Filed: 5/24/2024 3:49 PM

IN THE
INDIANA COURT OF APPEALS

CAUSE NO. 24A-CT-00254

MAHARI MRACH OUKBU and NITSIHITI ABRAHAM, *Appellants-Plaintiffs,* v. AMAZON, INC., *et al*. *Appellees-Defendants*.	)	APPEAL FROM THE HAMILTON SUPERIOR COURT, NO. 5 Trial Court Cause No. 29D05-2308-CT-007700 The Honorable Judge David K. Najjar

---

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

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

/s/ Edward M. O'Brien
Edward M. O'Brien, No. 32092-39
Edward A. DeVries, No. 30316-45
Phillip G. Rizzo, No. 34170-49
Cyrus G. Dutton, IV, No. 38055-10
100 Mallard Creek Road, Suite 250
Louisville, KY 40207
502.238.8500 (main)
502.238.7844 (fax)
Edward.O'Brien@wilsonelser.com
Edward.DeVries@wilsonelser.com
Philip.Rizzo@wilsonelser.com
Cyrus.Dutton@wilsonelser.com
Counsel for Appellees Amazon, Inc. Amazon Logistics, Inc., Amazon.com, Inc., and Amazon.com Services, LLC, MQJI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. CASES

B. INDIANA TRIAL RULES

C. OTHER

I. STATEMENT OF ISSUES

In the pre-dawn hours of September 2, 2022, Mahari Oukbu, a tractor-trailer driver, approached an Amazon fulfillment center located in Greenfield, Indiana, to make a delivery. Just before reaching the designated tractor-trailer entrance, Oukbu stopped his truck in the middle of the county road in front of the facility, exited the cab, started walking across the road, and within seconds was struck by an oncoming motorist. Oukbu sued the motorist, Amazon, the landowner, and several county and city departments in Hamilton County Superior Court. Oukbu's wife Nitsihiti Abraham also joined the suit, alleging loss of consortium. The trial court granted Amazon's motion for judgment on the pleadings, finding that Amazon owed no duty to Oukbu under the facts alleged as a matter of law. Oukbu and Abraham now appeal.

The specific issue raised on appeal is: Whether the trial court correctly determined Oukbu and Abraham's Amended Complaint fails to state an actionable claim against Amazon as Amazon owed no duty to control traffic, issue warnings, or take other action to protect Oukbu 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 April 24, 2023, the Appellants filed this action against the Amazon Defendants (hereinafter, "Amazon") and others. (App. 2: 24).[1] Shortly thereafter, on July 6, 2023, the Appellants amended their Complaint to add additional defendants and supplement their factual allegations. (App. 2: 44). The Amended Complaint alleges Oukbu was an invitee to whom Amazon owed a duty of reasonable care, which Amazon breached by failing to provide adequate lighting and signage for

[1] Citations to 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.

delivery drivers at the fulfillment center, creating a dangerous condition beyond its premises on the adjacent public roadway (*i.e.*, the dangerous condition that confused delivery drivers would stop on or near the adjacent public roadway, exit their vehicles, and be struck by third-party motorists). (App. 2: 50–59).

Amazon filed its Answer to the Amended Complaint on July 31, 2023. (Appellees' App. 2: 2). Attached to the Answer as an exhibit is a publicly available map depicting the accident location. (Appellees' App. 2: 49). On October 10, 2023, Amazon filed its Motion for Judgment on the Pleadings, arguing it owed no duty to Oukbu. (App. 2: 72–74). Appellants responded (App. 2: 109), and Amazon replied (App. 2: 130). On January 4, 2024, the trial court granted Amazon's motion, dismissing Appellants' claims against Amazon.[2] (App. 2: 18–23). The Appellants filed their Notice of Appeal on February 2, 2024. (App. 2: 17).

III. STATEMENT OF FACTS

Amazon operates a fulfillment center located in Greenfield, Indiana. (App. 2: 25). The fulfillment center has three entrances accessible from the adjacent public roadway—County Road 300. (Appellees' App. 2: 49). When approaching from the west, a delivery driver passes the first two entrances reserved for cars only (marked with "no truck" signs) before arriving at the tractor-trailer entrance. (Appellees' App. 2: 15–16, 49). The following Google Maps image of the Amazon facility and County Road 300 depicts the site.[3] (Appellees' App. 2: 49). West is to the left of the facility and

[2] The Trial Court's Order also addressed two additional motions filed by defendants Mount Comfort DST and the Hancock County Board, Hancock Planning Commission, and Hancock Highway Department (collectively, "Hancock County"). The Trial Court granted both Mount Comfort DST's Motion for Judgment on the Pleadings and Hancock County's Motion to Dismiss. Appellants indicate in their Brief that they are not appealing the portions of the Trial Court Order that pertain to Hancock County's Motion to Dismiss. (Appellants' Br., at 6).

[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);

east is to the right; thus, 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.

Starting on the far left of the image (west) and moving right (east), the first entrance into the facility off County Road 300 (just left of the facility) is marked with "No Trucks" signage. (App. 2: 54). 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: 54). 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). (App. 2: 50).

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 distance." (citations omitted)).

On September 2, 2022, Oukbu, an independent contractor, was en route to deliver goods to the Greenfield fulfillment center.[4] (App. 2: 56). Oukbu approached from the west, passing the first and second entrances before stopping his truck just shy of the third tractor trailer entrance in the two-way turn lane in the center of County Road 300. (App. 2: 47). Oukbu then exited the cab of his truck to cross on foot the westbound lane of County Road 300. (App. 2: 49). As he was doing so, Oukbu was struck in the westbound lane by a motor vehicle operated by Bruce L. Gibson. (App. 2: 49). There is no allegation that Gibson had any relationship with Amazon or was coming to or from the Amazon fulfillment center. Oukbu alleges Gibson was negligent and he is a defendant in the lawsuit below. (App. 2: 61). It is further undisputed that neither Oukbu nor his vehicle ever physically entered the fulfillment center premises and that the accident occurred entirely on the public roadway. (App. 2: 47–49).

Oukbu initiated this negligence action on April 24, 2023, alleging that Amazon owed Oukbu a duty of reasonable care that it breached by failing to provide adequate lighting and signage to guide delivery drivers to the facility. (App. 2: 50–51). Following the entry of judgment on the pleadings in favor of Amazon, Oukbu now appeals. (App. 2: 17).

IV. SUMMARY OF ARGUMENT

This Court should affirm the trial court's judgment that Amazon owed no duty to Oukbu. Oukbu argues Amazon owed him 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

[4] Appellants also allege that forty-eight (48) days after this incident, a non-party delivery driver stopped his tractor-trailer in the middle of County Road 300, exited the cab, and was struck by a third-party motorist while he was crossing the public roadway. (App. 2: 28). Amazon's motion for judgment on the pleadings was likewise granted in that case and that decision is the subject of a separate appeal before the Court of Appeals, captioned *Harjit Kaur, Individually, and as the Special Administrator of the Estate of Harvail Singh Dhillon, Deceased, v. Amazon, Inc. et al.*, Cause No. 23A-CT-02059.

invitee is actually on the premises. Oukbu indisputably never entered the fulfillment center premises and the accident occurred on the adjacent public roadway. Any duty owed to Oukbu as a business invitee, therefore, never attached. Oukbu alternatively argues Amazon owed a duty to him as the possessor of land adjacent to the highway on which Oukbu was traveling. The Indiana Supreme Court's recent decision in *Reece v. Tyson, Inc.*, 173 N.E.3d 1031 (Ind. 2021), bars Oukbu'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 Oukbu is the "No Trucks" signage and lighting on Amazon's premises. Oukbu's Amended Complaint does not allege that the signage and lighting visited itself or physically 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, that the signage and lighting ***did not*** intrude upon the public roadway. Oukbu'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 Oukbu alleged affirmative acts by Amazon sufficient to create an assumed duty under Indiana law.

While the circumstances of this case are unfortunate, the law this Court must apply is clear. Amazon created no hazardous condition on the public roadway itself, and even accepting as true Oukbu'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

Oukbu or the traveling public on County Road 300. Oukbu'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 trail 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 did not owe a duty to a pedestrian walking on a public roadway.

1. Amazon did not owe Oukbu a duty as a business invitee because Oukbu never entered Amazon's premises.

Oukbu cannot state a claim against Amazon unless Amazon owed him a duty. *See, e.g.*, *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 decision that Amazon owed no common-law duty to guard against dangers posed beyond its premises by persons over whom Amazon had no control should be affirmed. (App. 2: 18).

Whether one party owes a duty to another in a negligence action is generally a question of law. *See Sizemore v. Templeton 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., Louisville Cement Co. v. Mumaw*, 448 N.E.2d 1219, 1221 (Ind. Ct. App 1983) ("The status of the invitee is created by his **entering the premises** . . . .") (emphasis added) (citations omitted); *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 specifically alleges that the accident occurred on County Road 300 North, not on Amazon's property. (App. 2: 49). Consequently, the legal duties owed by landowners to business invitees 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 owed no duty to Oukbu "when the injury occurred off their premises." (App. 2: 22).

Nevertheless, Oukbu argues that Amazon "negligently designed, maintained, and controlled the entrance to its fulfillment center," claiming that as Oukbu approached the facility he must have become confused and, due to alleged inadequate signage and lighting, was forced to stop and exit his vehicle on the public roadway. (Appellants' Br., at 4, 18). Oukbu further contends Amazon owed a duty of care beyond the boundaries of its premises by creating a dangerous condition outside its premises. (Appellants' Br., at 10). Oukbu is mistaken.

2. Amazon did not owe Oukbu a duty because the allegedly hazardous condition was wholly confined to the land and did not visit itself or physically intrude upon the county 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 a commercial premises adjacent to a public roadway generally owes no duty to invitees injured while walking upon or along the roadway. *See, e.g., Lutheran Hosp. v. Blaser*, 634 N.E.2d 684, 870 (Ind. Ct. App. 1994).

Our Supreme Court's recent decision in *Reece, supra*, is dispositive of Oukbu'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. *See 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 motorist 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 proven, potentially lethal dangers to its invitees." (App. 2: ¶ 50 (emphasis added); *see also*, e.g., ¶ 36

(referring to dangerous conditions "on the premises"); ¶ 54 (alleging Amazon "took no corrective action to improve the dangerous condition on its premises"); ¶ 57 (alleging Amazon should have added additional signage and lighting "on its premises"); ¶ 36 (alleging Amazon knew of the existence of a dangerous condition "on its premises")). Thus, even accepting as true Oukbu's allegation that the fulfillment center lacked adequate signage and lighting, the face of his Amended Complaint makes clear that those conditions were confined to the fulfillment center premises and did not physically 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 owner. **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.**

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 Oukbu's argument that Amazon owed him a duty simply because he chose to stop and park his tractor trailer on the public roadway adjacent to the fulfillment center premises.

---

[5] Despite being the seminal and most recent guidance on this issue from our Supreme Court, Oukbu does not address *Reece* in his brief.

Oukbu's claims against Amazon, therefore, fail as a matter of law, and the trial court's ruling was correct.

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

The facts of this case are 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*. There, like here, the plaintiff parked on a roadway and walked along the roadway with the intention of reaching the defendant's property (a flea market). *See id.* at 1217. There, like here, the plaintiff alleged that Indiana common law imposed a duty on the defendant to provide allegedly adequate signage on its property to prevent an accident on the public roadway. *See id.* at 1217–18. The Court of Appeals ruled that "the law imposes no such duty," explaining:

> [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). The Court of Appeals 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* is consistent with the Supreme Court's recent decision in *Reece*.[6]

[6] The Court of Appeals 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. *See* 413 N.E.2d at 560. In finding that the landowner owed no duty to the traveling public, the Supreme Court 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 be to place a duty on a property owner to continually inspect the perimeters

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, the Court of Appeals 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 duty over or responsibility for the third-party motorist who struck Oukbu.

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 the defendant, when he was injured after the edge of the pothole located in the right-of-way gave way underneath him. *See* 724 N.E.2d at 649. The pothole was located adjacent to the entrance to the defendant's gas station, and the entrance to the gas station was adjacent to and extended from the public roadway's right-of-way. *See id*. The plaintiff sued the

---

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*, where the plaintiff was injured crossing a public street en route to a horse track stable. 438 N.E.2d 1238 (Ill. Ct. App. 1982). 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 intersections, 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.

gas station owner, arguing it assumed a duty of care with respect to the pothole due to its 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 the defendant. *See id.* at 652. On appeal, the Court of Appeals affirmed, holding that "[e]ven assuming that [the defendant'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*, the Court of Appeals further explained:

> 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 [defendant] to provide traffic control, issue warnings, or take other action to protect [plaintiffs] from being struck by a vehicle not under [defendant's] control while [plaintiffs] were walking along the highway on their way to [defendant's 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 Oukbu and his claim fails as a matter of law.

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

Oukbu'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 Oukbu. 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 the time 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.

The Court of Appeals 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 the hospital's premises to the hospital building. *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*.

Critically, *Lutheran* framed the duty inquiry differently than *Reece*. *Lutheran* states that "the landowner may be under a duty to correct" a condition wholly confined to its land if "the activities conducted on the business premises affect the risk of injury off the premises." *Id.* at 870. That cannot be squared with *Reece*, where the grass caused the injury off the defendant's premises. *Lutheran* is, therefore, inconsistent with *Reece*'s bright-line rule that a condition wholly confined to the defendant's land that does not physically intrude upon the roadway cannot created a duty as a matter of law. *See Reece*, 173 N.E.3d at 1041 ("[A] landowner owes a duty to passing motorists on an adjacent highway to not 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." (internal quotation marks omitted)).[7]

Moreover, the Amended Complaint here does not allege an expansion of Amazon's business activity beyond its premises, as Amazon did not affirmatively act to create a hazardous condition that physically intruded upon the adjacent roadway. There is no allegation supporting a reasonable inference that Oukbu believed 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

[7] Compare the facts of this case with those in *Pitcairn v. Whiteside*, *e.g.*, wherein railroad employees started a fire, and a dense cloud of smoke drifted across the nearby public roadway. *See* 34 N.E.2d 943, 945 (Ind. Ct. App. 1941). Due to the density of the smoke obstructing visibility, two vehicles traveling upon the public roadway collided. *See id*. The Court of Appeals 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*. This case is far afield from *Pitcairn* because the allegedly dangerous conditions here were limited to the premises.

(S.D. Ind. Aug. 11, 2006) (noting that *Lutheran Hospital* involved "a plaintiff injured by a hit-and-run driver whole she was crossing a driveway at a hospital parking lot," not on a public roadway). While Oukbu 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 public roadway. Oukbu's allegations make it explicitly clear that Amazon lacked control over County Road 300; instead, Oukbu alleges that Amazon only had control over lighting and signage on its property and that this allegedly dangerous condition existed on the premises itself.

Oukbu's reliance on *Holiday Rambler Corp. v. Gessinger* is similarly misplaced. *See* 541 N.E.2d 559, 562 (Ind. Ct. App. 1989). 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. The Court of Appeals later explained in *Sheley v. Cross* that the duty was imposed in *Holiday Rambler* because the defendant's "conduct caused a hazard to visit itself upon the roadway." 680 N.E.2d 10, 13 (Ind. Ct. App. 1997), *Holiday Rambler*'s limited reach was crystallized by the Court of Appeals' opinion in *Sheley*, which adopted the bright-line rule later embraced 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." See *id*. at 11. The Court of Appeals 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**.

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." *Reece*, 173 N.E.3d at 1040 (also calling *Sheley* "the most logical extension of Indiana precedent"). This language from our Supreme Court dispenses with any argument Oukbu 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. 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, Oukbu's failure to address how *Holiday Rambler* fits within the post-*Reece* analysis renders his entire argument unsound.

Finally, *Ember v. B.F.D.*, 490 N.E.2d 764, 772 (Ind. Ct. App. 1986), is inapposite. 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 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. *See id*.

Given the extensiveness of the pub's affirmative conduct to patrol the area outside the boundaries of its property, the *Ember* Court concluded that 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). The Court of Appeals 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." *See 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, 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. Oukbu's foreseeability argument improperly relies upon historical evidence.

Oukbu argues Amazon owed a duty to protect him on County Road 300 because of the alleged foreseeability of the incident. (Appellants' Br., at 18–20). Oukbu asserts reasonable inferences support the conclusion that he was confused about where to enter the property and that

Amazon had reason to know not only of Oukbu'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. (*See id.)* 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 Oukbu is manifestly inconsistent with *Reece*'s adoption of a bright-line rule and Oukbu'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 Oukbu 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, Oukbu's allegation 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 Oukbu.

Oukbu 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. (Appellants' Br., 20–21). This position also fails as a matter of law as 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 assumptions of the undertaking there can be no correlative 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 Short 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.

Oukbu's assumption-of-duty argument primarily relies upon *Ember*, *supra*, but here again that reliance is unavailing. Recognizing the peculiar circumstances involved in *Ember*, the Court of Appeals 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. The Court of Appeals 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 Oukbu, 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. (Appellants' Br., at 5). Oukbu does not claim that Amazon was negligent in performing any act. Rather, Oukbu 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 Oukbu. *See Yost*, 3 N.E.3d at 517. Nor did Amazon take any action to render services to Oukbu. 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 business 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 Oukbu beyond that which already existed if the signs had never been posted.[8]

[8] In *Jump v. Bank of Versailles*, the Court of Appeals 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. *See* 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

Arnold v. F.J. Hab, Inc., is similarly inapposite. *See* 745 N.E.2d 912, 915 (Ind. Ct. App. 2001). There, a patron of the night club was injured after 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 offers to work as security officers outside of the club. *See id*. The Court of Appeals, 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." *See id*. at 917. Thus, in *Arnold*, there were explicit allegations that the night club had assumed a legal duty by engaging 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, Oukbu claims Amazon invited contractors to its premises, but ***did not*** place lighting and signs to direct truck drivers on the public roadway. In other words, Oukbu alleges that Amazon ***should have***, but ***did not*** do something: direct or guide traffic on County Road 300. This demonstrates that Amazon ***did not*** assume a duty to Oukbu. Rather, Oukbu makes the

---

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 id*. at 881. The court 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, the Court of Appeals 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 Oukbu—*i.e.*, the third, trucks-only entrance, which Oukbu simply never reached.

untenable argument that the absence of an action somehow equates to an active assumption of a legal duty to perform that action. Oukbu cites no authority for that proposition.

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

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

As a final matter, Oukbu faults the trial court for noting that he failed to allege that he ever entered Amazon's premises or even attempted to do so. (Appellants' Br., at 21–23). But this statement in this dismissal order is (1) accurate, and (2) in any event, can be likened to *dicta* as 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 the Court of Appeals 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: 21–22). Regardless, Oukbu's complaint on this point is immaterial as, even drawing the inference that Oukbu 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 (*i.e.*, physically intruded) upon the adjacent roadway and it makes no difference whether Oukbu 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.

Oukbu also complains that the trial court improperly relied upon his alternative pleadings (*i.e.*, that the driver of the vehicle that struck Oukbu was negligent) when it reached its conclusion that Amazon did not owe him a duty. (Appellants' Br., at 23–25). Again, however, this contention

misses the mark. The trial court's point was not that Amazon and Gibson could not both be simultaneously negligent, but that Amazon had no control over the third-party motorist. The 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, Gibson) 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.[9]

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 duty to travelers on an adjacent public roadway, including Oukbu. Even accepting Oukbu's allegations as true, any allegedly dangerous condition was confined wholly to the fulfillment center premises and Amazon created no dangerous condition that intruded upon the public roadway. Amazon neither owed nor assumed a duty to Oukbu, and his Amended Complaint makes no allegations sufficient to establish a duty as a matter of law.[10]

---

[9] Oukbu also complains that the trial court's order incorrectly stated he parked his vehicle adjacent to County Road 300, rather than on the road, as alleged in the Amended Complaint. This was—at most—harmless error. Whether Oukbu 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.

[10] Because "a cause of action for loss of consortium is derivative in nature" and "derives its viability from the validity of the claim of the injured spouse against the wrongdoer," Abraham's consortium claim likewise fails as a matter of law. *Nelson v. Denkins*, 598 N.E.2d 558, 563 (Ind. Ct. App. 1992).

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

DATED: May 24, 2024.

Respectfully submitted,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

/s/ Edward M. O'Brien
Edward M. O'Brien, No. 32092-39
Edward A. DeVries, No. 30316-45
Phillip G. Rizzo, No. 34170-49
Cyrus G. Dutton, IV, No. 38055-10
100 Mallard Creek Road, Suite 250
Louisville, KY 40207
502.238.8500 (main)
502.238.7844 (fax)
Edward.O'Brien@wilsonelser.com
Edward.DeVries@wilsonelser.com
Philip.Rizzo@wilsonelser.com
Cyrus.Dutton@wilsonelser.com
Counsel for Appellees, Amazon Logistics, Inc., Amazon, Inc., Amazon.com, Inc., and Amazon.com Services, LLC, MQJI

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 [7,949 words], as required by Appellate Rule 44(E). This word count was calculated using Microsoft Word, which was used to prepare this Brief.

/s/ Edward M. O'Brien
Counsel for Appellees, Amazon Logistics, Inc., Amazon, Inc., Amazon.com, Inc., and Amazon.com Services, LLC, MQJI

CERTIFICATE OF SERVICE

I hereby certify that on **May 24, 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:

Louis "Buddy" Yosha
Bryan C. Tisch
Brandon A. Yosha
Richard A. Cook
Alexander C. Trueblood
YOSHA COOK & TISCH
9102 North Meridian St., Suite 535
Indianapolis, Indiana 46260
Attorney for Appellants-Plaintiffs

Barath S. Raman
Edmund L. Abel
LEWIS WAGNER, LLP
1411 Roosevelt Avenue, Suite 102
Indianapolis, Indiana 46201
Attorneys for Appellee-Defendant CF Mount Comfort DST

Daniel M. Witte
TRAVELERS STAFF COUNSEL INDIANA
P.O. Box 64093
St. Paul, Minnesota 55164-0093
Attorney for Appellee-Defendants, Hancock County Board of Commissioners, Hancock County Planning Commission, and Hancock County Highway Dept.

Patrick J. Murphy
STATE FARM LITIGATION COUNSEL
6640 Intech Blvd., Suite 210
Indianapolis, Indiana 46278
Attorney for Defendant Bruce L. Gibson

/s/ Edward M. O'Brien
Counsel for Appellees, Amazon Logistics, Inc., Amazon, Inc., Amazon.com, Inc., and Amazon.com Services, LLC, MQJI