails to state an actionable claim against Amazon because Amazon owed no duty to control traffic, issue warnings, or take other action to protect Dhillon from being struck by a third-party motorist after he parked his tractor trailer in the middle of a public roadway in front of the Amazon fulfillment center.

II. STATEMENT OF THE CASE

On December 21, 2021, the Estate filed this negligence action against the Amazon Defendants and others. (App. 2: 131).[1] Shortly thereafter, Amazon moved to dismiss the complaint under Trial Rule 12(B)(6). (App. 2: 143). That motion was ultimately granted after the trial court found no duty (App. 2: 177) and, in March 2023, after receiving leave from the trial court, the Estate amended its complaint (App. 2: 26).

[1] Citations to the Appellant's Appendix are in the following format: (App. "volume number": "page number(s)"). Citations to the Appendix of Appellees appear as: (Appellees' App. "volume number": "page number(s)"). Citations to the Transcript are in the same format.

The Amended Complaint alleges Dhillon was an invitee to whom Amazon owed a duty of reasonable care, which Amazon breached because the lighting and signage for delivery drivers at the fulfillment center created a dangerous condition beyond the premises (*i.e.*, a risk that confused delivery drivers would stop on or near the adjacent public road, exit their vehicles, and be struck by third-party motorists). (App. 2: 33–41). Specifically, the Estate speculates that Amazon's signage was confusing, as the first two entrances to the fulfillment center had "no truck" signs with "insufficient illumination" and no sign directing incoming truck drivers to the appropriate entrance. (App. 2: 37, ¶ 59).

Amazon answered the Amended Complaint in April 2023. (Appellees' App. 2: 2). Attached to the Answer were two exhibits—surveillance video of the accident and a publicly available map depicting the accident location. (Appellees' App. 2: 38–40). On May 10, 2023, Amazon moved for judgment on the pleadings, arguing it owed no duty to Dhillon. (App. 2: 45–68). The Estate responded (App. 2: 69), and Amazon replied (App. 2: 96). On June 12, 2023, the trial court heard oral argument. (Tr. 2: 2).

In a thorough and well-reasoned opinion, the trial court granted Amazon's motion on June 23, 2023 (App. 2: 18), and denied the Estate's subsequent motion to reconsider on July 12, 2023 (App. 2: 22). On July 19, 2023, the Estate moved the trial court to certify its June 23 order for interlocutory appeal and stay proceedings in the interim. (App. 2: 182). The trial court denied that motion on August 4, 2023. (App. 2: 23). On August 18, 2023, the Estate moved the court to enter final judgment pursuant to Trial Rule 54(B). (App. 2: 196). The Estate's motion to enter final

judgment was granted on August 28, 2023. (App. 2: 25). The Estate filed its Notice of Appeal on September 5, 2023.[2] (*See* App. 2: 16).

III. STATEMENT OF FACTS

Amazon operates a fulfillment center located in Greenfield, Indiana. (App. 2: 28). The fulfillment center has three entrances accessible from the adjacent public roadway, County Road 300. (Appellees' App. 2: 39). When approaching from the west, a delivery driver passes the first two entrances that are for cars only (marked with "no truck" signs) before arriving at the tractor-trailer entrance. (Appellees' App. 2: 39). The following aerial Google Maps image of the Amazon facility and County Road 300 depicts the site.[3] (Appellees' App. 2: 39). West is left of the facility and east is right, so a driver approaching the facility from west to east would traverse from the left side of the image to the right along County Road 300.

[2] In October 2023, the trial court also granted judgment on the pleadings in favor of co-defendant Mount Comfort DST, the owner of the property on which the fulfillment center is located. (Supp. App. 2: 2–4). That order was the subject of a separate appeal which this Court then consolidated with this appeal.

[3] Courts may and do take judicial notice of publicly available maps, including Google Maps. *See, e.g.*, *Page v. State*, 395 N.E.2d 235, 237 (Ind. 1979) (noting that courts may take judicial notice of facts of geography), *overruled on other grounds* by *Rhyne v. State*, 446 N.E.2d 970 (Ind. 1983); *Cloe v. City of Indianapolis*¸712 F.3d 1171, 1177 (7th Cir. 2013) ("We have taken judicial notice of—and drawn our distance estimates from—images available on Google Maps, a source whose accuracy cannot reasonably be questioned, at least for the purpose of determining general distances." (citations omitted)).

Starting on the far left of the image (west) and moving right (east), the first entrance into the facility off of County Road 300 (just left of the facility) is marked with "No Trucks" signage. (App. 2: 37). Continuing to the right (west to east), the second entrance into the facility (just to the right of the facility) is also marked with "No Trucks" signage. (App. 2: 37). Drivers need only continue to the right (west to east) to reach the third entrance into the facility, which is the truck entrance (just to the right of the parking lot). (Appellees' App. 2: 39).

On October 20, 2022, Dhillon, an independent contractor, was en route to deliver goods to the Greenfield fulfillment center.[4] (App. 2: 27, 29). Dhillon approached from the west, passed the first entrance, then stopped and parked his tractor trailer on the county roadway near the second

[4] The Estate also alleges that about forty-five days before this incident, a non-party delivery driver stopped his vehicle on County Road 300 and was struck by a third-party motorist while crossing the public roadway. (App. 2: 33).

entrance. (App. 2: 29–30). Dhillon's parked truck is shown in the following facility surveillance footage image. (Appellees' App. 2: 38, 40).

Dhillon turned his headlights on, activated his left turn signal, exited his truck and, within seconds, was struck and killed on the roadway by a fuel tanker operated by William McPhearson, an employee of I.C.I. Transport, LLC. (App. 2: 29–30; Appellees' App. 2: 38, 40). There is no allegation that McPhearson had any relationship with Amazon or was coming to or from the Amazon fulfillment center. The Estate alleges McPhearson was negligent, and he and I.C.I. are defendants in the lawsuit below. (App. 2: 29–30). It is undisputed that Dhillon and his vehicle never physically entered any driveway at the fulfillment center and that the accident occurred entirely on the public roadway. Dhillon never entered the Amazon premises at all. (App. 2: 29, 42).

Dhillon's Estate initiated this negligence action in December 2022, alleging that Amazon owed Dhillon, an invitee, a duty of reasonable care that was breached by Amazon's failure to provide adequate lighting and signage to guide delivery drivers to the facility. (App. 2: 131–42). Following the entry of judgment on the pleadings in favor of Amazon, the Estate now appeals. (*See* App. 2: 18).

IV. SUMMARY OF ARGUMENT

The Court should affirm the trial court's judgment that Amazon owed no duty to Dhillon. The Estate argues Amazon owed Dhillon a duty of reasonable care because he was a business invitee. While a land possessor owes its invitees a duty of reasonable care, that duty only triggers when the alleged invitee is on the premises. Dhillon indisputably never entered the fulfillment center premises and the accident occurred on a public roadway. Amazon, therefore, never owed Dhillon a duty as an invitee as a matter of law. The Estate alternatively argues Amazon owed a duty to Dhillon as the possessor land adjacent to the highway on which Dhillon was traveling. The Indiana Supreme Court's recent decision in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031 (Ind. 2021), bars the Estate's claim as a matter of law. *Reece*'s "bright-line" rule holds that "[l]andowners owe a duty to passing motorists on adjacent highways not to create hazardous conditions that visit themselves upon the roadway; but when a land use or condition that may impose a visual obstruction is **wholly contained on a landowner's property, there is no duty to the traveling public**." *Id.* at 1034 (emphasis added). This rule provides "the correct approach for conditions that do not intrude on the public right-of-way." *Id.* at 1040.

The hazardous condition alleged by the Estate is the "No Trucks" signage and lighting on Amazon's premises. The Estate's Amended Complaint does not allege that the signage and lighting visited itself or intruded upon the county road. On the contrary, the Amended Complaint specifically alleges that the signage and lighting were contained entirely on Amazon's premises and, thus, specifically alleges that the signage and lighting ***did not*** intrude upon the roadway. The Estate's claim, therefore, falls on the wrong side of *Reece*'s bright-line rule and the trial court correctly found Amazon owed no duty as a matter of law. Nor has the Estate alleged affirmative acts by Amazon sufficient to create an assumed duty under Indiana law.

While the circumstances of this case are certainly tragic, the law this Court must apply is clear. Amazon created no hazardous condition on the public roadway itself, and even accepting as true the Estate's allegations, any hazardous condition (*i.e.*, allegedly inadequate signage and lighting) was contained wholly within the fulfillment center premises. Amazon owed and undertook no duty to Dhillon or the traveling public on County Road 300. The Estate's claims, therefore, fail and the trial court's decision was correct.

V. ARGUMENT

A. Standard of Review

A motion for judgment on the pleadings pursuant to Trial Rule 12(C) attacks the legal sufficiency of the pleadings. *See Davis v. Ford Motor Co.*, 747 N.E.2d 1146, 1149 (Ind. Ct. App. 2001), *trans. denied*. The test to be applied when ruling on a Rule 12(C) motion is whether, in a light most favorable to the non-moving party and with every intendment regarded in his or her favor, the complaint is sufficient to constitute any valid claim. *See id*. In applying this test, courts look only to the pleadings, with all well-pleaded material facts taken as admitted, supplemented by any facts of which the court may take judicial notice. *See id*. A court "need not accept as true allegations that are contradicted by other allegations or exhibits attached to or incorporated in the pleading. Courts also need not accept as true conclusory, nonfactual assertions or legal conclusions." *Trustees of Ind. Univ. v. Spiegel*, 186 N.E.3d 1151, 1157 (Ind. Ct. App. 2022) (citing *Shi v. Yi*, 921 N.E.2d 31, 36–37 (Ind. Ct. App. 2010)).

The standard of review is *de novo*, requiring this Court to read the pleadings to determine if they state any circumstances under which relief can be granted as a matter of law. *See Jones v. Oakland City Univ. Founded by Gen. Baptists, Inc.*, 122 N.E.3d 911, 918 (Ind. Ct. App. 2019). In other words, this Court may affirm the trial court's judgment on a Rule 12(C) motion on any theory

supported by the record. *See id*. A court should affirm the trial court's grant of a Rule 12(C) motion "when it is clear from the face of the pleadings that one of the parties cannot in any way succeed under the operative facts and allegations made therein." *Sanitary Dist. of the City of Hammond v. Town of Griffith*, 39 N.E.3d 400, 405 (Ind. Ct. App. 2015), *trans denied*. Questions of law are appropriate for judgment on the pleadings. *See, e.g., id.*

B. The trial court correctly determined Amazon owed no duty to a pedestrian walking on a public road.

1. Amazon owed no duty to Dhillon because he had not entered the premises at the time of the accident.

The Estate cannot state a claim against Amazon unless Amazon owed a duty to Dhillon. *See Rogers v. Martin*, 63 N.E.3d 316, 321 (Ind. 2016). Absent a duty, there can be no breach and therefore no liability for negligence. *See Goodwin v. Yeakle's Sports Bar & Grill*, 62 N.E.3d 384, 386 (Ind. 2016). The trial court's conclusion that Amazon owed no common-law duty to guard against dangers posed outside its premises by persons over whom Amazon had no control should be affirmed. (App. 2: 21).

Whether one party owes a duty to another in a negligence action is generally a question of law. *See Sizemore v. Templeton Oil Co.*, 724 N.E.2d 647, 650 (Ind. Ct. App. 2000). In premises liability cases, whether a duty is owed depends primarily upon whether the defendant was in control of the premises when the accident occurred. *See Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004). It is well established that a land possessor's duty to an invitee is limited to a "duty to exercise reasonable care for his protection **while he is on the landowner's premises**." *Burrell v. Meads*, 569 N.E.2d 637, 639 (Ind. 1991) (emphasis added); *see also, e.g., Roumbos v. Vazanellis*, 95 N.E.3d 63, 67 (Ind. 2018) ("Under Indiana premises-liability law, the owner or possessor of land owes the

highest duty of care to its invitees; the duty to exercise reasonable care for their protection while they are on the premises.").

Here, the Amended Complaint alleges that the accident occurred on County Road 300 North, not on Amazon's property. (App. 2: 29). Consequently, the legal duties owed by landowners to business invites do not apply. *See, e.g., Rogers*, 63 N.E.3d at 320 (stating a landowner must exercise reasonable care for an invitee's protection while the invitee is on the landowner's premises). As the trial court correctly determined, "Amazon had no duty because [Dhillon] was not on its premises." (App. 2: 19).

Nevertheless, the Estate argues that Amazon "negligently designed, maintained, and controlled the entrance to its fulfillment center," speculating that as Dhillon approached the facility, he must have become confused and, because of Amazon's alleged "improper and inadequate lighting . . . and signage," was forced to stop and exit his vehicle on the public roadway. (Appellant's Br. at 4, 13). The Estate further contends Amazon owed a duty of care beyond the boundaries of its premises by creating a dangerous condition outside its premises. (Tr. 2: 25). The Estate is wrong.

2. *Reece* is dispositive in cases where, as here, no allegedly dangerous condition on the premises visited itself upon the public roadway.

The scope of a landowner's duty under Indiana law has been previously examined and, thus, this Court need not determine the existence of a separate duty here. *See Rogers*, 63 N.E.3d at 321 (Ind. 2016) ("[A] judicial determination of the existence of a duty is unnecessary where the element of duty has 'already been declared or otherwise articulated.'"). A land possessor's duty normally extends only to its "premises," and the owner of commercial premises adjacent to a public highway generally owes no duty to invitees injured while walking upon or along the highway. *See, e.g.*, *Lutheran Hosp. v. Blaser*, 634 N.E.2d 864, 870 (Ind. Ct. App. 1994).

Our Supreme Court's recent decision in *Reec*e, *supra*, is dispositive of the Estate's argument. In *Reece*, a plaintiff injured in a motor vehicle accident claimed that the accident was caused by tall grass on the northwest corner of the intersection that obstructed the view of the traveling public. *Reece*, 173 N.E.3d at 1033. The grass grew in a ditch on Tyson's property, and the ditch had been dredged and cleaned at various times. At the time of the collision, the grass did not extend onto the road. *See id.* The Supreme Court resolved longstanding disagreement about the scope of a land possessor's duty to the traveling public by adopting a "bright-line" rule, holding:

> [L]andowners owe a duty to passing motorists on adjacent highways not to create hazardous conditions that visit themselves upon the roadway; **but when a land use or condition that may impose a visual obstruction is wholly contained on a landowner's property, there is no duty to the traveling public**.

Id. at 1034 (emphasis added). In *Reece*, "the tall grass in the ditch was indisputably confined to Tyson's property, and because that visual obstruction did not intrude on the public right of way, Tyson did not owe a duty to the traveling public." *Id.* The Supreme Court emphasized that "[g]iven [this] applicable bright-line principle, there [was] no need to determine preliminary factual questions, such as whether the grass was an artificial or natural condition, or how dense the population in the area was." *Id.*

In justifying its adoption of a bright-line rule, the Supreme Court reiterated its view that "it would be too onerous to impose a duty on a 'property owner to continually inspect the perimeters of his property, particularly along an adjacent highway, to make sure that dangerous conditions do not arise for those traveling on the highway.'" *Id.* at 1040 (quoting *Blake v. Dunn Farms, Inc.*, 413 N.E.2d 560, 564 (Ind. 1980)). Because the tall grass was located entirely on the landowner's property, the landowner owed no duty to the traveling public. *See id.* at 1041–42.

Here, as in *Reece*, the allegedly dangerous condition was located entirely upon the fulfillment center premises. The Amended Complaint specifically alleges that Amazon "had inadequate and poorly illuminated signage **on its premises**, confusing these truck drivers and thereby posing a proven, potentially lethal danger to its invitees." (App. 2: 35, ¶ 51 (emphasis added); *see also, e.g.*, ¶ 49 (referring to dangerous condition "on the premises"); ¶ 53 (alleging Amazon "took no corrective action to improve the dangerous condition on its premises"); ¶ 61 (alleging Amazon should have added additional signage and lighting "on its premises"); ¶ 71 (alleging Amazon knew of the existence of a dangerous condition "on its premises")). Thus, even accepting as true Estate's allegation that the fulfillment center lacked adequate signage and lighting, the face of the Estate's Amended Complaint makes clear that those conditions were confined to the fulfillment center premises and did not intrude or encroach upon the public roadway.[5]

Reece also explicitly rejected the plaintiff's argument that "a landowner's duty to passing motorists on an adjacent highway should be the same as a landowner's duty to a business invitee." *Id.* at 1040, n.3. The Indiana Supreme Court emphasized that it had "already rejected such an argument in" *Blake, supra*, wherein the court held:

> [W]e must totally reject the conclusion of the Court of Appeals that the duty of a landowner to a person on an adjacent road is similar to that of a landowner to a business invitee. The duty of the business property owner to an invitee is an extra burden based upon the relationship of the owner or occupier of the land to the one he invites for the benefit of the owner or occupier. Virtually every useable piece of property in the State of Indiana is adjacent to a roadway or highway. The road is a means of common ingress and egress to all of the properties along the highways, for this property owner and all other property owners. **A particular landowner does not invite all persons using the highway for their own purposes to make that use or traverse that part of the highway adjacent to his own property**.

[5] Despite being the seminal and most recent guidance on this issue from our Supreme Court, neither the Estate nor *amicus curiae* address *Reece* in their briefs.

Blake, 413 N.E.2d at 564 (emphasis added). The court emphatically declined "to revisit this issue" in *Reece*. *See Reece*, 173 N.E.3d at 1040, n.3. *Reece* is fatal to the Estate's argument that Dhillon was an invitee simply because he chose to stop and park his tractor trailer on the public roadway adjacent to the fulfillment center premises.

The Estate's claims against Amazon, therefore, fail as a matter of law, and the trial court correctly dismissed them.

3. The trial court's decision is consistent with pre-*Reece* decisions addressing similar factual circumstances.

Even if *Reece* were not dispositive of the Estate's claims, they would still fail even under pre-*Reece* jurisprudence. The facts of this case are highly similar to those in *State v. Flanigan*, where two pedestrians were injured by a third-party motorist while walking on a public roadway on their way to the defendant's property. 489 N.E.2d 1216, 1217–20 (Ind. Ct. App. 1986), *trans. denied.* The Court of Appeals in *Flanigan* held:

> [G]enerally the owner of commercial premises adjacent to a public highway owes no duty to a patron who was injured when struck by an automobile as that patron was crossing or walking upon or along such highway. **We declare such to be the law in Indiana**.

Id. at 1218–19 (emphasis added). This Court further recognized that to impose liability "for the acts of a third party over whom [the landowner] had no control, and which occurred not on their property **but on a public highway over which they had no control would clearly be contrary**" to Indiana law. *Id.* at 1218 (emphasis added). *Flanigan* has never been overruled and is consistent with the Supreme Court's recent decision in *Reece*.[6]

[6] This Court in *Flanigan* relied primarily upon two cases in support of its decision. The first, *Blake*, *supra*, involved a situation where, after dusk, a tenant's horse escaped the premises and wandered onto a public roadway, where the horse was struck by the plaintiff's vehicle. 413 N.E.2d at 560. In finding that the landowner owed no duty to the traveling public, the Supreme Court

More recently, in *Precedent Partners I, L.P. v. Hulen*, the primary case relied upon by the trial court, a child on her bicycle suffered injuries after colliding with a truck on a public street. 863 N.E.2d 328, 330 (Ind. Ct. App. 2007). In reversing the trial court's denial of summary judgment, this Court held that "[t]he 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." *Id*. at 333 (citing *Snyder Elevators, Inc. v. Baker*, 529 N.E.2d 855, 859 (Ind. Ct. App. 1988), *trans. denied*). The *Precedent Partners* defendants were not responsible for the conduct of the third-party motorist who struck the child and, thus, the defendants could not be liable for failing to properly design or maintain the median at the location of the accident. *Id*. at 331. Here, the allegedly dangerous condition was located entirely on the fulfillment center premises, and it is not alleged that Amazon had any control over or responsibility for the third-party motorist who struck Dhillon.

Similarly, in *Sizemore, supra*, the plaintiff was walking in the right-of-way of a state road, intending to enter a gas station owned by Templeton, when he was injured after the edge of the pothole located in the right-of-way gave way underneath him. 724 N.E.2d at 649. The pothole was

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explained that "[t]he owner of the property had no relationship to the agency causing the problem[] and no duty to investigate to determine if there was a problem, emergency or dangerous condition. To hold otherwise would place a duty on a property owner to continually inspect the perimeters of his property, particularly along an adjacent highway, to make sure that dangerous conditions do not arise for those traveling on the highway." *Id.* at 564. The Supreme Court cited *Blake* approvingly in *Reece*, 173 N.E.3d at 1035. The *Flanigan* Court also relied upon an Illinois Court of Appeals decision, *Laufenberg v. Golab*, 438 N.E.2d 1238 (Ill. Ct. App. 1982), where the plaintiff was injured crossing a public street en route to a horse track stable. The plaintiff alleged that the track owner had a duty to provide safe access across the street and that the owner had failed to fulfill this duty by not having signals in the vicinity of the intersection, not furnishing adequate crossing guards, and not providing a designated crosswalk. *See id.* at 1239–40. The Illinois court found no duty because "the injuries allegedly suffered . . . [had] no connection of any kind with the physical condition of the roadway but resulted entirely from the intervention of an independent factor beyond the control of the defendant"—to wit, the third-party motorist. *Id.* at 1241.

located adjacent to the entrance to Templeton's gas station, and the entrance to the gas station was adjacent to and extended from the highway right-of-way. *See id.* The plaintiff sued Templeton, arguing Templeton assumed a duty of care with respect to the pothole due to Templeton's control over the area where the pothole was located and because the company had a policy of inspecting its parking lot for hazards. *See id*. at 651. The trial court granted summary judgment in favor of Templeton. *See id.* at 652. On appeal, this Court affirmed, holding that "[e]ven assuming that Templeton's sweeping and plowing activities included the area where the pothole was located, those activities do not demonstrate control over the condition and repair of the pavement itself." *Id*. The *Sizemore* Court explained:

> Our holding today . . . is consistent with our conservative approach in other factual circumstances, wherein we have held that a **landowner's only duty to persons traveling on an adjacent highway is to refrain from creating or maintaining a hazardous condition.** Moreover, public policy considerations weigh against the extension of the duty to provide safe ingress and egress outside of the business owner's premises. It is unclear how a business owner would discharge such a duty. Surely they would not be required to repair conditions such as potholes, particularly on state roads.

Id. at 654–55 (internal citations omitted) (emphasis added). Echoing *Flanigan*, this Court explained in *Sizemore*:

> In order to affirm the decision of the trial court, we would be required to hold that under the facts alleged in this case, the law imposed a duty upon the [defendants] to provide traffic control, issue warnings, or take other action to protect [plaintiffs] from being struck by a vehicle not under [defendants] control while [plaintiffs] were walking along the highway on their way to [defendants' premises]. In our opinion the law imposes no such duty.
>
> Accordingly, . . . **the owner of commercial premises adjacent to a public highway owes no duty to a patron who was injured when struck by an automobile as that patron was crossing or walking upon or along such highway**.

Id. at 653 (quoting *Flanigan*, 489 N.E.2d at 1217–19) (cleaned up) (emphasis added).

On the strength of this authority, the trial court properly found Amazon owed no duty to Dhillon and the Estate's claims fail as a matter of law.

4. The cases relied upon by the Estate are distinguishable or inapplicable following *Reece*.

The Estate's Brief says nothing about *Reece* and instead attempts to rely upon outdated, distinguishable, or inapplicable case law. *Lutheran*, *supra*, is the case primarily cited by the Estate. In *Lutheran*, the plaintiff, a hospital visitor, was struck by a vehicle in the driveway of the parking lot for Lutheran Hospital in Fort Wayne. *See* 634 N.E.2d at 867–68. Specifically, the parking lot for the hospital was located across the street from the hospital. *See id.* At time the plaintiff was struck, she was attempting to walk from the hospital back to the parking lot, where her car was parked. *See id.* A jury awarded the plaintiff damages and Lutheran Hospital appealed, contending that it only had a duty to maintain the parking lot driveway, as it did not control the public right-of-way adjacent to the driveway. *See id*. at 868. This Court determined Lutheran Hospital owed a duty to the plaintiff beyond the limits of the boundary of its property because it created a dangerous condition on its premises that pedestrians gravitated to and were not discouraged from using. *See id.* at 869. The specific condition at issue in *Lutheran* was a conspicuous, mid-block canopied entrance to the hospital building that the hospital knew pedestrians regularly used when walking to and from the parking lot portion of hospital's premises to the hospital building portion of the hospital's premises. *See id.* The canopied entrance was located away from the road's marked and lighted intersections with crosswalks. *See id.* In addition, drivers were funneled by the hospital into an entrance for delivery trucks intended to be an exit for automobiles; the plaintiff was struck from behind by an automobile turning into the parking lot exit. *See id.* Further, before the plaintiff was struck, Lutheran "assured the city engineer that it would discourage people from using the canopy entrance doors as

an entry and exit to the hospital; however, virtually nothing had been done inside the hospital towards this end or to direct pedestrians to the crosswalks." *See id.*

Here, in contrast, there is no allegation of an expansion of Amazon's business activity beyond its premises, as Amazon did not affirmatively act to create a hazardous condition that intruded upon the adjacent roadway. Under the facts alleged in the Amended Complaint, it would not have been reasonable for Dhillon or others to assume Amazon controlled County Road 300. Amazon took no affirmative act to control traffic *on the roadway* and it certainly is not alleged that Amazon directed drivers to stop on the roadway prior to entering the fulfillment center premises. Rather, this case involves a collision on land Amazon did not control involving parties Amazon did not control. *See, e.g., Zimmerman v. R&S* Trucking, No. 4:05-cv-0031-DFH-WGH, 2006 U.S. Dist. LEXIS 60783, at *18 (S.D. Ind. Aug. 11, 2006) (noting that *Lutheran Hospital* involved "a plaintiff injured by a hit-and-run driver while she was crossing a driveway at a hospital parking lot," not on a public roadway). While the Estate alleges that the collision was caused, in part, by the absence of adequate lighting and signage, this misses the mark. The absence of adequate lighting and signage on the premises—assuming these allegations to be true—are not dangerous conditions visiting themselves (*i.e.*, physically intruding) upon the roadway.[7] The Estate's allegations make it explicitly clear that Amazon lacked control over County Road 300; instead, the Estate alleges that Amazon only had

[7] Compare the facts of this case with those in *Pitcairn v. Whiteside*, for example, wherein railroad employees started a fire, and a dense cloud of smoke drifted across the nearby public roadway. 34 N.E.2d 943, 945 (Ind. Ct. App. 1941). Two vehicles traveling upon the roadway collided. *See id*. This Court held that the railroad owed the traveling public a duty to refrain from creating a dangerous condition on its land which intruded upon the roadway and subjected travelers to unreasonable risks. *See id*. at 946. This case is far afield from *Pitcairn* because the allegedly dangerous conditions here were limited to the premises.

control over the lighting and signage on its property and that this allegedly dangerous condition existed on the premises itself.[8]

The Estate's reliance on *Holiday Rambler Corp. v. Gessinger,* 541 N.E.2d 559, 562 (Ind. Ct. App. 1989), is similarly misplaced. There, a manufacturing plant allowed hundreds of its employees to leave the plant at the end of each day's afternoon shift, resulting in hundreds of vehicles simultaneously spilling onto the adjacent public roadway. *See id*. at 561. The mass exodus of vehicles onto the roadway caused a collision. *See id*. The *Holiday Rambler* Court concluded that the landowner owed a duty under those circumstances. *See id*. at 562. As reaffirmed in *Sheley v. Cross*, it was the manufacturing plant's activity on its premises and affirmative acts that caused the hazard to infiltrate the roadway. 680 N.E.2d 10, 13 (Ind. Ct. App. 1997), *trans. denied*.

Holiday Rambler's limited reach was crystallized by this Court's opinion in *Sheley*, which was favorably cited in *Reece*. In *Sheley*, the Court of Appeals found no duty where the plaintiff alleged negligence by the owners of land at an intersection who "negligently planted crops on their land such that a motorist's view of oncoming traffic at this intersection was impaired." *Id.* at 11. This Court explained:

> . . . [T]his case is distinguishable from *Pitcairn* and *Holiday Rambler*. In those cases, the defendants' conduct caused a hazard to visit itself upon the roadway. Here, the alleged hazardous condition was wholly upon the Grossmans' property . . . . [T]o the extent a landowner owes a duty to travelers on an adjacent roadway, that duty is limited to refraining from creating hazardous conditions that visit themselves upon the roadway. **Where an activity is wholly contained on a landowner's property, there is no duty to the traveling public**.

[8] The Estate's argument also fails to recognize crucial factual differences between *Lutheran Hospital* and this case. *Lutheran Hospital* involved a plaintiff who had been inside the hospital and was leaving. It also involved a tortfeasor driver who was going to the hospital and, in fact, had already entered hospital-controlled premises upon entering the driveway. Here, Dhillon never entered Amazon-owned or operated premises and the alleged tortfeasor driver, McPhearson, was not attempting to enter or leave the fulfillment center.

Id. at 13 (emphasis added). Our Supreme Court in *Reece* explained that *Sheley*'s "bright-line rule . . . lends itself to easy application. If the visually obstructing activity—artificial or natural—is completely contained on the land, then no duty is imposed on the landowner to traveling motorists on adjacent roadways."[9] *Reece*, 173 N.E.3d at 1040 (also calling *Sheley* "the most logical extension of Indiana precedent"). Importantly, *Reece* focuses on the existence of a ***physical*** encroachment onto the roadway, and all pre-*Reece* cases must be viewed through that analytical lens. Here again, the Estate's failure to address how *Holiday Rambler* fits within the post-*Reece* analysis renders its entire argument unsound.

Finally, the Estate misses the mark in relying on *Ember v. B.F.D.*, 490 N.E.2d 764, 772 (Ind. Ct. App. 1986). In *Ember*, a bar patron was attacked while walking to the bar, by three assailants across the street from the bar, on land not owned by the defendant. *See id.* at 766. Noting first that a landowner's duty to invitees does not extend to harm caused by third parties beyond the boundaries of the landowner's premises, the *Ember* Court held that a landowner can nevertheless assume a duty of care through affirmative acts. *See id*. The court noted that the defendant pub had distributed a flyer "emblazoned with its phone number which implored area residents to call the pub before the police in case of problems in the neighborhood." *Id*. at 770. Contemplating "wide dissemination of a broad offer of help to persons in the vicinity of its business," the pub had assured neighborhood residents that members of its staff would patrol the parking lots in the area to check for "any kind of thing that was happening" and had also written a letter to the Indiana Alcoholic Beverage Commission detailing the steps it had taken to preserve peace and order in the vicinity of its business

[9] This language from our Supreme Court dispenses with any argument the Estate might make that *Reece* applies only to naturally occurring hazards or obstructions. Clearly *Reece* adopts a broader rule, referring generally to "activity" on the land.

establishment. *See id*. A security officer from the pub had previously assisted with disturbances outside the bounds of its premises even though, in the words of the pub owner, "it had nothing to do with us [the pub]" and occurred down the street from the tavern. *Id*.

Given the extensiveness of the pub's affirmative conduct to patrol the area outside the boundaries of its property, the *Ember* Court concluded the pub had assumed a duty to protect even would-be invitees like the plaintiff injured by a third-party criminal attack on land adjacent to the pub. *See id*. Importantly, the *Ember* Court noted that "it was not aware of ***any Indiana cases*** expressly extending an invitor's duty beyond the limits of the business property," but that other jurisdictions had expanded the definition of "premises" in some cases to include adjacent property the invitor "controls." *Id.* at 772 (emphasis added). This Court reasoned that liability could extend "to adjoining areas which harbor a dangerous condition created by the owner's special benefit or use of such areas." *Id.* at 773. In finding that the exception could apply to the facts before it, the *Ember* Court relied upon the fact that the pub "used the abutting sidewalk, and perhaps the adjacent street and parking lots, to contain its waiting customers" and this dynamic resulted in a "premises" that was not limited simply to the area actually owned by the pub. *See id.* Those facts are simply not present here. Again, the allegedly dangerous condition was confined entirely to the fulfillment center premises and there is no allegation that Amazon controlled County Road 300.

C. The Estate's foreseeability argument improperly relies upon historical evidence.

The Estate argues Amazon owed a duty to protect Dhillon on County Road 300 because of the alleged foreseeability of the incident. (Appellant's Br., 13–14). The Estate asserts reasonable inferences support the conclusion that Dhillon was confused about where to enter the property and that Amazon had reason to know—not only of Dhillon's confusion—but also that he would stop in the middle of the adjacent public roadway, exit his vehicle, and be struck by a third-party motorist

because of a similar accident that occurred approximately forty-five days earlier. (Appellant's Br., 20–21). This argument fails as a matter of law.

In adopting a bright-line rule addressing the duty question, *Reece* sought to discard "unworkably malleable" methods of determining whether and when a landowner owes a duty to those injured outside its premises. *Reece*, 173 N.E.3d at 1040. The fact-intensive foreseeability analysis advocated by the Estate is manifestly inconsistent with *Reece*'s adoption of a bright-line rule and the Estate's argument fails on that basis alone. More broadly, our Supreme Court recently held that "**historical evidence**, while 'appropriate in evaluating foreseeability in the context of proximate cause,' **should play no role when we evaluate 'foreseeability as a component of duty**.'" *Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, 140 N.E.3d 837, 844 (Ind. 2020) (quoting *Goodwin*, 62 N.E.3d at 393) (emphasis added). As the Supreme Court explained:

> [F]oreseeability in this context—as a component of duty—is evaluated differently than foreseeability in proximate cause determinations: while the latter foreseeability analysis requires a factfinder to evaluate the specific facts from the case, the former "involves a lesser inquiry," requiring a court, as a threshold legal matter, to evaluate "the broad type of plaintiff and harm involved, without regard to the facts of the actual occurrence."

Id. at 840 (citing *Goodwin*, 62 N.E.3d at 393, which rejected the previously used totality test because it emphasized the particular facts of the case rather than a broader inquiry and was "ill-suited to determine foreseeability in the context of duty"). By focusing "on the general class of persons of which the plaintiff was a member and whether the harm suffered was of a kind normally to be expected," and because "almost any outcome is possible and can be foreseen," this expression of the duty analysis ensures "that landowners do not become the insurers of their invitees' safety." *Id.* (citing *Rogers*, 63 N.E.3d at 324 (quotation omitted)).

Absent notice of present and specific circumstances that would cause a reasonable person to recognize the risk of imminent harm, the law does not impose a duty on landowners to foresee harm caused by third parties not under the control of the landowner:

> By pointing to police runs made to the bar during the year before the quarrel, [the plaintiff] improperly substitutes evidence of the bar's past raucousness for contemporaneous knowledge of imminent harm. **We repeat, this type of historical evidence, while "appropriate in evaluating foreseeability in the context of proximate cause," should play no role when we evaluate "foreseeability as a component of duty."** *Goodwin*, 62 N.E.3d at 393. Considering prior reports of the bar's unruliness shifts our common law jurisprudence back into a recently supplanted totality analysis and risks fabricating a duty when harm is merely "sufficiently likely." *Id*. at 392 (quotation omitted). A landowner's present knowledge, however, more conclusively elevates the knowledge of risk to "some probability or likelihood of harm," *id*., allowing courts to continue to find a duty when "reasonable persons would recognize it and agree that it exists," *Rogers*, 63 N.E.3d at 325.

Id. *at* 843–44 (emphasis added).

Although the harm that befell Dhillon was not the result of a criminal attack, the Indiana Supreme Court's instruction as to how to conduct a foreseeability analysis in determining duty still holds. *See, e.g.*, *Penske Truck Leasing Co., L.P. v. Dalton-McGrath*, 157 N.E.3d 5, 14 (Ind. Ct. App. 2020) (applying *Goodwin's* foreseeability test in a dog bite case where the trial court improperly relied upon a prior police complaint regarding a dog bite on the same premises). Simply put, the Estate's allegation of a prior accident or of other confused drivers—*i.e.*, historical or anecdotal evidence—is irrelevant to the legal question of whether Amazon owed him a duty; under *Reece*, it did not.

D. Amazon did not gratuitously assume a duty to protect Dhillon.

The Estate alternatively argues that Amazon gratuitously assumed a duty to incoming delivery drivers through the act of placing "No Truck" signs at the first two of its entrances to the

property. (Appellant's Br. at 19–20). This position also fails as a matter of law because Amazon did not affirmatively act to assume such a duty.

The Indiana Supreme Court has explained that

> A duty may be imposed upon one who by affirmative conduct . . . assumes to act, even gratuitously, for another to exercise care and skill in what he has undertaken. It is apparent that the actor must specifically undertake to perform the task he is charged with having performed negligently, for without actual assumption of the undertaking there can be no correlative legal duty to perform the undertaking carefully.

S. Shore Baseball, LLC v. DeJesus, 11 N.E.3d 903, 910 (Ind. 2014) (cleaned up); *see also Yost v. Wabash College*, 3 N.E.3d 509, 517 (Ind. 2014). In *Yost* and *South Shore Baseball*, the Indiana Supreme Court adopted the rule set forth in the *Restatement (Third) of Torts*, which provides in relevant part:

> An actor who undertakes to render services to another and who knows or should know that the services will reduce the risk of physical harm to the other has a duty of reasonable care to the other in conducting the undertaking if:
>
> (a) the failure to exercise such care increases the risk of harm beyond that which existed without the undertaking, or
>
> (b) the person to whom the services are rendered or another relies on the actor's exercising reasonable care in the undertaking.

Restatement (Third) of Torts § 42 (2012) (quoted in *Yost*, 3 N.E.3d at 517). The Supreme Court further instructed that the judicial imposition of liability under a theory of gratuitously assumed duty is considered "unwise policy and should be cautiously invoked only in extreme circumstances involving a negligently performed assumed undertaking." *Yost*, 3 N.E.3d at 518.

The Estate's assumption-of-duty argument primarily relies upon *Ember*, *supra*, but here again that reliance is unavailing. Recognizing the peculiar circumstances involved in *Ember*, this Court explicitly stated in *Flanigan* that "[t]he holding in *Ember* should not be extended beyond the factual context of that case." *Flanigan*, 489 N.E.2d at 1219, n.2. This Court further explained:

> . . . [I]n this case, . . . it was not alleged that [the defendants] assumed the duty of providing safe travel over and along the highway by pedestrians approaching [the defendants'] flea market. **In fact, liability is claimed because of their *failure* to discharge such a duty. Therefore, no issue of gratuitous assumption of duty is presented**, and no legal duty existed.

Id. (emphasis added). As discussed *supra*, the bar in *Ember* exercised an extraordinary amount of control over the public property, directing area residents to call the pub before the police to report problems in the neighborhood, patrolling parking lots in the area, and assisting with responding to unrelated disturbances in the area, among other things. Such allegations are not present in this case.

Here, according to the Estate, Amazon assumed a duty to properly direct traffic arriving at its fulfillment center by placing "No Truck" signs at the first two entrances to the facility. (Appellant's Br., at 20). The Estate does not claim that Amazon was negligent in performing any act. Rather, the Estate's claims that Amazon ***failed to act***—*i.e.*, Amazon failed to place adequate lighting and signage to direct traffic entering the fulfillment center premises. If Amazon did not act, then Amazon did not engage in the affirmative or deliberate conduct necessary for a duty to arise, and as such, did not assume a gratuitous or voluntary duty of care to Dhillon. *See Yost*, 3 N.E.3d at 517. Nor did Amazon take any action to render services to Dillon. The self-evident purpose of the signs was to alert delivery drivers that trucks were not permitted at those particular entrances. There is absolutely no indication that by erecting signs at its entrances, Amazon gratuitously assumed a duty to users of the adjacent public roadway. If the Court were to accept that argument, then all businesses erecting signage on their own property would be responsible for any accident that occurs within sight of the signage. Furthermore, there are no facts alleged that could show Amazon's "No

Truck" signs increased the risk of harm to Dhillon beyond that which already existed if the signs had never been posted.[10]

Arnold v. F.J. Hab, Inc., 745 N.E.2d 912, 915 (Ind. Ct. App. 2001), the second case relied upon by the Estate, is similarly inapposite. There, a patron of the night club was injured upon being struck by a car while walking on a public sidewalk outside of the night club. *See id.* One of the bar patrons had parked her vehicle in such a manner that it blocked the parking lot entrance/exit. *See id.* A passenger in the vehicle who stayed behind decided to move the vehicle, so it no longer blocked the entrance/exit. *See id.* While doing so, the passenger-turned-driver lost control of the vehicle and crossed both lanes of traffic on the adjacent street, striking the plaintiff, who was exiting the club. *See id.* The night club employed off-duty police officers to work as security officers outside of the club. *See id.* This Court, in finding a genuine issue of material fact as to the assumption of duty, found that there was some evidence that the night club's security officers "had a policy of controlling, to some extent, the flow of traffic in the parking lot used by the Club's patrons" and that security officers "had the discretion to take action to disperse traffic jams." *Id.* at 917. Thus, in *Arnold*, there were explicit allegations that the night club had assumed a legal duty by engaging

[10] In *Jump v. Bank of Versailles* this Court found that even if the landowner had assumed a duty to the plaintiff, the landowner did not create a dangerous condition affecting the adjoining property. 586 N.E.2d 873, 881 (Ind. Ct. App. 1992). In *Jump*, the plaintiff was injured when she fell down an icy stairwell located between a bank and an office building in which she worked. *See id*. at 874–75. Although the stairwell was located entirely on the bank's property, it was frequently used by the public to gain access to the adjacent office building. *See id*. at 874. Jump filed suit against the owner of the office building arguing, in part, that the building owner assumed a duty to keep the steps in a reasonably safe condition by encouraging and inviting Jump to use the bank's steps. *See i*d. at 881. The Court alternatively determined that the primary issue at hand was whether the premises owner created a hazardous condition that caused injury to the plaintiff. *See id.* at 882. As such, this Court found that no hazardous condition was created, and even if there was an assumed duty to the plaintiff, it was fulfilled when the business provided an alternative means of ingress and egress. *See id*. at 881. Here, as in *Jump*, there was a safe, alternative means of ingress and egress for delivery drivers like Dhillon—*i.e.*, the third, trucks-only entrance, which Dhillon simply never reached.

security officers who at times acted to direct and control traffic and that the club discharged that duty negligently. There are no similar allegations in this case. In fact, the Estate claims Amazon invited contractors to its premises, but ***did not*** place lighting or signs to direct truck drivers on the public roadway. In other words, the Estate alleges that Amazon ***should have***, but ***did not*** do something: direct or guide traffic on County Road 300. This is evidence that Amazon ***did not*** assume an additional duty. The Estate is making the untenable argument that absence of an action somehow equates to an active assumption of a legal duty to perform that action. The Estate cites no authority for that proposition.

Absent some affirmative conduct by Amazon undertaking a duty to Dhillon, there can be no duty owed as a matter of law. The Estate's assumption-of-duty argument, therefore, must fail.

E. Contrary to ITLA's assertions, the majority of jurisdictions do not impose a duty under like circumstances and the foreign cases cited by ITLA are, on the whole, distinguishable.

The Indiana Trial Lawyers Association ("ITLA") claims that the vast majority of jurisdictions extend duty beyond a landowner's premises. (ITLA Brief, p. 12). That assertion is incorrect. As an initial matter, ITLA's arguments are largely unhelpful to the Court because ITLA fails to mention—much less discuss—*Reece*, which is controlling in this case. With due respect to other jurisdictions, our Supreme Court in *Reece* engaged in a lengthy analysis of the relative merits of the different analytical approaches and legal rules to determine the extent, if any, of the legal duty owed by land possessors to travelers on adjacent highways or properties. This Court is certainly not at liberty to reconsider the Indiana Supreme Court's judgment on that question, yet that is what ITLA suggests the Court should do here.

Notwithstanding the clarity with which our Supreme Court has spoken, ITLA's suggestion that the "vast majority of jurisdictions" have embraced the arguments raised by the Estate here is not

borne out by reality. At least sixteen states hold that a land possessor bears **no liability** for harm caused to persons on an adjacent property it does not control. *See, e.g.*, *Britz v. LeBase*, 258 So.2d 811 (Fla. 1971); *Wemple v. Daham*, 83 P.3d 100 (Haw. 2004); *Heath v. Honker's Mini-Market*, 8 P.3d 1254 (Idaho Ct. App. 2000).[11] This appears to be the plurality rule across the country. Other states hold that a landowner can be liable for harm caused to persons on an adjacent roadway or property if the landowner performs an affirmative act creating an unsafe condition. *See, e.g.*, *Louis Pizitz Dry Goods Co. v. Harris*, 118 So.2d 727 (Ala. 1959); *Seaber v. Hotel Del Coronado*, 2 Cal. Rptr.2d 405 (Cal. Ct. App. 1991); *Equitable Life Assurance Soc. v. McClellan*, 149 S.W.2d 730 (Ky. App. 1941); *Martin v. Flanagan*, 818 So.2d 1124 (Miss. 2002). Others hold that a landowner can be liable for harm caused to persons on an adjacent property if the landowner had actual or constructive knowledge of a dangerous condition. *See, e.g.*, *Estate of Mickelsen v. North-Wend Foods, Inc.*, 274 P.3d 1193 (Alaska 2012); *Ollar v. Spakes*, 601 S.W.2d 868 (Ark. 1980); CO Code § 13-21-115 (Colorado); *Fleming v. Garnett*, 646 A.2d 1308 (Conn. 1994). Other rules turn on whether a landowner utilizes the adjacent property in connection with its business, *see, e.g.*, *Stephens v. Bashas' Inc.*, 924 P.2d 117 (Ariz. Ct. App. 1996); caused or created the allegedly dangerous condition, *see, e.g.*, *Rogers v. Omega Concrete Sys.*, 883 P.2d 1204 (Kan. Ct. App. 1994); or

[11] The list goes on. *See also, e.g.*, *Ford v. Round Barn True Value, Inc.*, 883 N.E.2d 20 (Ill. App. Ct. 2007); *Humphries v. Trustees of the Methodist Episcopal Church*, 566 N.W.2d 869 (Iowa 1997); *Chimiente v. Adam Corp.*, 535 A.2d 528 (N.J. 1987); *Laumann v. Plakakis*, 351 S.E.2d 765 (N.C. Ct. App. 1987); *Holter v. Sheyenne*, 480 N.W.2d 736 (N.D. 1992); *Albright v. Univ. of Toledo*, No. 01AP-130, 2001 Ohio App. LEXIS 4158 (Ohio Ct. App. Sep. 18, 2001); *Fuhrer v. Gearheart by Sea, Inc.*, 719 P.2d 1305 (Or. Ct. App. 1985); *Ferreira v. Strack*, 636 A.2d 682 (R.I. 1994); *Epps v. United States*, 862 F.Supp. 1460 (D.S.C. 1994); *HNMC, Inc. v. Chan*, No. 22-0053, 2024 Tex. LEXIS 35* (Tex. Jan. 19, 2024); *Hevelone v. City Mkt., Inc.*, No. 20040481-CA, 2005 Utah App. LEXIS 214 (Utah Ct. App. May 12, 2005); *Cyr v. United States*, No. 5:10-cv-194, 2011 U.S. Dist. LEXIS 66307 (D. Vt. June 21, 2011); *Hansen v. Schmidman Properties, Inc.*, 115 N.W.2d 495 (Wis. 1962).

assumed a duty to the injured party, *see, e.g., Carignan v. N.H. Int'l Speedway*, 858 A.2d 536 (N.H. 2004).

Amazon acknowledges that different states address this question in different ways, but ITLA is incorrect that the question is undecided in Indiana. Our Supreme Court has made clear that "when a land use or condition that may impose a visual obstruction is wholly contained on a landowner's property" and the condition does not visit itself upon the roadway, "**there is no duty to the traveling public**." *Reece*, 173 N.E.3d at 1034 (emphasis added). **This is the law in the State of Indiana**. The cases cited by ITLA do nothing except highlight the idiosyncrasies of the law of each jurisdiction in addressing this duty question. For example, ITLA cites *Stephens v. Bashas' Inc.*, 186 Ariz. 427 (Ct. App. 1996), wherein a truck driver arrived at Bashas' warehouse in the early morning hours and was directed to park off the premises until the gates opened. *See id.* at 428–29. The driver parked his truck on the adjacent roadway in the middle of a two-lane left turn area. *See id.* As he was prepping his vehicle for offloading, the driver was struck by a pickup truck. *See id.* at 429. The Arizona Court of Appeals found that Bashas' owed a duty to the driver "to conduct its business and maintain its warehouse premises so as to not subject him to an unreasonable risk of harm." *id*. at 432. Under the facts of *Stephens*, it was reasonable to assume Bashas' used the adjacent roadway in connection with its business, since Bashas' specifically directed its drivers to park their vehicles off the premises. *See id.* at 428–30. That is not the case here. Dhillon was never directed to park his tractor trailer in the middle of County Road 300 or to exit his vehicle and cross the street into traffic.

The Estate's reliance on the Missouri case of *Boggs ex rel. v. Lay*, 164 S.W.3d 4 (Mo. App. E.D. 2005), is similarly unavailing. In *Boggs*, semi-trucks hauling grain to Archer-Daniels-Midland Company would queue up on an adjacent street while they waited their turn to enter a grain scale. *See id.* at 11. Drivers were not permitted to enter the facility until their trucks were weighed. *See id.*

The scale was controlled by a stop light that permitted trucks to enter the scale when the light turned green. *See id.* If the light was red, trucks were not permitted to enter. *See id*. at 11–12. The process was slow-going, and as such, drivers would queue up in long lines on the adjacent street. *See id*. at 12. The adjacent street was not wide enough for trucks to queue and still allow for two lanes of travel. *See id*. On the date of the incident, the line of trucks extended in front of the plaintiff's home, blocking his ability to see oncoming traffic. *See id*. at 13. Attempting to exit his driveway on his bike, the plaintiff drove through a gap in the line of trucks and was struck by a vehicle attempting to pass the queued trucks in order to enter the facility. *Id*. The Missouri Court of Appeals found that the defendant had assumed a duty because it has ***affirmatively*** created a hazardous condition on the adjacent street by: (1) stopping the flow of traffic through its red-green light traffic system, (2) closing its truck parking lot where trucks could stage, and (3) instructing first-priority haulers to pass the parked trucks, despite the queued trucks creating only a single lane of travel. *See id*. Here, Amazon took no affirmative action; instead, the Estate argues that an omission (not providing adequate signage or lighting on the premises) created a hazardous condition. In addition, in *Boggs*, the hazardous condition clearly visited itself upon the roadway, since the defendant specifically directed waiting trucks to park there. Those facts are not alleged here.

While ITLA cites the Seventh Circuit case of *Justice v. CSX Transp.*, 908 F.2d 119, 121 (7th Cir. 1990), because ITLA's Brief fails to discuss *Reece* it likewise fails to recognize that *Justice*'s holding that "that a landowner's duty of care extends to avoiding the creation of visual obstacles that unreasonably imperil the users of adjacent public way, even if the obstacle is wholly on his land and merely blocks the view across it" is manifestly inconsistent with the rule announced in *Reece*. *Id.* at 124. *Justice* is, therefore, of no persuasive force here. Likewise, the Arkansas case of *Ollar v. Spakes* adopted a rule finding that "when an owner or operator [of a business] learns or should have learned

of a dangerous condition existing adjacent to his property and fails to attempt to correct the condition or warn the invitees of such danger, he is guilty of negligence." 269 Ark. 488, 493 (Ark. 1980). That rule and holding is completely inconsistent with Indiana authority. Similarly, in *Fleming v. Garnett*, 231 Conn. 77 (Conn. 1994), the Connecticut Supreme Court held that "a possessor of land has a duty to conduct its business operations in a manner that does not create an unreasonable risk of physical harm to those outside of the premises." *Id.* at 83–84. Indiana has not adopted that rule in this context, as it too would be manifestly inconsistent with *Reece*. In *Langen v. Rushton*, the plaintiff was involved in an automobile accident after her view was obstructed by a small tree in the median of the exit way. 138 Mich. App. 672, 675 (Mich Ct. App. 1984). The Michigan court imposed a duty on the landowner "by balancing the societal interests involved, severity of the risk, burden upon defendant, likelihood of occurrence, and relationship between the parties." *Id*. at 677. Our Supreme Court expressly disavowed such a fact-intensive balancing test in *Reece*, instead adopting what it called a "bright-line" rule.

ITLA cites to *HNMC, Inc. v. Chan*, a Texas Court of Appeals case that has since been overruled by the Texas Supreme Court. 637 S.W.3d 919 (Tex. App. 2021), *rev'd* No. 22-0053, 2024 Tex. LEXIS 35 (Tex. Jan. 19, 2024). The Texas Supreme Court found that a landowner owes no duty to those outside of property that he does not control. *See id.* at *11. In *Bradford v. Universal Const. Co., Inc*., the plaintiff was walking by a construction site when a gust of wind blew a piece of plywood into the air and hit the plaintiff in the leg. 644 So.2d 864, 865 (Ala. 1994). This scenario, of course, is precisely what it means for a hazard to visit beyond the premises—and *Bradford* is, therefore, inapposite. *Combs v. Atlanta Auto Auction, Inc.*, involved a private road the defendant controlled. 287 Ga. App. 9, 10. (Ga. Ct. App. 2007). In *Carigan v. New Hampshire Int'l Speedway, Inc*., the plaintiff was injured after colliding with an RV attempting to enter the Speedway. 151 N.H.

409, 412 (N.H. 2004). The New Hampshire court found that the speedway had voluntarily assumed a duty by placing a traffic guard on its property to signal potential patrons from the adjacent roadway. *See id*. at 413. *Garlick v. Trans Tech Logistics, Inc.*, involved a truck driver who was killed after he drove off a cliff. 636 Fed. Appx. 108, 110 (3d Cir. 2015). The driver was hauling water to a remote site and was provided very detailed instructions by his employer that required him to count the miles on his odometer. *See id*. The Court found that the employer assumed a duty to the driver by providing him with specific directives that required him to monitor the exact distance he traveled on each road. *See id*. at 114. Those facts are not present here.

In sum, ITLA fails to address *Reece* and the cases it does address are either factually distinguishable or legally incongruous with the precedent from this Court and the Indiana Supreme Court.

F. The trial court did not fail to draw all reasonable inferences in the Estate's favor, nor did it improperly rely upon the Estate's inconsistent allegations.

As a final matter, the Estate faults the trial court for noting the Estate failed to allege that Dhillon ever entered Amazon's premises or even attempted to do so. (Appellant's Br., at 20–21). But this statement in the dismissal order is (1) accurate, and (2) in any event, can be likened to *dicta* because it was not the basis for the trial court's ruling. On the contrary, the trial court equated the facts of this case to *Precedent Partners*, wherein this Court determined that a landowner does not owe a duty to guard against harm caused by third parties over whom the landowner has no control and where the injury occurs outside the bounds of the landowner's premises. (App 2: 21). Regardless, the Estate's complaint on this point is immaterial because, even drawing the inference that Dhillon was attempting to enter the Amazon premises, the inference is insufficient to save the day. The alleged inadequate lighting and signage was not a condition that visited itself upon the

adjacent roadway and it makes no difference whether Dhillon was an invitee, a would-be invitee, or a member of the traveling public. As the Indiana Supreme Court explained in *Reece,* landowners owe no duty to the traveling public where the condition "is wholly contained on a landowner's property" and this is a bright-line rule that does not depend upon preliminary factual questions or findings. *Reece*, 173 N.E.3d at 1034.

The Estate also complains that the trial court improperly relied upon the Estate's alternative pleading (*i.e.*, that the driver of the fuel tanker that struck Dhillon was negligent) when it reached its conclusion that Amazon did not owe Dhillon a duty. (Appellant's Br., at 22–23). Again, however, this contention misses the mark. The trial court's point was not that Amazon and the other driver could not both be simultaneously negligent, but that Amazon had no control over the third-party motorist. That motorist was not an Amazon employee or contractor and was not on his way to the Amazon facility. As illustrated at length above, Indiana law makes clear that premises liability hinges, in part, on control over the agency of harm (here, the other driver) and control of the premises where the injury occurred (County Road 300). The trial court's conclusion is consistent with decades of Indiana precedent evaluating these two factors and should be affirmed.[12]

VI. CONCLUSION

"'Duty' is the threshold question to be determined when deciding whether a plaintiff may maintain an action in negligence" and "[w]ithout a duty, there can be no recovery in negligence." *Walker v. Rinck,* 604 N.E.2d 591, 594 (Ind. 1992). The trial court determined that Amazon owed no

[12] The Estate also complains that the trial court's order incorrectly stated Dhillon parked his vehicle beside County Road 300 rather than on the road, as alleged in the Amended Complaint. This was—at most—harmless error. Whether Dhillon parked his tractor trailer on the roadway or beside the roadway is immaterial to the duty analysis, since the Amended Complaint does not allege he parked his vehicle on the premises and it is not disputed that the accident occurred on the public roadway.

duty to travelers on an adjacent public roadway, including Dhillon. Even accepting the Estate's allegations as true, any allegedly dangerous condition was confined wholly to the fulfillment center's premises and Amazon created no dangerous condition that intruded upon the public roadway. Amazon neither owed nor assumed a duty to Dhillon, and the Estate's Amended Complaint makes no allegations sufficient to establish a duty as a matter of law.

For all of the foregoing reasons, this Court should AFFIRM the trial court's decision granting judgment on the pleadings to Amazon.

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Respectfully submitted,

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WORD COUNT CERTIFICATE

I hereby affirm that, excluding those portions exempted by Appellate Rule 44(C), this Brief contains no more than 14,000 words [9,669 words], as required by Appellate Rule 44(E). This word count was calculated using Microsoft Word, which was used to prepare this Brief.

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CERTIFICATE OF SERVICE

I hereby certify that on **April 11, 2024,** the foregoing **Brief of Appellees** was electronically served through the IEFS in accordance with Appellate Rule 68(F)(I) upon the following counsel of record in the Court of Appeals:

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