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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, Deceased, Plaintiffs, 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. Defendants.	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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AMENDED CONSOLIDATED AMICUS CURIAE BRIEF OF THE INDIANA TRIAL LAWYERS ASSOCIATION

INDIANA TRIAL LAWYERS ASSOCIATION
Charles Hubley, No. 35622-29
Chase Wilson, No. 34258-49
Attorneys for the *Amicus Curiae*,
HURST LIMONTES LLC
50 S. Meridian Street, Suite 600
Indianapolis, IN 46240
Phone: (317) 636-0808
Fax: (317) 633-7680
Email: cwilson@hurstlimontes.com
chubley@hurstlimonts.com

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I. BRIEF STATEMENT OF THE INTEREST OF *AMICUS CURIAE*

The Indiana Trial Lawyers Association ("ITLA") is an organization dedicated to the constitutional rights of open access to the courts and equal protection under the law for all persons in Indiana. The ITLA is comprised of trial attorneys who represent people who are injured by the negligence and misconduct of others. Due to the unique composition of the ITLA, Indiana's trial courts, Court of Appeals, and this Supreme Court have frequently granted it "friend of the court" status. The ITLA takes this privilege seriously and only requests this status when a particular case's outcome could have a ripple effect endangering other litigants' access to the courts or just compensation.

The interests of the ITLA are aligned with the Appellant/Plaintiff, Harjit Kuar ("Kuar") and all tort victims who would be severely affected if the lower court's ruling is allowed to stand and essentially immunize premises owners for conduct that causes injury off of their premises.

II. SUMMARY OF THE ARGUMENT

The trial court's orders granting Defendants' Trial Rule 12(c) Motions to Dismiss on the pleadings was improper because Indiana law recognizes a duty could be owed to the Plaintiff by the Defendants. In the alternative, Indiana should recognize a duty based on the three factor *Webb* test.

Indiana law recognizes several applicable theories of extraterritorial duty imposed upon a landowner. Those theories include a duty where a business invitee reasonably believes the invitor controls adjacent premises, where the invitor knows his invitees customarily use an adjacent premise in connection with their invitation, when the activities of the business affect risk of foreseeable injury off the premise, gratuitous assumption, to provide a safe means of ingress and

egress, to exercise reasonable care to prevent injury caused by the property's defective or dangerous condition to persons traveling on public roads, and a possessor of land has a duty of reasonable care for artificial conditions or conduct on the land that poses a risk of physical harm to persons or property not on the land.

The duties above are well-recognized by legal treatises and many jurisdictions throughout the United States. The trial court's ruling, if not overturned, would immunize property owners from any sort of liability despite the premises owner's affirmative artificial conduct, no matter how egregious or dangerous, which causes known harm to those traveling on abutting public roadways.

The trial court ignored each of these legally established duties under Indiana law. Instead, the Court ruled the Defendant owed no duty to the Plaintiff based on *Precedent Partners*, which is easily distinguishable and inapplicable.

III. ARGUMENT

A. Defendants Had a Duty Already Recognized Under Indiana Law

Indiana recognizes several theories of extraterritorial liability for landowners, specifically when it relates to business invitees. "Liability is not limited to the area owned or leased but extends to adjoining areas which harbor a dangerous condition created by the owner's special benefit or use of such areas." *Ember v. B.F.D., Inc.,* 490 N.E.2d 764, 773 (Ind. Ct. App. 1986). "When the activities conducted on the business premises affect the risk of injury off the premises, the landowner may be under a duty to correct the condition or guard against foreseeable injuries." *Lutheran Hosp. of Indiana, Inc. v. Blaser*, 634 N.E.2d 864, 870 (Ind. Ct. App. 1994). "A duty of reasonable care may be extended beyond the business premises when it is reasonable for invitees to believe 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." *Ember*, at 772. "[A]n invitor's duty to exercise reasonable care includes a duty to provide a safe and suitable means of ingress and egress, and may extend to warning of or protection from a danger that originates from third persons." *Lutheran*, at 869. Amazon had an already recognized duty in relation to the case at bar under each of these already recognized theories of extraterritorial duty, as well as additional theories.

i. Defendants Owed a Duty to Plaintiff Because It Was Reasonable for Invitees to Believe Defendants Controlled the Premise Adjacent to It Due to the Regular Use by Invitees in Connection with the Invitation.

Defendants were aware that their business invitees were regularly stopping on the public road adjacent to its premises to ask for directions as to where deliveries were to be made, making it reasonable for invitees to believe Defendants controlled the adjacent premises. This fact extended Defendants' duty to protect invitees to the subject adjacent premises.

Ember v. B.F.D., Inc., established, "a duty of reasonable care may be extended beyond the business premises when it is reasonable for invitees to believe 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." 290 N.E. 764, 870 (Ind. Ct. App. 1986).

The facts as plead by the Plaintiff establish that Defendants were aware, or should have been aware, truck driver invitees would regularly stop on the street adjacent to the second entrance to ascertain where they were supposed to be taking deliveries. Defendants, therefore, had a duty to the Plaintiff.

ii. Defendants Owed a Duty to Plaintiff Because Activities on and in the Use of Their Business Premise Harbored a Dangerous Condition and Affected the Risk of Injury Off Premises.

Defendants, in relation to the activities conducted on its business premises, used the business premises in a manner that harbored a dangerous condition off premises, which they were or should have been aware of, that affected the risk of injury to business invitees. The culmination of Defendants' business practices and lack of clear direction created a dangerous condition in which said drivers would regularly stop their trucks in the middle of the road to cross the road onto Defendants' premise to ask for directions. Defendants were aware this was happening and had actual knowledge it increased the risk of injury off its premises yet failed to act to remedy or warn of the danger.

Ember articulated that a business may have a duty to protect invitees beyond its business premises in certain situations. *Lutheran* furthered the discussion of when extraterritorial duty is applicable. "The invitor has a duty to exercise reasonable care to discover defects or dangerous conditions on the premises . . . In addition, an invitor's duty to exercise reasonable care includes a duty to provide a safe and suitable means of ingress and egress and may extend to warning of or protection from danger that originates from third persons." *Id.* at 869. *"*When activities conducted on the business premises affect the risk of injury off the premises, the landowner may be under a duty to correct the condition or guard against foreseeable injuries." *Id.* at 870.

In *Lutheran* a woman attempting to cross a public road from parking lot located across the street from a hospital using the exit driveway of the parking lot was struck by a motor vehicle attempting to enter the parking lot using the exit driveway. *Id.* In examining whether the hospital owed a duty to the woman the court looked at several things, including the following facts:

- The hospital, located on the West side of a public roadway had a parking

lot that serviced it on the East side of the public roadway.

- In front of the hospital building was a circular driveway with a well-lit canopy entrance, and a guard booth.
- The exit driveway to the parking lot across the street was directly across the street from the entrance.
- The visual cues provided necessarily drew pedestrians to use the exit lane of parking lot and cross the public roadway mid-block as opposed to using the marked crosswalks to both the north and the south.
- On the parking lot side of the public roadway there was a guardhouse with an arrow pointing into it, though it was only meant to be an entrance for delivery trucks, not the public.
- The public had no way of knowing this until they were pulling into the exit driveway or right alongside it.
- The hospital was aware that both pedestrians and vehicles were mistakenly using the exit driveway and adjacent roadway.

Id.

The Court, looking at these facts stated, "the factfinder could infer that automobiles were turning into the 'exit' driveway of the parking lot with the mistaken idea that it was an entrance, and pedestrians were crossing mid-block on [the public roadway] and pedestrians were crossing mid-block on the [public roadway] and walking into the 'exit' driveway towards their cars." *Id.* at 869. The court reasoned, "This funneling of pedestrian and vehicular traffic into the driveway of the parking lot created a dangerous condition that [The Hospital] was either cognizant of or should have reasonably foreseen." *Id.* The court further reasoned that the accident was reasonably

foreseeable as both the pedestrian and the vehicle acted in a normal and ordinary manner. *Id*.

The court reasoned that by allowing pedestrians and automobiles to use the 'exit' driveway in this manner without adequate safeguards or warning the Hospital, "used its premises, the parking lot, in such a way to affect the risk of injury to its invitees off its premises . . . Because [The Hospital] used knew the manner in which its invitees . . . customarily used the driveway of the 'exit' in connection with its invitation, it is under a duty to correct the dangerous conditions and guard against foreseeable injuries." *Id.* at 870.

Defendants' use of the premises, specifically their policies, lack of signage, and failure to direct delivery drivers created confusion amongst their delivery driver invitees which resulted in the dangerous condition which foreseeably led to the death of Harvail Singh Dhillon. The commonalities between *Lutheran* and the case at bar are too much to be ignored:

- The visual impression that one of the two entrances in front of its warehouse was proper entrances with nothing more than two small "no truck" signs to indicate otherwise.
- The failure to provide drivers with directions to the proper truck entrance which was located some ways down the road at another business's facility.
- Defendants' awareness that this was regularly causing confused delivery driver invitees to stop in the middle of the roadway and cross the street to ask for directions.
- Defendants' awareness this course of action could cause injury, as it already had.

Defendants further enflamed the situation by docking driver pay if they were late. As such, Defendants owed a duty under Indiana Law.

B. The Precedent that the Possessor of Land Has a Duty of Reasonable Care for Artificial Conditions or Conduct on the Land that Poses a Risk of Physical Harm to Persons or Property Not on the Land is Law in Most of the Jurisdictions in the United States.

It is axiomatic that land possessors may engage in many different forms of activity on their land that will pose risks to others off the land.[1] The fact that a landowner engages in conduct on the possessor's own property instead of someone else's property or public property does not affect the obligation of the actor-possessor. This is especially true regarding artificial conditions on the land that may pose risks to others off of the land. *Restatement (Third) of Torts* states in pertinent part:

> (a) The possessor of land has a duty of reasonable care for *artificial conditions or conduct* on the land that poses a risk of physical harm to persons or property not on the land.
>
> (b) For natural conditions on the land that pose a risk of physical harm to persons or property on the land, the possessor of the land
> (1) Has a duty of reasonable care if the land is commercial; otherwise
> (2) Has a duty of reasonable care only if the possessor knows of the risk or if the risk is obvious…

Restatement (Third) of Torts, § 54 (2012)(emphasis added). Section 371 of *The Restatement Second of Torts* provided for liability of a land possessor whose activities on the land harm those off the land if those activities impose an unreasonable risk and the possessor is or should be aware of the risk. *The Restatement (Third) of Torts* adopts the more familiar duty language of reasonable care for conduct on the land that creates risks to those off the land. *The Restatement (Third) of Torts* makes a specific distinction between artificial conditions and natural conditions in order to foster consistency with its predecessor, the Second Restatement.

1 "For example, they may build automobiles, dispense drugs, construct structures, mine coal, or engage in myriad other activities that could potentially harm others off the land." *Restatement (Third) of Torts*, § 54 (2012).

Section 363 of the Second Restatement provided that land possessors in urban areas have a duty of reasonable care with regard to trees on land that pose a risk to those on a public highway, but explicitly left open the question whether this duty also applies to land possessors in rural areas. Under the *Second Restatement*, land possessors have no other duties with regard to natural conditions. In terms of duty as it pertains specifically to adjacent highways, the *Third Restatement* is instructive:

> e. Adjacent Highways. This section applies to those on highways adjacent to private property. Section 368 of the Second Restatement addressed the liability of a land possessor for harm to those on adjacent highways. As the Second Restatement recognized, *there is nothing unique about a highway, as opposed to other types of adjacent public or private land, that should affect the duty of a land possessor. The existence of a highway may affect the magnitude of the foreseeable risk of certain conduct by the land possessor, but that would ordinarily go to whether there is a breach of the duty, not to the existence of a duty*…

Restatement (Third) of Torts, § 54(e) (2012)(emphasis added).

In an attempt to immunize landowners in the State of Indiana from liability, and in direct contravention of the vast majority of jurisdictions within the United States, the Defendants below argued to the trial court that businesses have no duty, no matter what actions are taken on their own land, to those traveling on public roadways that are adjacent to the landowner's premises. The problem with this unjustly narrow reading of the caselaw here in Indiana is that it not only obtusely interprets Indiana precedent, but it also is in direct contradiction to the vast majority of Indiana's fellow jurisdictions who have examined this particular duty to people traveling on land adjacent to the subject premises.

In *Stephens v. Bashas' Inc.*, 186 Ariz. 427 (Ct. App. 1996), the Arizona Court of Appeals Held that a delivery driver who was struck by a passing truck while waiting on an adjacent street to enter the owner's premises to deliver goods was a business invitee to whom the owner owed a duty to maintain its premises in a reasonably safe condition, including the obligation to provide

reasonably safe means of ingress and egress. The court stated that "It is reasonable for invitees to believe 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.* at 430. In response to Basha's argument that it owed no duty to the delivery driver Stephens because it owed no duty to the traveling public on the abutting street, the appellate court disagreed, stating that "…Stephens was not merely a member on the traveling public in relation to Bashas. *He was a business invitee whom Bashas owed a duty of care…several courts have concluded that a business' duty to invitees may extend beyond its own property*." *Id.* (Emphasis added).

In terms of duty, the court stated that "No one disputes that Bashas knew truck drivers used the center lane of 35th Avenue for parking and opening their doors before backing onto its property." *Stephens*, *supra* at 430. The business was aware of the potential hazard that it was creating on the public roadway yet did nothing to remedy the situation. In evaluating cases presented by the landowner to suggest there was no duty, the court dismissed the arguments as they suggested that a landowner would have a duty to control an adjacent public road. "Stephens has not alleged that Bashas had a duty to control 35th Avenue. *He instead contends that Bashas should have maintained its own premises so that space would have been available for him to open his doors off the roadway." Id.* at 431 (emphasis added). "When the activities conducted on the business premises affect the risk of injury off-premises, the landowner may have an obligation 'to correct the condition or guard against foreseeable injuries.'" *Stephens*, 186 Ariz. at 431 *citing Ember v. B.F.D., Inc.,* 490 N.E.2d 764, 772 (Ind.App.1986). "This is particularly true when the activity involves use of the adjoining way to the business' commercial advantage. *Id.* at 773.

No one is suggesting that the Defendants below should have controlled the state road where the decedent Plaintiff was injured. On the contrary, the Plaintiff below merely is asking for the

Court to find that there may by a duty imposed on a landowner who, through its own affirmative conduct and actions to attempt to control the way travelers use a public roadway, does in fact knowingly influence the flow of traffic. At the very least, the Plaintiff below should be allowed to conduct meaningful discovery to determine to what extent, if any, the amount of control, whether intentional or not, Defendants' signage on the premises exerted on the traffic patterns and conduct of those traveling on the adjoining roadway where this fatality occurred. Defendants' potential control over the traffic flow of the intersection in question has already been established by the fact that they erected different, clearer signage throughout the perimeter of the facility after Harvail Singh Dhillon's death.[2] To find that the Defendants have no duty whatsoever despite their affirmative conduct in erecting signage that influences traffic on the abutting roadway would immunize property owners for flagrantly disregarding a duty of reasonable care as to activities and artificial conditions on the possessor's land which are causing known harm to those traveling on abutting public roadways.

In *Boggs ex rel. Boggs v. Lay,* 164 S.W.3d 4 (Mo. App. E.D., 2005), the Missouri Court of Appeals upheld a jury verdict below finding that a landowner responsible for Soybean processing was liable to a minor who was injured on a public roadway adjacent to the landowner's premises. In finding that "An abutting owner will be held liable for injuries sustained by travelers lawfully using the road as a result of conditions that the owner has been instrumental in creating or maintaining", the court applied a recognized exception to the general rule that an abutting property owner is under no duty to maintain a public road in a safe condition. *Id.* at 16. The court found that the property owner did have a duty under the exception that a duty is imposed when an abutting

2 Depending on when these subsequent remedial measures were contemplated, they may be admissible in this case to establish notice and would work to show a duty on the part of Defendants. *See Boggs ex rel. Boggs v. Lay,* 164 S.W.3d 4 (Mo.App. E.D., 2005).

property owner "…*artificially creates, through negligence or affirmative action*, a condition on the public road which makes passage unsafe." *Id.* at 17, *citing Caldwell v. McGahan*, 894 S.W.2d 237, 239 (Mo.App. E.D., 1995); *see also* 40 C.J.S. *Highways* § 249 (1991); 39 Am. Jur.2d *Highways, Streets, and Bridges* § 365 (1968)(emphasis added). When the abutting property owner creates a dangerous condition on the public road, the law will impose a duty of reasonable care to guard the public from injury. *Harris v. Woolworth*, 824 S.W.2d 31, 33 (Mo.App. E.D., 1991).

The court reasoned that the premises owner's operation of the red-green light for access onto its scales, its decision not to provide an alternative parking situation for its delivery drivers, and its instructions on how the drivers were to access the soybean processing plant, all affirmatively created a condition on the abutting public road that made passage unsafe. *Boggs,* 164 S.W.3d, at 17.[3] The situation in *Boggs* is analogous to the Defendants' conduct in the case below. The Defendants controlled the manner in which the delivery drivers entered the premises, provided directions to the premises on how their drivers were supposed to enter the premises, the Defendants affirmatively erected an artificial hazard ("No Trucks" signage) on their premises that they had direct knowledge was affecting the traffic patterns on the neighboring public roadway, and the Defendants took no action, despite this knowledge, to provide alternative parking measures for the drivers. All these actions, or inactions, created a condition on the abutting public road that made passage unsafe and resulted in the death of Harvail Signh Dhillon.

Extending the duty of care of landowners as it relates to not creating hazardous artificial conditions on their land that affects travel on an adjacent public roadway is widely accepted

3 Compare Instead to *O'Neil v. ADM Growmark River Systems, Inc.*, 871 S.W.2d 54 (Mo. App. E.D. 2005)(Finding that no duty was created to warn a delivery driver of the dangers of a railroad crossing when the landowner had taken no affirmative act, other than simply being open for business, to cause the traffic to accumulate on a public road that resulted in driver's death).

throughout most jurisdictions. *See Justice v. CSX Transp., Inc.*, 908 F.2d 119, 123 (7th Cir. 1990)(applying Indiana law)("The most fundamental [principle] is that, with the exception just stated [relating to *natural conditions*], a person may not use his land in such a way as to unreasonably injure the interests of persons not on his land – including owners of adjacent lands, of course, but also other landowners and the users of public ways."); *Ollar v. Spakes*, 601 S.W.2d 868, 870 (Ark. 1980)("Therefore, liability of the owner or operator of a business to an invitee is not necessarily confined to his property boundary lines…When an owner or operator 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."); *Fleming v. Garnett*, 646 A.2d 1308 (Conn. 1994)(owner of commercial driveway adjacent to public road owed duty to passing motorists since he realized or should have realized that tractor trailers leaving his property and entering highway via neighboring driveway would temporarily block both lanes of traffic); *Langen v. Rushton*, 360 N.W.2d 270, (Mich. Ct. App. 1984)(shopping-center owner owed duty in developing and maintaining facility, including parking lot and exits, to consider risks to motorists on adjacent highways); *HNMC, Inc. v.* Chan, 637 S.W.3d 919 (Tex. App. 2021)(There was a high likelihood of injury to pedestrians crossing street from hospital's building to its parking late, at same mid-block place where nurse was struck and killed by vehicle exiting lot, as factor in determining whether hospital owed duty to ensure nurse's safety while she cross public road using crosswalk that had been abandoned by county); *Bradford v. Universal Const. Co., Inc.*, 644 So.2d 864, 866 (Ala. 1994) ("This Court has recognized that a landowner's duty extends beyond the premises where the land abuts public ways or sidewalks…Ordinary care requires that the owner 'do no affirmative act that will create an unsafe condition in the public way fronting his property.'") *citing Louis Pizitz Dry Goods Co. v. Harris*, 270 Ala.390, 393, 118 So.2d 727, 729

(1959); *Combs v. Atlanta Auto Auction, Inc.*, 287 Ga.App. 9, 15, 650 S.E.2d 709, 716-717 (2007)("…[W]e conclude that, at the very least, the last ten to fifteen yards of Stansell Road immediately before the Auction's property…constitute a final approach to that property... [Defendant] had a legal duty to 'exercise due care within the confines of [its] right in the public way."); *Carigan v. New Hampshire Int'l Speedway, Inc.*, 858 A.2d 536, 541 (NH 2004)(Landowner found to have voluntarily assumed a duty by placing an employee on the roadway to direct traffic onto its premises)("…having undertaken the task of directing the driving public onto its property, under these circumstances, [the defendant] was required to exercise care to avoid exposing persons to a risk of injury that occurs offsite."); *Garlick v. Trans Tech Logistics, Inc.*, 636 Fed.Appx. 108, 114 (3rd Cir. 2015)(applying Pennsylvania law)(Landowner that took measures to determine the most efficient and safest route to its facility and provided directions to delivery drivers was found to have undertook a duty but then failed to provide adequate lighting and signage, precluding summary judgment).

C. Public Policy Considerations Support Vacating the Trial Court's Sweeping Ruling Finding No Duty on the Defendants

From a public policy perspective, allowing the trial court's ruling below to stand will allow for landowners to engage in conduct, no matter how dangerous and egregious to those traveling on roadways abutting the premises, without a manner of redress. Our Supreme Court has identified three general factors to balance in determining whether a duty should be imposed. *Ousley v. Board of Commissioners of Fulton County*, 734 N.E.2d 290, 293 (Ind. Ct. App. 2000) *citing Webb v. Jarvis*, 575 N.E.2d 992, 995 (Ind. 1991), *disapproved of on other grounds*. The three factors to consider are (1) the relationship between the parties, (2) the reasonable foreseeability of the harm to the person injured, and (3) public policy concerns *Id*. As it relates to the public policy concerns

factor, the *Ousley* court referred to the Indiana Supreme Court's reliance upon Professors Prosser and Keeton in *Gariup Construction Co.*, *Inc. v. Foster*, 519 N.E.2d 1224 (Ind. 1988), who observed that:

> ***The statement that there is or is not a duty begs the essential question – whether the plaintiff's interests are entitled to legal protection against the defendant's conduct… *Various factors undoubtedly have been given conscious or unconscious weight, including convenience of administration, capacity of the parties to bear the loss, a policy of preventing future injuries, the moral blame attached to the wrongdoer, and many others. Changing social conditions lead constantly to the recognition of new duties*. No better general statement can be made than that the courts will find a duty where, in general, reasonable persons would recognize it and agree that it exists.

Prosser & Keeton on Torts § 53, at 357-59 (5th Ed. 1984)(emphasis added) *see also Haywood v. Novartis Pharmaceuticals Corp.*, 298 F.Supp.3d 1180, 1192 (7th Cir. 2018)(applying Indiana law)("Various factors play into this policy consideration, including convenience of administration, capacity of the parties to bear the loss, a policy of preventing further injuries, and the moral blame attached to the wrongdoer"). "When considering public policy to determine if common law imposes a duty of care, a court should look to 'who is, or should be, in the best position to prevent [an] injury and how society should allocate the costs of such injury.'" *Estate of Staggs by and through Coulter v. ADS Logistics Co., LLC*, 102 N.E.3d 319, 326 (Ind. Ct. App. 2018). "For purposes of establishing whether a duty exists, foreseeability is established when a defendant is shown to have knowledge, actual or constructive, that there is some probability or likelihood of injury sufficiently serious that an ordinary person would take precautions to avoid it." *Boggs,* 164 S.W.3d at 17.

From the allegations of the Plaintiff's complaint, the Defendants had abundant notice, not only of trucks stopping on County Road 300 North adjacent of the Amazon facility every day, but also of the severe dangers that this posed considering a fellow delivery driver was struck by a

passing vehicle in the exact same area only weeks before Plaintiff Harvail Singh Dhillon was killed. In terms of convenience of administration, lighting and accurate signage would have alleviated the trap set by Defendants for their delivery drivers in this scenario and would also have effectuated smoother operations for the businesses benefiting from the traffic on County Road 300 North. Convenience of administration in finding a duty is also exhibited by the fact that days after Harvail Singh Dhillon was killed, the Defendants changed the signage outside of the facility and installed lighting in order to make the manner of ingress and egress to its premises safer. The Defendants include some of the most profitable corporate entities in the world and therefore they have ample capacity to bear the loss associated with this wrongful death. As it relates to the prevention of injuries, Defendants, as the owners of the land, the main commercial users of the stretch of road where the wrongful death occurred, and the erectors of the "No Trucks" signage, were in the best position, especially considering their daily notice of trucks stopping on the adjacent roadway, to modify the situation causing the confusion and remedy the trap they were setting for delivery drivers attempting to enter the facility.

If Harvail Singh Dhillon's death had been the first incident where a delivery truck had stopped on County Road 300 North that resulted in injury, then it would be feasible to suggest that there is little to no moral blame attributable to the Defendants. However, as was plead in the Amended Complaint, the Defendants were aware that on September 22nd, 2022, less than a month before Harvail Singh Dhillon was killed, that another delivery driver stopped in the exact same spot on CR 300 N and was struck by a passing vehicle while attempting to discern how to enter the facility. The Defendants' failure to make any changes following the September 22nd, 2022, injury, coupled with their detailed knowledge that delivery drivers were stopping in that spot *every single day* leading up to Harvail Singh Dhillon's death, should be considered morally reprehensible

behavior on their part. The Defendants' moral responsibility is made even more evident by the fact that they took simple measures after Harvail Singh Dhillon was killed to alleviate the confusion they had caused by their signage which was simply too little, too late.

Allowing property owners free reign to utilize their land, despite the effect it would have on those utilizing adjacent public roadways, will lead to extremely dangerous and absurd results. Take for example if instead of a "No Trucks" sign, the Defendants had erected signage which said "Trucks this Way" that pointed to a cliff on the other side of the road, and a truck had driven off the cliff only weeks before the subject wrongful death incident. Defendants' argument is that this scenario would still not impose a duty on the Defendants because the injury did not occur on their own premises and therefore, they had no duty, despite their affirmative conduct relating to artificial conditions on their own land. Such a result sounds absurd in context, but this is a scenario that would seemingly be appropriate if the trial court's ruling is allowed to stand.

The Defendants put the sign up. The Defendants had direct knowledge that delivery drivers stopped in this exact same spot on County Road 300 North *every day* prior to the injury incident of September 22nd, 2022. The Defendants took no corrective action, continued to watch their delivery drivers stop in the same area for four weeks, until finally Harvail Singh Dhillon was killed on October 20th, 2022, in the exact same manner that another delivery driver suffered severe and debilitating injuries only four weeks prior. The Defendants then changed their signage to make it clearer where these trucks needed to go and also added lighting to improve visibility in the area. It is inconceivable, from a public policy perspective, for the Defendants to now suggest to the court that it had absolutely no obligation to Harvail Singh Dhillon all things considered.

IV. CONCLUSION

For the reasons stated herein, *amicus curiae* respectfully requests that this Court reverse the Trial Court's entry of judgment on the pleadings for the Defendants and remand this matter to the Trial Court for further proceedings.

V. WORD COUNT CERTIFICATION

I verify that this brief contains no more than 7,000 words. I verify that this brief contains 6,744 words.

/s/ Chase T. Wilson_____
Charles Hubley (#35622-29)
Chase T. Wilson (#34258-49)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 16, 2024, the foregoing document was electronically served upon the following counsel of record using the Indiana E-Filing System (IEFS):

Thomas R. Schultz
Stacey A. Everson
SCHULTZ & POGUE

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

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

Brandon A. Yosha
Louis "Buddy" Yosha
Richard A. Cook
Bryan C. Tisch
Alexander C. Trueblood
Yosha Cook & Tisch
9102 N. Meridian Street, Suite 535
Indianapolis, IN 46260

/s/ Charles Hubley
INDIANA TRIAL LAWYERS ASSOCIATION
Charles Hubley, No. 35622-29
Chase Wilson, No. 34258-49
Attorneys for the *Amicus Curiae*,
HURST LIMONTES LLC
50 S. Meridian Street, Suite 600
Indianapolis, IN 46240
Phone: (317) 636-0808
Fax: (317) 633-7680
Email: cwilson@hurstlimontes.com
chubley@hurstlimonts.com