Received: 11/27/2024 12:17 PM
Filed: 12/03/2024 1:31 PM

IN THE
INDIANA SUPREME COURT

CASE NO.: 23A-CT-2059

HARJIT KAUR, individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased Appellant-Plaintiff v. AMAZON, INC., AMAZON LOGISTICS, INC.,AMAZON.COM, INC., AND AMAZON.COM SERVICES, LLC, MQIL AND CF MOUNT COMFORT DST Appellees-Defendants	) APPEAL FROM THE) HAMILTON SUPERIOR COURT) LOWER COURT CASE NO.) 29D04-2212-CT-10006) THE HONORABLE JUDGE) J. RICHARD CAMPBELL

BRIEF OF *AMICUS CURIAE*, DEFENSE TRIAL COUNSEL OF INDIANA, IN SUPPORT OF APPELLEES (DEFENDANTS BELOW)

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I. STATEMENT OF INTEREST

Defense Trial Counsel of Indiana ("DTCI") is an association of Indiana lawyers that defend clients in civil litigation. DTCI has an interest in the outcome of this appeal, as the adoption and application of the Restatement (Third) of Torts § 54 (2012) will significantly alter and negatively impact Indiana's premises liability law.[1]

II. SUMMARY OF ARGUMENT

This case arises from an unfortunate event that resulted in the death of Harvail Singh Dhillon, after he was struck by a passing motorist. On the morning of October 20, 2022, Dhillon, an independent contractor and truck driver, approached the Amazon fulfillment center, located at 4412 West 300 North, Greenfield, Indiana, stopped his vehicle in the center turn lane of a public roadway, exited his truck, and within seconds, was struck and killed by a semi-truck operated by William McPhearson. (App. 2: 27, 29–30).

The Estate alleges in its Complaint, that the Defendants, CF Mount Comfort (the premises owner) and Amazon (which leases the premises) breached their duty of care to Dhillon, as the lighting and signage for delivery drivers within the fulfillment

[1] Pursuant to Indiana Appellate Rule 46(E)(2), the undersigned attorneys for *Amicus Curiae* DTCI have consulted with counsel for Appellees—whose position DTCI's *amicus curiae* submission supports—and reviewed the arguments raised in their brief, in an effort to avoid, where possible, any repetition and restatement of legal arguments.

center premises created a dangerous condition beyond the premises. (App. 2: 26, 33–41).

At the trial court level, Defendants moved for judgment on the pleadings, arguing they owed no duty to Dhillon. (App. 2: 45–68). The trial court granted Defendant's motion and denied the Estate's subsequent motion to reconsider, holding that Defendants "had no duty to guard against injury to [Dhillon] from the negligent acts of someone over whom [Defendants] had no control and when the injury occurred off" the premises. (App. 2: 18, 21–22). On September 27, 2024, a panel of the Court of Appeals reversed the trial court's decision in a to-be-published opinion (the "Opinion"). The Court of Appeals rejected Defendant's argument that this Court's opinion in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031, 1041 (Ind. 2021), applied here because, in the panel's view, *Reece* addresses only visual obstructions and the duties owed to the traveling public, not other dangerous conditions on the premises and the duties owed to would-be invitees. (*See* Opinion, pp. 9–10).

The Court of Appeals further relied upon Section 54 of the *Restatement (Third) of Torts*, which provides, in pertinent part:"[t]he 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." (*Id.*, p. 13 (quoting *Restatement (Third) of Torts* § 54 (2012)). The panel acknowledged that Section 54 has not been adopted in Indiana, but nonetheless applied it to reverse the trial court's ruling because "[t]he Estate alleged that Amazon controlled the way that delivery drivers enter the premises and that it placed an artificial hazard, *i.e.*, the 'no trucks' signage

on its premises." (*Id.*, pp. 14–15). Judge Mathias concurred, writing separately to "urge our colleagues on the Supreme Court" to adopt Section 54. (*Id.*, p. 17).

The Panel's reliance on Section 54 is the focus of this *amicus curiae* brief. DTCI urges this Honorable Court to reject the adoption of Restatement (Third) of Torts § 54 (2012), as this Court already established a bright-line rule rt in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031, 1041 (Ind. 2021), and the adoption of Section 54 would significantly impact the current state of Indiana's premises liability law and potentially open the flood gates to onerous litigation that will disproportionately burden Indiana's business owners.

III. ARGUMENT

DTCI's focus as *amicus curiae* is limited to the issue and applicability of Section 54 of the Restatement (Third) of Torts ("Section 54"). The Opinion relies upon the language of Section 54, which represents a significant adaptation to the existing analysis of Indiana premise liability law. As such, DTCI presents to this Court a concise analysis of Section 54, along with the policy implications the adoption of Section 54 would have on Indiana law. DTCI urges this Court to reject the adoption of Section 54, as it runs afoul of existing Indiana precedent. Nevertheless, even if this Court adopts Section 54, the artificial conditions in question do not pose a risk of harm, therefore alleviating the Appellees-Defendants from any duty owed under Section 54.

III.A. The Practical Implications of Adopting Section 54 Result in an Unwarranted Expansion of Liability.

If Section 54 were to be adopted, it would impose an unwarranted, onerous burden on landowners never before seen under Indiana law. The language of Section 54 would turn simple automobile accidents into premise liability claims based on any presence of an artificial condition supposedly deemed "confusing", "distracting", or otherwise. Such a change would not only overwhelm the judiciary, but subject landowners to baseless litigation. Adopting Section 54 has the potential to open the floodgates to suits against landowners for merely advertising their products and services on adjacent roadways. Phrased differently, the adoption of Section 54 opens the door to unnecessary litigation, potentially nefarious arguments against landowners, and an unwieldy, crowded docket with non-meritorious claims.

Notably, this Court has already had the opportunity to adopt Section 54. However, this Court chose instead to establish the "bright-line rule" as laid out in *Reece*. The bright line rule established in *Reece* discarded the "meandering" and "unworkably malleable" analysis previously imposed under Indiana law. However, to adopt Section 54 would mean this Court would need to backtrack on an opinion that is less than four (4) years old and return to the unworkably malleable system previously imposed. *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031 (Ind. 2021). That bright-line rule established that landowners 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. This well-reasoned articulation is appropriate as it eliminates the need for preliminary factual inquisitions.

If Section 54 were to be adopted, and the bright-line rule to be rolled back, Indiana courts would be tasked with not only deciphering the previously unworkable, malleable analysis, but defendants also would be required to analyze the mind of a traveling motorist. Specifically, a traveling motorist would only need to claim that signage adjacent to a public roadway was confusing for his or her claim to accrue against an adjacent business. Thus, an additional an unjustified burden would be imposed upon business owners adjacent to public roadways.

The adoption of Section 54 would immediately require an analysis of the pretextual factual questions disposed of by *Reece*. In addition, eliminating the blueprint laid out by *Reece*, will promote incongruous arguments by plaintiffs, and lead to inconsistent decisions that will ultimately have to be decided on appeal. For instance, without *Reece*, the trial courts will be tasked with establishing what constitutes confusing signage. In this case, under Section 54, the trial court would need to determine whether a simple statement, "No Trucks," constitutes confusing signage. This sign, hardly a lengthy diatribe about the rules and directions, would be subject to pretextual arguments that appropriately would not be available under *Reece*. Under Section 54, this process would expand to stop signs, yield signs, "one-way" signs, "do not enter" signs, and more.

The overarching effect associated with adopting Section 54 will be detrimental to landowners, as any advertisements, signage, or similar items will become a magnet for litigation. The onerous burden imposed upon landowners attempting to comply with the ambiguous language of Section 54 is a fruitless endeavor, as there is no bright-line rule for landowners to follow. Even good faith efforts that would have been sufficient under *Reece* would become subject to interpretation and pretextual factual determinations. Simply put, Section 54 will cause expansive litigation while implicating business owners in needless premises liability suits. Thus, DTCI is advocating for the preservation of the bright-line rule established by *Reece,* only a few short years ago.

Further, the application of Section 54 would discourage landowners from utilizing signage in any capacity. Despite a landowner's best efforts, a plaintiff could simply claim that signage was "confusing." A court would then need to take an allegation of confusing signage on its face, and a defendant would need to present evidence contrary to an allegation of confusing signage. More likely than not, defendants would be tasked with a fruitless endeavor, as one cannot read the mind of a passing motorist.

The adoption of Section 54 would place new burdens on business owners and landowners. While DTCI advocates for continued reflection and consideration about the evolution of Indiana law in such a way that aligns with well-settled precedent, the practical implications here are too far-reaching with unintended consequences to ignore. DTCI respectfully requests that this Court maintain the bright-line rule in

determining premise liability cases as articulated by this Court in *Reece*, and reject Section 54, as it does not comport with Indiana precedent.

III.B. The Application of Section 54 of the Restatement (Third) of Torts Would Not Impose a Duty Upon Appellees

Section 54 of the Restatement (Third) of Torts was released by the American Law Institute in 2012. As such, Section 54 is a relatively new addition to American jurisprudence. Due to its infancy, very few states have had an opportunity to consider Section 54's implications, and only one state has utilized it in a controlling opinion.[2] Thus, if this Court were to adopt Section 54, Indiana would not only be overturning decades of precedent, but it would also be the second state to test the ramifications of its adoption.

Section 54, titled Duty of Land Possessors to Those Not on the Possessor's Land, provides:

> (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 land that pose a risk of physical harm to persons or property not 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.

[2] *See HNMC, Inc. v. Chan*, 683 S.W.3d 373 (Tex. 2024)(application adopted); *Holland v. Murphy Oil USA, Inc.*, 290 So.3d 1253, (Miss. 2020) (adoption rejected); *Eadie v. Leise Props., LLC.*, 912 N.W.2d 715 (Neb. 2018) (adoption rejected); *R&R Family Invs. V. Plastic Moldings Corp.*, WL 7231911 (Ohio Ct. App. 2016) (adoption rejected).

The Court of Appeals found this language instructive, emphasizing subsection (a) in its Opinion. Applying that language to the facts at hand, the Opinion concludes that the Estate alleged that Amazon controlled the way that delivery drivers enter the premises and that it placed an artificial hazard, *i.e.*, the "no trucks" signage on its premises. (Op. p. 14). Further, the Court determined the Estate pled facts establishing that Amazon had direct knowledge of the hazard it created and that it took no action to provide instructions for its approaching truck drivers. (*Id.*)

However, Amazon and Mount Comfort had no duty to ensure Dhillon's safety when he left the cab of his truck and stepped onto a public roadway. A similar factual occurrence, as well as the implication of Section 54, was discussed in *HNMC, Inc. v. Chan*, 683 S.W.3d 373 (Tex. 2024). There, Chan, a nurse who worked for HNMC for more than thirty years, was leaving the premises of HNMC and walking towards the HNMC parking lot. (*Id.* at 379). Chan exited the hospital and proceeded to cross a public road in the middle of the block. (*Id.*). While she was walking across the road, a driver struck Chan, ultimately resulting in Chan passing away from her injuries. (*Id.*). Notably, there were multiple prior motor vehicle accidents involving pedestrians on this public road. (*Id.* at 379).

The *Chan* Court considered Section 54 in its analysis. The Court noted, "Chan left HNMC's property and was struck in the public roadway by a careless driver. As acknowledged by the Restatement, 'no one would think that a land possessor did have a duty of care to others for conditions not caused by the possessor on public highways

and streets adjacent to the possessor's land.' RESTATEMENT (THIRD) OF TORTS: *Liability for Physical & Emotional Harm* 54 cmt. d (Am. L. Inst. 2012). Moreover, HNMC was under no duty to control the actions of Budd, the careless third-party driver who struck Chan." (*Id.* at 382).

The *Chan* Court ultimately concluded that generally, a property owner or occupier owes no duty to make an adjoining public road safe or to warn of potential danger in the roadway. (*Id.* at 387). But when a property owner exercises actual control over adjacent property, it does owe premises liability duties to those injured by conditions in the controlled area. (*Id.*). HNMC exercised control over limited areas of the public right-of-way abutting the public roadway. (*Id.*). But Chan was not injured by conditions in the controlled area. (*Id.*) Instead, she was tragically killed by the careless acts of a third-party driver, a risk for which HNMC was not responsible and from which it had no duty to protect Chan. (*Id.*)

Even if this Court were to adopt and apply Section 54 of the Restatement (Third) of Torts, the Appellees do not owe a duty, as the artificial conditions do not pose a risk of physical harm.

The same application, examining by what or whom caused the injury, should apply in Indiana here, even if this Court were to consider Section 54. Although Amazon had signage on the land, the signage alone did not pose a risk of physical harm. Consequently, and in alignment with existing precedent, Dhillon's harm came from the actions—or inactions—of Mr. McPherson, not the signage.

IV. CONCLUSION

Amicus Curiae Defense Trial Counsel of Indiana respectfully requests that this Court reject the adoption of Section 54 in Indiana.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 44(E)

I verify that this brief complies with the type volume limitation of Appellate Rule 44(E). The brief does not exceed 4,200 words. The brief contains 2,384 words (including those used in footnotes) based upon the count of the word processing system used to prepare the brief, Microsoft Word 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Brief was electronically filed with the Clerk of the Indiana Court of Appeals, Supreme Court, and Tax Court on this 27th day of November, 2024, and served—via the Court's E-Filing System—on:

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