Reply 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, Appellant, Plaintiff below, vs. AMAZON, INC., a corporation; 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.	Appeal from the Hamilton Superior Court No. 4 Trial Court Cause No. 29D04-2212-CT-010006 The Honorable J. Richard Campbell, Judge

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APPELLANT'S REPLY BRIEF

Brandon Yosha, No. 24693-49
Louis "Buddy" Yosha, No. 1436-49
Bryan C. Tisch, No. 24693-49
Alexander C. Trueblood, No. 31804-49
YOSHA LAW
9102 N. Meridian Street, Suite 535
Indianapolis, IN 46260
Phone: (317)334-9200
Fax: (317)315-5143
Email: byosha@yoshalaw.com
lbyosha@yoshalaw.com
btisch@yoshalaw.com
atrueblood@yoshalaw.com

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I. Summary of Argument

Neither the Amazon Defendants[1] nor CF Mount Comfort DST ("Mount Comfort") meaningfully distinguish this action from this Court's binding precedent in *Lutheran Hospital v. Blaser*, 634 N.E.2d 864, 868-73 (Ind. Ct. App. 1994), which is directly on point with the facts of this action.

Mount Comfort largely misconstrues the holding in *Lutheran*, arguing that the duty owed in *Lutheran* arose from the hospital's actual or perceived control over the public right of way in which the plaintiff in that case was struck, despite the *Lutheran* court never addressing the issue of control.[2] Instead, this Court in *Lutheran* found a duty based on the hospital's knowledge that its invitees customarily used its entrance area in a manner that placed them in danger of being struck by a vehicle the same way that the plaintiff did when she was injured. The same duty exists in this case, based on Amazon and Mount Comfort's knowledge that delivery truck drivers invited to the premises were routinely exiting their trucks on County Road 300 North just outside the premises in the same spot where the decedent, Harvail Singh Dhillon ("Harvail"), was struck and killed after exiting his truck as he was attempting to enter the premises.

Amazon, on the other hand, bizarrely focuses its argument on *Reece v. Tyson Fresh Meats, Inc.*, despite the Indiana Supreme Court expressly cautioning in its opinion that "our holding is

[1] For the purposes of this appeal and 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."

[2] Amazon also incorrectly asserts that the accident in *Lutheran* occurred on "hospital-controlled premises." (Amazon Appellees' Brief at 23-24 and n. 8).

confined to visual obstructions that do not come in contact with traveling motorists." 173 N.E.3d 1031, 1041 (Ind. 2021). This case has nothing to do with visual obstructions, so *Reece* is inapplicable. Further, *Reece* dealt with a landowner's duty to passing motorists on an adjacent highway, and the *Reece* court expressly rejected the argument that such a duty should be the same as that owed by a landowner to a business invitee. *Id*. at 1040 n.3 (citing *Blake v. Dunn Farms, Inc.*, 413 N.E.2d 560, 564 (Ind. 1980) (holding that landowner's duty to business invitee is greater than duty to members of traveling public on adjacent road). As such, *Reece* is a red herring and entirely irrelevant to the analysis of Amazon and Mount Comfort's duty to their business invitee, Harvail.

II. Argument

A. The duty this Court recognized in *Lutheran Hospital v. Blaser* arose regardless of whether the hospital exercised any control over the off-premises area where the plaintiff in that case was struck.

Mount Comfort's summary of *Lutheran* usefully illustrates how badly both Mount Comfort and Amazon miss the point of *Lutheran*. Mount Comfort acknowledges that this Court found a duty owed by the hospital in *Lutheran* because **"(1) both pedestrians and vehicles were 'customarily' using the driveway; (2) in connection with their invitation**; and (3) in a manner that created a dangerous condition; the hospital owed both sets of its invitees a duty to guard them against foreseeable injuries." (Mount Comfort's Appellee's Brief at 19) (citing *Lutheran Hospital*, 634 N.E.2d at 869) (emphasis added). Mount Comfort also acknowledges that this Court in *Lutheran* recognized that "a landowner's duty may extend beyond its 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.'" *Id*. (quoting *Lutheran Hospital*, 634 N.E.2d at 870) (emphasis added). From the bold text in the preceding quotations, it is crystal clear that the duty this Court found in *Lutheran* arose from the hospital's knowledge that its invitees were regularly using the adjacent premises (*i.e.* the public right of way being used as the exit driveway of the hospital's parking lot) in connection with their invitation in a manner which endangered them.

Presumably aware that the obvious interpretation of *Lutheran* would be fatal to their arguments, both Amazon and Mount Comfort seek to read a requirement of control into the *Lutheran* opinion. Of course, neither Amazon nor Mount Comfort can cite to the actual text of the *Lutheran* opinion for such a requirement,[3] because this Court never addressed the question of control in *Lutheran,* as control of the location where the accident happened was not necessary for a duty to arise. The only discussion of whether the hospital controlled the exit drive came in section II(B) of the *Lutheran* opinion, where the Court addressed whether the trial court erred in instructing the jury that the hospital exercised a lesser degree of control over the exit drive via its duty to maintain the exit drive. 634 N.E. 2d at 872-73. This Court held that "[t]o the extent that Lutheran

[3] Mount Comfort cites a line of *dicta* from this Court's decision in *Precedent Ptnrs. I, L.P. v. Hulen*, 863 N.E.2d 328, 332 (Ind. Ct. App. 2007), that refers to the driveway in *Lutheran* as "the 'exit' driveway of **its** [*i.e.* the hospital's] parking lot." (Mount Comfort's Appellee's Brief at 19-20). Yet this Court's opinion in *Lutheran* clearly explains that the parking lot itself was on the hospital's premises, while the exit drive attached to the parking lot was a public right-of-way that was off the hospital's premises. 634 N.E. 2d at 870 ("Lutheran used its premises, the parking lot, in such a way to affect the risk of injury of its invitees off its premises, the 'exit' driveway."). None of this even remotely suggests that the hospital exercised control over the driveway. Mount Comfort also cites a single line of *dicta* from a California Supreme Court case that incorrectly states that the hospital in *Lutheran* exercised control of the driveway, but again cannot point to a single statement in the actual *Lutheran* opinion that says the hospital controlled the exit drive.

argues that the instructions are not a correct statements [*sic*] of law, we have found that Lutheran did owe Blaser a duty of reasonable care beyond its actual premises which it breached by creating a dangerous condition on its premises." *Id.* at 873. In other words, the *Lutheran* court never reached the question of control because it had already found that the hospital owed a duty beyond its actual premises based on the hospital's knowledge of its invitees' customary use of the exit drive, *regardless of whether the hospital controlled the exit drive*.

It should also be noted that Mount Comfort argues that *Lutheran* is distinguishable because "unlike the tortfeasor in *Lutheran Hospital*, McPhearson [the driver who struck Harvail] was not a business invitee, thus, he was not an invitee who was 'customarily' using the adjacent premises in connection with an invitation." (Mount Comfort's Appellee's Brief at 20). Mount Comfort claims that "[t]his distinction is crucial because this Court's decision in *Lutheran Hospital* was based on the fact that both the driver and pedestrian were the hospital's invitees." *Id*. Again, Mount Comfort is misrepresenting the contents of the *Lutheran* opinion, which expressly notes that the accident was a hit-and-run and "[t]he identity of the vehicle's driver is unknown." 634 N.E.2d at 867. In fact, the hospital argued that "the record [did] not support the speculation that the hit-and-run driver was a visitor to Lutheran confused by inadequate signage or poor illumination," but the *Lutheran* court held that the accident was foreseeable and the hospital was liable "whether or not the driver was a visitor to the hospital." *Id*. at 873. As noted earlier in the *Lutheran* opinion, "Lutheran created an unsafe condition, and risked a car hitting a pedestrian at the 'exit' of the parking lot." *Id*. at 872. It did not matter in *Lutheran* if the driver who hit the plaintiff was an invitee of the hospital, and it does not matter in this case that Mr. McPhearson was not an invitee of Amazon or Mount Comfort when he struck Harvail. Businesses have a duty to refrain from

inadvertently luring their invitees to walk into the path of vehicle traffic regardless of whether the vehicles' drivers are also invitees or merely passing motorists. *Id*.

B. *Reece v. Tyson Fresh Meats, Inc.* is inapplicable.

Amazon focuses much of its Brief on arguing that this case should be governed by the Indiana Supreme Court's holding in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031, 1041 (Ind. 2021). Yet the *Reece* opinion expressly cautions that "our holding is confined to visual obstructions that do not come in contact with traveling motorists." *Id*. at 1041. Unlike *Reece*, this case has nothing to do with tall grass or other visual obstructions; Amazon and Mount Comfort's duty arose from the defective and confusing signage and layout at their Fulfillment Center, which, like the defective and confusing signage and layout at the entrance to the hospital in *Lutheran*, was known to have the effect of funneling invitees into the path of oncoming traffic.

Reece is also inapplicable because it deals with the question of whether a landowner owes a duty of care to the passing motorists on an adjacent highway. The *Reece* court expressly rejected an argument that the duty owed by a landowner to passing motorists on an adjacent highway should be the same as that owed by a landowner to a business invitee. *Id*. at 1040 n.3 (citing *Blake v. Dunn Farms, Inc.*, 413 N.E.2d 560, 564 (Ind. 1980) (holding that landowner's duty to business invitee is greater than duty to members of traveling public on adjacent road).[4] Thus, because the duty owed to business invitees like Harvail is greater than the duty owed passing motorists, *Reece* and the many related cases cited by Amazon addressing the question of what duty is owed to passing

[4] Amazon strangely cites this portion of *Reece* in support of its position and argues (without explanation) that it somehow "is fatal to the Estate's argument that Dhillon was an invitee." (Amazon Appellees' Brief at 19). Amazon nonetheless acknowledges on numerous occasions throughout its Brief that the Amended Complaint alleges that Harvail was an invitee of Amazon.

motorists are inapplicable.

C. Amazon and Mount Comfort's duty arose from the defective and confusing signage and layout at the Fulfillment Center, not just the lack of proper signage and lighting.

Amazon and Mount Comfort attempt to reframe the Estate's arguments based on references to the lack of proper signage and lighting in the Amended Complaint, asserting that that cannot be sufficient to impose a duty on Amazon and Mount Comfort. (Mount Comfort's Appellee's Brief at 20-23, Amazon Appellees' Brief at 23-26). But the crux of the Estate's allegations and arguments is that Amazon and Mount Comfort used their premises in a manner that affirmatively created a danger to invitees arriving to the premises, even before those invitees had entered the premises. Specifically, Amazon and Mount Comfort's defective and confusing signage and layout at the Fulfillment Center's entrances caused incoming delivery truck drivers to become confused and exit their trucks in the middle of County Road 300 North *every day*. (Appellant's App. Vol. II, pp. 35-38).

This distinction is critical. As many of the cases cited by Amazon and Mount Comfort make clear, Indiana law generally does not require a business to affirmatively protect invitees from pre-existing dangers before they arrive to the business' premises if the business did nothing to create or increase such dangers. *See, e.g.*, *State v. Flanigan*, 489 N.E.2d 1216, 1217–20 (Ind. Ct. App. 1986) (business owed no duty to invitees struck while walking along public road to reach business where business had done nothing to create or increase the danger to pedestrians); and *Sizemore v. Templeton Oil Co.*, 724 N.E.2d 647, 654 (Ind. Ct. App. 2000) (business owed no duty to invitee injured falling in pothole on public road outside business' entrance where business did

nothing to create or increase the danger posed by the pothole).[5]

Unlike the defendants in *Flanigan*, *Sizemore*, and *Snyder Elevators*, Amazon and Mount Comfort affirmatively created and had actual knowledge of the danger that caused their invitee to be killed just outside the entrance to their facility. Harvail did not simply die in a traffic accident outside the Fulfillment Center; he was struck and killed after exiting his truck and approaching the Fulfillment Center on foot after Amazon and Mount Comfort's "no-truck" signs prevented him from entering the Fulfillment Center at the two obvious entrances, with no direction or instruction as to how he was actually allowed or expected to enter, effectively leaving him stranded in the middle of County Road 300 North until he could determine how to enter the Fulfillment Center. (Appellant's App. Vol. II, pp. 28-30, 35-38). Further, like the hospital in *Lutheran*, Amazon and Mount Comfort were aware that their confusing signage and layout were endangering their invitees every day. (Appellant's App. Vol. II, pp. 35-38).

D. The Estate should be entitled to take discovery to further support its claims.

All of the cases cited by the parties in their respective briefs were decided on summary judgment or at trial after the parties in those cases had the opportunity to gather evidence and develop their claims and arguments based on that evidence. Motions for judgment on the pleadings like Amazon's and Mount Comfort's, that essentially argue that the complaint fails to state a claim upon which relief can be granted, are treated as Trial Rule 12(B)(6) motions to dismiss. *City of*

[5] *Snyder Elevators, Inc. v. Baker*, 529 N.E.2d 855 (Ind. Ct. App. 1988), which Mount Comfort cites, similarly notes that members of the general public, as opposed to business invitees, may be owed a duty only in "cases in which the defendant has maintained a hazardous condition or conducted some activity on the premises, beyond the mere fact of operating a business, which causes the off-premises injury."

Gary v. Smith & Wesson Corp., 126 N.E.3d 813, 823 (Ind. Ct. App. 2019). Indiana courts view such motions with disfavor, "because such motions undermine the policy of deciding causes of action on their merits." *Id*. (quoting *Schrage v. Audrey R. Seberger Living Tr.*, 52 N.E.3d 54, 59 (Ind. Ct. App. 2016)).

The essential allegations of the Amended Complaint are simple: Amazon and Mount Comfort knew or should have known that their defective and confusing signage and layout at the entrances to their Fulfillment Center endangered their delivery truck driver invitees every day, yet did nothing to remedy the dangerous condition, and Harvail died as a direct and proximate result of this negligence. The precise extent of the danger to the delivery truck driver invitees, and Amazon and Mount Comfort's knowledge thereof, cannot be determined without the benefit of discovery. This is why Indiana law both views motions such as Amazon's and Mount Comfort's with disfavor and holds that courts evaluating such motions must "accept as true the facts alleged in the complaint, and 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." *Veolia Water Indianapolis, LLC v. Nat'l Tr. Ins. Co.*, 3 N.E.3d 1, 5 (Ind. 2014). Plaintiffs like Harvail's Estate are entitled to their day in court and must not be denied the opportunity to seek and obtain the evidence necessary to ensure that justice is done. *See* Ind. Const. Art. 1, § 12 ("All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.").

E. Indiana law has long recognized that a business may be liable for harm to its invitees that occurs outside its premises.

Amazon argues that it owed no duty to Harvail because Harvail was struck and killed on

County Road 300 North immediately outside Amazon's premises. (Amazon Appellees' Brief, at 15-16). To support this argument, Amazon cites cases setting forth the general rule of premises liability in Indiana that a land possessor owes a duty to exercise reasonable care to protect invitees while they are on the land possessor's premises. *Id*. at 15 (citing *Burrell v. Meads*, 569 N.E.2d 637, 639 (Ind. 1991)). While this general rule is correct, Amazon incorrectly argues that this general rule expresses the *limit* of a land possessor's duty, ignoring the applicable exceptions to that general rule. *See, e.g.*, *Lutheran*, 634 N.E.2d at 870 (finding hospital owed a duty to invitee injured off-premises where it "used its premises, the parking lot, in such a way to affect the risk of injury of its invitees off its premises."); *see also Ember v. B.F.D., Inc.*, 490 N.E.2d 764 (Ind. Ct. App. 1986) and *Holiday Rambler Corp. v. Gessinger*, 541 N.E.2d 559 (Ind. Ct. App. 1989). As explained in great detail in the Estate's Appellant's Brief, Indiana law recognizes several circumstances under which a business' duty to its invitees extends beyond the strict boundaries of its premises, most importantly where the business' use of its premises creates a hazardous condition that endangers invitees outside the premises. (Appellant's Brief at 14-18).

F. Evidence of Amazon and Mount Comfort's knowledge of the danger posed by the defective and confusing signage and layout at the entrance to the Fulfillment Center is not improper historical evidence.

Amazon argues that the Court should disregard the Amended Complaint's allegation that another delivery truck driver arriving to the Fulfillment Center was struck and severely injured at the exact same location in the exact same manner as Harvail, just 48 days prior to Harvail's death. (Amazon Appellees' Brief at 26-28). Specifically, Amazon cites to *Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, 140 N.E.3d 837, 844 (Ind. 2020) for its summary of the Indiana Supreme Court's line of cases that began with *Goodwin v. Yeakle's Sports Bar & Grill*, 62 N.E.3d

384 (Ind. 2016) and held in part that when evaluating foreseeability as a component of duty, courts should evaluate "the broad type of plaintiff and harm involved, without regard to the facts of the actual occurrence," and should not consider "historical evidence." Amazon's argument fails for two reasons.

First, the broad type of harm (injury and death in a traffic accident) is an obvious and foreseeable risk to the broad type of plaintiff (a delivery truck driver arriving to the Fulfillment Center) in this case. Amazon argues that it should not be required to foresee not only that Harvail would become confused when arriving to the Fulfillment Center, "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." (Amazon Appellees' Brief at 26). But as Amazon notes in its Brief, a court's evaluation of foreseeability in the context of duty must rely on the broader inquiry into the broad type of plaintiff and harm involved, *not* on the specific facts of a given case. (Amazon Appellees' Brief at 27) (citing *Cavanaugh's Sports Bar*, 140 N.E.3d at 844) (court evaluating foreseeability in the context of duty must evaluate "the broad type of plaintiff and harm involved, without regard to the facts of the actual occurrence."). As such, the specific manner in which Harvail was killed is not relevant to whether his death was foreseeable for the purpose of establishing a duty owed by Amazon and Mount Comfort. All that is required to establish foreseeability as a component of duty is that "there is some probability or likelihood of harm that is serious enough to induce a reasonable person to take precautions to avoid it." *Cavanaugh's Sports Bar*, 140 N.E.3d at 840. A company owning and/or operating a large distribution center and warehouse should reasonably foresee that confusing signage and layout at the facility's entrance presents a serious enough risk of causing

traffic accidents that the company should take reasonable precautions to avoid such risk.[6]

Second, the *Cavanaugh's Sports Bar* court noted that "[a] landowner's present knowledge, however, more conclusively elevates the knowledge of risk to 'some probability or likelihood of harm,' allowing courts to continue to find a duty when 'reasonable persons would recognize it and agree that it exists.'" 140 N.E.3d at 843-44 (quoting *Goodwin*, 62 N.E.3d at 393 and *Rogers v. Martin*, 63 N.E.3d 316, 325 (Ind. 2016)). Here, the Amended Complaint alleges that Amazon sees lost truck drivers get out of the trucks at the spot where Harvail was killed *every day*. (Appellant's App. Vol. II, p. 35). Further, the Amended Complaint alleges that Amazon "that truck driver invitees parked their vehicles just outside the entrance at issue in this case because they were confused by the inadequate signage and lighting" and that Amazon "had ***actual knowledge*** on September 2, 2022, forty-eight days before Harvail's death, that it had inadequate and poorly illuminated signage on its premises, confusing these truck drivers and thereby posing a proven, potentially lethal danger to its invitees." *Id*. This present knowledge of the dangerous condition was further enhanced by Amazon's knowledge that another truck driver had been severely injured at the same spot under the same circumstances less than two months prior to Harvail's death.

The prohibition against using "historical evidence" to determine foreseeability in the context of duty arose from the *Goodwin* court's rejection of a request to consider evidence of prior police reports and evidence of the character of the neighborhood when evaluating whether a

[6] Under the *Goodwin* standard as restated in *Cavanaugh's Sports Bar*, this foreseeability inquiry is generally a threshold legal matter for the Court to evaluate, not a question of fact for the jury. 140 N.E.3d at 840-41. However, this case suggests an exception to that general rule would be appropriate, as expert testimony in traffic management, human factors, and potentially other topics would be useful in establishing that a company operating a distribution center should reasonably foresee the risk that a confusing layout and/or signage would likely cause traffic accidents.

shooting at a bar was foreseeable. *Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, 140 N.E.3d 837, 840 (Ind. 2020) (citing *Goodwin*, 62 N.E.3d at 392-94). Instead, a key factor that courts must consider is "whether the landowners knew or had reason to know about any present and specific circumstances that would cause a reasonable person to recognize the probability or likelihood of imminent harm." *Id*. Thus, while the general historical evidence of prior criminal activity in the neighborhood of the bar in *Goodwin* was impermissible to show that the shooting was foreseeable, a duty of care by a business was properly found in another case where a restaurant's staff recognized increasing hostilities between two groups of patrons before one customer brandished a gun and shot another. *Id*. at 841-42 (citing *Hamilton v. Steak 'n Shake Operations Inc.*, 92 N.E.3d 1166 (Ind. Ct. App. 2018)). Likewise, a college fraternity "had reason to recognize the probability or likelihood of looming harm" when it hosted a party and left a fraternity member who it knew had previously been accused of sexual assault alone with a drunken party guest. *Id*. at 842. Amazon's knowledge of the present and specific circumstances that endangered Harvail – *i.e.* the defective and confusing signage and layout at the Fulfillment Center – similarly would have caused a reasonable person to recognize the risk of imminent harm, and therefore establishes that Amazon owed its delivery truck driver invitees a duty to take reasonable precautions to protect against that harm. *Id*.

G. Amazon and Mount Comfort's affirmative act of posting "no truck" signs at the entrances to the Fulfillment Center was sufficient to assume a duty to inform arriving drivers where they were permitted to enter.

Amazon incorrectly asserts that the Estate "does not claim that Amazon was negligent in performing any act" and that instead the Estate's allegations are simply that Amazon failed to place

adequate signage directing traffic how to enter the Fulfillment Center.[7] However, the Amended Complaint plainly alleges that "Amazon breached its duty of care to truck driver invitees due to its confusing and defective signage." (Appellant's App. Vol. II, p. 37).

To be clear, the Estate is not arguing that Amazon assumed a duty to direct incoming delivery truck drivers simply by inviting them to its Fulfillment Center. Instead, when Amazon posted "no truck" signs at the two most obvious entrances to the Fulfillment Center, it assumed a duty to inform incoming delivery truck drivers where else they were permitted to enter.[8] This is neither an onerous nor an unreasonable requirement. As noted in the Amended Complaint, Amazon could have solved this problem simply by posting signs stating something as simple as "Trucks for Amazon deliveries: Proceed to the next driveway at Progressive Logistics Inc." (Appellant's App. Vol. II, p. 37). Of course, Amazon could also have solved the problem by not posting the "no truck" signs in the first place, but by doing so, it assumed the duty to inform incoming delivery truck drivers where they were permitted to enter the Fulfillment Center if it was going to bar them from entering at the obvious entrances. *See, e.g.*, *Arnold v. F.J. Hab, Inc.*, 745 N.E.2d 912, 915 (Ind. Ct. App. 2001) (reversing summary judgment for nightclub on question of assumption of duty to direct or control traffic where nightclub advised patrons not to park in

[7] Mount Comfort makes essentially the same argument in its Brief. (Mount Comfort's Appellee's Brief at 20-23).

[8] As noted in the Appellant's Brief, because this matter has not yet reached the discovery stage, it is not yet clear whether the signs were posted by Amazon, Mount Comfort, or both. As such, the Court must assume for the sake of their respective Motions for Judgment on the Pleadings that both Amazon and Mount Comfort were responsible for placing the "no truck" signs. *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.").

entrances to parking lot).

Mount Comfort argues that unlike the defendant in *Arnold*, Mount Comfort did not exercise control over County Road 300 North. (Mount Comfort's Appellee's Brief at 22). Yet the control exercised in *Arnold* – namely, prohibiting vehicles from entering specific areas – is the same control that Mount Comfort and Amazon exerted over incoming delivery truck drivers on County Road 300 North by virtue of the "no truck" signs that prohibited delivery trucks from entering the Fulfillment Center at those specific entrances. As such, Mount Comfort's argument is unavailing.

Amazon's argument that "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" (Amazon Appellees' Brief at 30-31) is disingenuous at best. The Amended Complaint is replete with allegations that Amazon's defective and confusing signage caused incoming delivery truck drivers to become confused, stop, and get out of their trucks on County Road 300 North. (Appellant's App. Vol. II, pp. 28-30, 33-38). Obviously if the "no truck" signs had not been placed, these delivery truck drivers would have simply entered the Fulfillment Center instead of stopping and getting out of their trucks.

H. The lack of any control over the driver who struck Harvail does not relieve Amazon or Mount Comfort of liability.

Mount Comfort argues that it cannot be liable because it exercised no control over William McPhearson, the driver who struck Harvail. (Mount Comfort's Appellee's Brief at 23-25). It is unclear why Mount Comfort thinks control over Mr. McPhearson is a necessary element of the Estate's claim against Mount Comfort, and Mount Comfort cites no case law to support its

position.[9] If Mount Comfort had pushed Harvail in front of Mr. McPhearson's vehicle, it certainly could not avoid liability simply because it exercised no control over Mr. McPhearson. The result should be no different based on the fact that, like the hospital in *Lutheran*, Mount Comfort negligently funneled delivery truck drivers like Harvail onto County Road 300 North by virtue of its defective and confusing signage and layout.

III. 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,

YOSHA LAW

/s/ Alexander C. Trueblood
Brandon A. Yosha, No. 36138-29
Louis "Buddy" Yosha, No. 1436-49
Bryan C. Tisch, No. 24693-49
Alexander C. Trueblood, No. 31804-49
9102 N. Meridian Street, Suite 535
Indianapolis, IN 46260
Ph: (317)334-9200
Fax: (317)315-5143
Email: byosha@yoshalaw.com
lbyosha@yoshalaw.com
btisch@yoshalaw.com
atrueblood@yoshalaw.com
Attorneys for Appellant Harjit Kaur, Individually, and As the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased

[9] This argument appears to be related to Mount Comfort's earlier argument that falsely asserts that the driver who struck the plaintiff in *Lutheran* was an invitee subject to control of the defendant hospital, which, as explained in more detail above, is both factually and legally incorrect.

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/s/ Alexander C. Trueblood
Alexander C. Trueblood
Attorney for Appellant

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

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 May 7, 2024, to:

Thomas R. Schultz
Stacey A. Everson
SCHULTZ & POGUE, LLP

Barath S. Raman
Edmund L. Abel
LEWIS WAGNER, LLP

Edward A. DeVries
Philip G. Rizzo
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP

/s/ Alexander C. Trueblood
Alexander C. Trueblood, No. 36138-29
YOSHA LAW
9102 N. Meridian Street, Suite 535
Indianapolis, IN 46260
Ph: (317)334-9200
Fax: (317)315-5143
Email: atrueblood@yoshalaw.com
Attorney for Appellant Harjit Kaur, Individually, and As the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased