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IN THE INDIANA SUPREME COURT

MAHARI MRACH OUKBU and NITSIHITI ABRAHAM, *Appellants-Plaintiffs*,	)	ON PETITION TO TRANSFER FROM THE INDIANA COURT OF APPEALS CAUSE NO. 24A-CT-00254
v. AMAZON, INC.; AMAZON.COM, INC.; AMAZON LOGISTICS, INC.; AMAZON.COM SERVICES LLC, MQJ1; CF MOUNT COMFORT DST; BRUCE L. GIBSON; CITY OF GREENFIELD, INDIANA; HANCOCK COUNTY BOARD OF COMMISSIONERS; HANCOCK COUNTY PLANNING COMMISSION; and HANCOCK COUNTY HIGHWAY DEPT. *Appellees-Defendants.*	)	APPEAL FROM THE HAMILTON SUPERIOR COURT NO. 5 TRIAL COURT CAUSE NO. 29D05-2308-CT-007700

REPLY IN SUPPORT OF PETITION TO TRANSFER BY APPELLEES AMAZON LOGISTICS, INC., AMAZON, INC., AMAZON.COM, INC., and AMAZON.COM SERVICES, LLC, MQJ1

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For decades, Indiana law has been that "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." *State v. Flanigan*, 489 N.E.2d 1216, 1218–19 (Ind. Ct. App. 1986). The Court of Appeals ignored this precedent and failed to apply this Court's bright-line rule adopted in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031 (Ind. 2021), which addresses whether and when the possessor of commercial premises bears liability for injuries occurring on an adjacent public roadway. The consequences of the Court of Appeals' decision extend far beyond this case. Absent transfer, trial courts, Court of Appeals panels, property owners, and litigants alike will face confusion and unpredictability. The Opinion below is irreconcilable with *Flanigan*, *Reece*, and other controlling authorities—and this Court should grant transfer to ensure clarity and consistency on this important question of law.

The Oukbus argue that the Opinion does not conflict with *Reece* because the rule adopted in *Reece* was "narrowly tailored." But *Reece* established a "bright-line rule" intended to "lend[] itself to easy application." *Id.* at 1040. The purpose of a bright-line rule is to "provide[] clarity and certainty" in the law. *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 972 (Ind. 2014). Bright-line rules are by definition categorical and broadly applied, not case-specific and narrowly tailored. This Court grants transfer—as it did in *Reece* and as it should do here—to establish rules of law to apply across many cases, not to address the idiosyncrasies of a specific case. *Reece* involved a visual obstruction, but the Oukbus and the Opinion ignore that this Court made clear that its bright-line rule was not limited to visual obstructions. *Reece* represents "the correct approach for" all "**conditions** that do not intrude on the public right-of-way." *Reece*, 173 N.E.3d at 1040 (emphasis added). The Oukbus' response continues to offer no logical or principled reason why *Reece*'s rule

governing "conditions" should be limited to "visual obstruction" conditions. That is because the relevant inquiry under *Reece* is whether the "**condition**" (whatever its nature) visits itself—or physically encroaches—upon the roadway. It is that simple.

The Opinion's erroneous reasoning is compounded by its unfounded assumption—shared by the Oukbus—that Oukbu was an invitee (and therefore owed the corresponding duty of care) at the time of the accident. Yet neither the Opinion nor the Oukbus cite any case beyond *Lutheran Hospital v. Blaser*, 634 N.E.2d 864 (Ind. Ct. App. 1994), for that proposition. The invitee duty of care only applies "**while the invitee is on the landowner's premises**." *Markle v. Hacienda Mexican Restaurant*, 570 N.E.2d 969, 972 (Ind. Ct. App. 1991) (emphasis added). The complaint here does not allege that Oukbu was ever "on the landowner's premises." *Lutheran Hospital* is also factually distinguishable, as discussed in Amazon's briefing below, and cannot be squared with *Flanigan* or *Sizemore v. Templeton Oil Co.*, 724 N.E.2d 647, 650 (Ind. Ct. App. 2000).

The Oukbus contend that *Flanigan* did not involve allegations that the business had done anything "to create or increase the danger to pedestrians." (Response, p. 10). Not so. *Flanigan* involved the same scenario as here—(a) would-be invitees, who (b) intended to (but never did) enter the premises, but were unfortunately (c) struck by third-party motorists, and then (d) *alleged that the property owner was at fault* for "failing to provide a safe place to park and/or adequate traffic control to allow pedestrian travel, and in failing to warn them of the dangers incident to parking adjacent to the highway and walking along the highway to attend the flea market." *Flanigan*, 489 N.E.2d at 1217. So too with *Sizemore*, where the Court of Appeals rejected the plaintiff's argument that "the law impose[s] a duty upon [the property owner] to provide traffic control, issues warnings, or take other action to protect" its would-be patrons "from being struck by a vehicle not under [the defendants'] control while [the would-be patrons] were walking along

the highway on their way to" the premises"—**because "the law imposes no such duty."** *Sizemore*, 724 N.E.2d at 653 (emphasis added). The Opinion here pivots in the opposite direction. More troublingly, the Opinion fails to address or distinguish *Flanigan* or *Sizemore*. Future trial judges and appellate panels faced with similar facts will be forced to choose between the Opinion's reasoning or that of *Flanigan* and its progeny. Such panel splits present the quintessential justification for transfer.

Finally, the Oukbus downplay Section 54 of the Third Restatement, characterizing the Opinion's reliance on Section 54 as an afterthought. (*See* Response, p. 12). The Oukbus' reluctance to engage Section 54 is understandable because Section 54's rule that "[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" directly conflicts with Indiana law. But the Opinion plainly relies on, and embraces, Section 54. Judge Mathias's concurrence expressly asks this Court to adopt it. Future litigants, trial courts, and appellate panels are not likely to ignore the published Opinion's reliance on Section 54. They will instead interpret the Opinion as embracing Section 54 and be forced to grapple with fitting the square peg of Section 54 into the round hole of *Reece*'s bright-line rule. More concerning, denial of transfer will almost certainly be construed as a tacit endorsement by this Court of Section 54, creating further uncertainty.

The Court should avoid all these consequences by granting transfer, vacate the Court of Appeals' Opinion, clarify that *Reece*'s bright-line rule means what it says and applies to all "conditions" (not just visual obstructions), and reinstate the trial court's judgment.

DATED: December 12, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 44(E)

I verify that this Reply in Support of Amazon's Petition to Transfer complies with the type volume limitation of Appellate Rule 44(E). The Reply does not exceed 1,000 words. The Petition contains 967 words based upon the count of the word processing system employed to prepare the brief.

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CERTIFICATE OF SERVICE

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