THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2022-001574

Stephen R. Edwards, Individually and as
Personal Representative of the Estate of
Steven Redfearn Stewart.....Respondent,

v.

Scapa Waycross, Inc.....Petitioner.

**BRIEF OF AMICI CURIAE
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE SOUTH CAROLINA CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED FOR REVIEW

I. Whether the Court of Appeals erred in affirming the trial court's ruling denying petitioner's motion for judgment n.o.v. because respondent did not introduce any legally sufficient evidence of causation

INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The South Carolina Chamber of Commerce ("State Chamber") is a not-for-profit, statewide organization with a mission of serving as the leading voice for business in South Carolina and with a vision of making South Carolina's economy the most vibrant in the United States, creating opportunity and prosperity for all.

The State Chamber's membership is comprised of businesses from across the state and across industries, from startups and family-owned businesses to multi-national enterprises—all of whom call South Carolina home. The State Chamber aims to protect the interests of South Carolina's business community by identifying and addressing issues that may impair economic development and growth, and

routinely participates in state and federal litigation as an amicus. The State Chamber has a substantial interest in ensuring that South Carolina's tort system is fair and balanced, holding parties responsible for the harms and injuries they cause—not for the harmful actions of others.

Amici have a strong interest in this case because the South Carolina Court of Appeals broke from established causation principles in asbestos litigation. Ensuring that courts follow those principles has great importance for amici and their members, in South Carolina and nationally.

SUMMARY OF THE ARGUMENT

Under longstanding tort law, a defendant can be liable only if its conduct was a substantial factor in causing the plaintiff's harm.

This substantial-factor test has long been understood to bar liability for defendants whose *relative* contributions to the plaintiff's harm are insignificant. Consider, for example, a case in which multiple actors contribute to the plaintiff's harm. If the other actors' contributions dwarf the defendant's contribution, the defendant's contribution is not a *substantial* factor in causing the plaintiff's harm. As a result, the defendant is not liable.

This bar on liability for relatively minor contributions plays a key role in asbestos litigation. Most asbestos plaintiffs have been exposed to asbestos from multiple sources over many years. Those exposures vary widely in their severity: Repeated exposures to asbestos from thermal insulation, for example, are far more harmful than isolated exposures to asbestos from gaskets or (as here) dryer felts.

Thus, a key defense for many companies in asbestos cases is that, in context, their contributions to the plaintiffs' asbestos exposures were too minor to trigger liability.

The South Carolina Court of Appeals, however, has stripped asbestos defendants of this key defense. Breaking from established causation principles and from decisions of courts across the country, the Court of Appeals has held that the substantial-factor test *forbids* consideration of a defendant's relative contribution to an asbestos plaintiff's harm. The result is that a defendant can be liable for asbestos exposures that, as a practical matter, are insignificant.

Left uncorrected, this erroneous approach to causation in asbestos cases would inflict serious harm on businesses and the economy. The dynamics of asbestos litigation already create significant pressure for businesses to settle, even when they did not contribute in any real way to plaintiffs' harms. Eliminating a critical defense on the issue of causation would exacerbate those pressures and drive up the costs of asbestos litigation for businesses. These businesses would then pass on those costs to consumers, employees, and the rest of the business community, both in South Carolina and across the country.

To avoid these results, this Court should reverse the Court of Appeals and reaffirm that, as in all other tort cases, the causation analysis in asbestos cases must account for defendants' relative contributions to plaintiffs' harms.

ARGUMENT

I. The South Carolina Court of Appeals has departed from established principles of causation in asbestos cases.

A. The substantial-factor test requires consideration of the defendant's relative contribution to the plaintiff's harm.

South Carolina and many states across the country follow the substantial-factor causation test. *See, e.g.*, *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007); *Childers v. Gas Lines, Inc.*, 248 S.C. 316, 325, 149 S.E.2d 761, 765 (1966); *see generally* Restatement (Second) of Torts § 431(a) (Am. L. Inst. 1965) (Restatement). Under that test, the plaintiff must show that the defendant's conduct was a substantial factor in bringing about the plaintiff's harm. *See* Restatement § 431(a).

As a threshold matter, to be a substantial factor, the defendant's conduct must make some contribution to causing the plaintiff's harm. This threshold requirement is met if the defendant's conduct is a but-for cause of the plaintiff's harm. *Id.* § 432(1). It is also met if the defendant's conduct is one of multiple sufficient causes that combine to produce the plaintiff's harm—the classic example being a combination of two fires, each of which is sufficient to cause the harm. *See id.* § 432(2) & cmt. d, illus. 3.

But the inquiry does not end there. Even when the threshold requirement of *some* contribution is met, the plaintiff must also show that the defendant's contribution to causing the plaintiff's harm is a *substantial* one. *Id.* §§ 431(a), 433. As the Restatement explains, this additional requirement is meant to limit liability

to conduct that "has such an effect in producing the harm as to lead reasonable [people] to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility." *Id.* § 431, cmt. a. The "substantial" requirement bars liability, in contrast, for conduct that is a cause only "in the so-called 'philosophic sense,' which includes every one of the great number of events without which any happening would not have occurred," many of which are "so insignificant that no ordinary mind would think of them as causes." *Id.*

Section 433 of the Restatement identifies considerations that are important to determining whether the defendant's conduct is a *substantial* factor in causing the plaintiff's harm. One of those key considerations is the relative contribution that the defendant's conduct makes to the plaintiff's harm. *See id.* § 433(a). As the Restatement puts the point, it is important to consider "the number of other factors which contribute in producing the harm" and "the extent of the effect which they have in producing it." *Id.* If these other factors predominate in causing the harm, and if the defendant's conduct is comparatively insignificant, the defendant's conduct is not a substantial factor. *See id.* § 433, cmt. d.

Considering the defendant's relative contribution is vital to the aim of the substantial-factor test: Barring liability for conduct that causes harm only in the "philosophic sense." *Id.* § 431, cmt. a. The relative-contribution analysis serves that aim by precluding liability for conduct that is, in context, so insignificant that "no ordinary mind" would view the conduct as a substantial cause. *Id.*

B. Consideration of the defendant's relative contribution is imperative in asbestos cases.

It is particularly important to consider a defendant's relative contribution to the plaintiff's harm in asbestos litigation. Courts and commentators have expressed widespread agreement on this point.

Because of the long latency of asbestos-caused diseases, most plaintiffs were exposed to asbestos over many years and from many different products. *See* David E. Bernstein, *Getting to Causation in Toxic Tort Cases*, 74 BROOK. L. REV. 51, 55 (2008) (Bernstein). Some of those products made far greater relative contributions to plaintiffs' harms than other products did. That is so for two reasons.

First, some products exposed plaintiffs to a greater volume of asbestos than other products did. For example, thermal insulation caused much larger exposures than other products. *See, e.g.*, *Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d 950, 955 (6th Cir. 2011); *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 73, 78, 80 (Bankr. W.D.N.C. 2014).

Second, some products exposed plaintiffs to more harmful asbestos than other products did. Asbestos comes in multiple forms, and some are more toxic than others. Amphibole asbestos, for example, has been proven to cause disease at relatively low exposure levels, unlike the much less potent chrysotile asbestos.[1] In

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[1] *See, e.g.*, *Yates v. Ford Motor Co.*, 113 F. Supp. 3d 841, 853-54 (E.D.N.C. 2015); *Bartel v. John Crane, Inc.*, 316 F. Supp. 2d 603, 605-06 (N.D. Ohio 2004), *aff'd sub nom. Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488 (6th Cir. 2005); Mark A. Behrens & William L. Anderson, *The 'Any Exposure' Theory: An Unsound Basis for Asbestos Causation and Expert Testimony*, 37 SW. U. L. REV. 479, 489 n.58 (2008).

this respect as well, thermal insulation (which contained amphibole asbestos) was much more dangerous than other products. *See Garlock*, 504 B.R. at 75-76; *see also Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 413, 878 S.E.2d 696, 705 (Ct. App. 2022) (noting that the dryer felts at issue in this case contained chrysotile asbestos).

For these reasons, in asbestos cases, the relative contributions to a plaintiff's harm vary significantly from product to product. It is therefore important to consider those relative contributions when applying the substantial-factor test.

That is what courts across the country have done. Courts in asbestos cases have widely agreed that the substantial-factor test bars liability for defendants who, in the context of a plaintiff's full set of asbestos exposures, made only relatively insignificant contributions.

A recent Fourth Circuit decision illustrates this approach. In *Connor v. Covil Corp.*, the Fourth Circuit held that the defendant's asbestos products were not a substantial factor in causing the plaintiff's mesothelioma. 996 F.3d 143, 154-56 (4th Cir. 2021). The court reached that conclusion because, among other reasons, the plaintiff's exposure to asbestos from the defendant's products was "dwarfed by [his] far more frequent, regular, and close-proximity exposure to asbestos" from other products. *Id.* at 155. Applying section 433 of the Restatement, the Fourth Circuit held that this relative disparity in exposure levels meant that the plaintiff could not show that the defendant's products caused his harm. *See id.* at 155-56.

The Sixth Circuit has followed the same approach. In *Moeller*, the court agreed that the substantial-factor test required consideration of different products'

relative contributions to the plaintiff's mesothelioma. 660 F.3d at 955. Because the plaintiff was exposed to far less asbestos from the defendant's products than from other products, the Sixth Circuit held that the plaintiff could not show that the defendant's products were a substantial factor in causing his disease. *Id.* The court summed up the need for an assessment of relative contributions with the observation that treating a relatively insignificant contribution to a plaintiff's asbestos exposures as a substantial factor "would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume." *Id.*

Many other courts have likewise agreed that the substantial-factor test requires consideration of defendants' relative contributions in asbestos cases. For example:

- The Texas Supreme Court held that a defendant's product is not a substantial factor if, "in light of the evidence of the plaintiff's total exposure to asbestos or other toxins," reasonable persons would not find the defendant's product to be a cause of the plaintiff's disease. *Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332, 353 (Tex. 2014).
- A federal district court in South Carolina stressed that the substantial-factor test must account for the defendant's "relative contribution to the overall exposure," as opposed to assessing only whether the defendant's contribution "was sufficiently harmful in the abstract."

Haskins v. 3M Co., No. 2:15-CV-02086-DCN, 2017 WL 3118017, at *8 (D.S.C. July 21, 2017).

- A federal bankruptcy court in North Carolina held that a debtor's liability for asbestos claims was limited because, compared to other products to which claimants were exposed, the debtor's products gave rise to "relatively low exposure of a relatively lower potency asbestos." *Garlock*, 504 B.R. at 82.

Commentators have similarly stressed the need to evaluate relative contributions in asbestos litigation. For example, to illustrate the point that relative contributions matter to the causation analysis, the Restatement (Third) of Torts uses an asbestos case. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 36, cmt. b, illus. 1 (Am. L. Inst. 2010). The Third Restatement also observes that courts have often used the substantial-factor test to limit liability in asbestos cases. *Id.*, Reporters' Note, cmt. b.[2] Other commentators agree that the substantial-factor test calls for a relative-contribution analysis in asbestos cases. *See, e.g.*, Bernstein at 55, 58-59, 71-72.

In sum, the consensus among courts and commentators is that the substantial-factor test requires a relative-contribution inquiry in asbestos cases—an

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[2] The Third Restatement does not carry forward the Second Restatement's "substantial factor" terminology. *See id.* § 36, cmt. a. But the Third Restatement does carry forward the principle that a defendant is not liable for making a relatively insignificant contribution to a plaintiff's harm. *See id.* § 36. The Third Restatement also confirms the importance of following that principle in asbestos cases. *See id.* § 36, cmt. b, illus. 1.

inquiry that forecloses liability for defendants that make relatively insignificant contributions to plaintiffs' asbestos exposures.

C. The Court of Appeals has incorrectly barred consideration of the defendant's relative contribution in asbestos cases.

The South Carolina Court of Appeals has broken from this consensus view. In a recent line of decisions, including its decision in this case, the Court of Appeals has held that the substantial-factor test bars consideration of a defendant's relative contribution to the plaintiff's harm in asbestos litigation. The court's reasoning on this point is flawed.

1. The Court of Appeals has foreclosed consideration of relative contributions in asbestos litigation.

The Court of Appeals took its first misstep on this issue in *Jolly v. General Electric Co.*, 435 S.C. 607, 869 S.E.2d 819 (Ct. App. 2021), *cert. granted* (Jan. 12, 2023). The defendant in that case asked the court to consider, in its causation analysis, that the plaintiff had been exposed to asbestos from products made by ten other manufacturers. *Id.* at 637, 869 S.E.2d at 835. The court rejected that request, holding that the substantial-factor test does not allow a comparison of relative contributions from different products. *See id.* at 638, 869 S.E.2d at 836.

The Court of Appeals repeated that mistake in this case. Like the defendant in *Jolly*, Scapa asked the court to consider Mr. Stewart's exposures to asbestos from other products. *See* Final Br. of Appellant, No. 2019-649, at 19 (S.C. Ct. App. Feb. 24, 2020). Consistent with *Jolly*, however, the Court of Appeals did not address Scapa's relative contribution to Mr. Stewart's exposures. The court instead asked

whether, in isolation, Mr. Stewart's exposure to asbestos from Scapa's dryer felts could be deemed a substantial factor. *See Edwards*, 437 S.C. at 411-16, 878 S.E.2d at 704-07. And the court ultimately held that, because Scapa's products contributed to Mr. Stewart's "cumulative dose," those products could be a substantial factor in causing Mr. Stewart's disease—no matter how small their relative contribution to that cumulative dose might be. *See id.* at 416-18, 878 S.E.2d at 707-08.[3]

The Court of Appeals has since followed the same course in another decision, *Glenn v. 3M Co.*, No. 2019-1600, 2023 WL 2778309 (S.C. Ct. App. Apr. 5, 2023). There too, the court focused on the plaintiff's exposure to asbestos from the defendant's product alone, and did not consider whether the defendant's relative contribution to the plaintiff's harm was substantial. *See id.* at *14.

2. The Court of Appeals' reasons for barring consideration of relative contributions are unsound.

The Court of Appeals did not offer a valid basis for rejecting the consideration of relative contributions in asbestos cases.

The Court of Appeals opined that accounting for relative contributions would conflict with this Court's decision in *Henderson*, which followed the Fourth Circuit's decision in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *See Jolly*, 435 S.C. at 637-38, 869 S.E.2d at 835-36. That is incorrect.

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[3] Scapa's opening brief in this Court discusses other problems with the Court of Appeals' approval of the "cumulative dose" theory. Scapa Br. 10-19. Amici agree with Scapa on those points as well.

In *Henderson*, this Court adopted *Lohrmann*'s "frequency, regularity, and proximity" test. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727. Under that test, to raise a reasonable inference of substantial causation, the plaintiff must present "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

The Court of Appeals inferred that the *Lohrmann* test *forecloses* consideration of relative contributions. *See Jolly*, 435 S.C. at 637-38, 869 S.E.2d at 835-36. The court reasoned, in other words, that an asbestos plaintiff need only show frequency, regularity, and proximity—and nothing more—to satisfy the substantial-factor analysis. *See id.*; *Edwards*, 437 S.C. at 412, 416, 878 S.E.2d at 705, 707.

This reasoning clashes with the Fourth Circuit's recent decision in *Connor*. In that case, the Fourth Circuit held that the plaintiff's claim failed the *Lohrmann* test. *See* 996 F.3d at 153-54. The court then held that the plaintiff's claim *also* failed because, in the context of the plaintiff's full set of exposures to asbestos, the defendant's relative contribution was too small to be a substantial factor. *See id.* at 154-56. The Fourth Circuit thus applied the *Lohrmann* test *and* considered relative contributions. This decision—from the same court that decided *Lohrmann*—refutes the Court of Appeals' conclusion that the *Lohrmann* test and a relative-contribution analysis are incompatible.

The Court of Appeals' reasoning also clashes with *Lohrmann* itself. *Lohrmann* followed the Restatement's substantial-factor test, and nothing in the Fourth Circuit's opinion suggests that the court meant to reject the relative-contribution analysis that is a key part of that test. *See* 782 F.2d at 1162. To the contrary, the court *applied* the relative-contribution analysis in the *Lohrmann* opinion. To support its conclusion that Mr. Lohrmann failed the substantial-factor test, the Fourth Circuit emphasized that he had been exposed to other asbestos products almost every day for decades, but had been exposed to the defendant's product only ten to fifteen times. *See id.* at 1163. The *Lohrmann* court thus analyzed the defendant's relative contribution to the plaintiff's harm—the very analysis that the Court of Appeals construed *Lohrmann* to forbid.

The Court of Appeals' analysis of *Lohrmann* also conflicts with the nature of the substantial-factor test. As discussed above, that test has two elements. *See supra* pp. 4-5; Restatement §§ 432, 433. *Lohrmann*'s frequency, regularity, and proximity test speaks to the first element: whether the defendant's conduct made some contribution to the plaintiff's harm. *See Lohrmann*, 782 F.2d at 1162-63; Restatement § 432(2). But even when a plaintiff satisfies that threshold element, the plaintiff must also show that the defendant's contribution was substantial—a showing that requires an analysis of relative contributions. *See supra* p. 5; Restatement § 433. Thus, contrary to the Court of Appeals' reasoning, satisfying the *Lohrmann* test is necessary, but not sufficient, to show substantial-factor causation.

The Court of Appeals also reasoned that accounting for relative contributions would require asbestos plaintiffs to show but-for causation as to each defendant. *See Jolly*, 435 S.C. at 637, 869 S.E.2d at 835. But the Restatement refutes that reasoning. The Restatement makes clear that, under the substantial-factor test, a plaintiff need not show but-for causation, and may instead show that a defendant's conduct is a sufficient cause of the plaintiff's harm. Restatement § 432(2). The Restatement then separately requires consideration of relative contributions. *Id.* § 433(a). The Court of Appeals conflated these two separate inquiries.

Finally, the Court of Appeals tried to justify its bar on considering relative contributions by relying on *Rost v. Ford Motor Co.*, 151 A.3d 1032 (Pa. 2016). *See Jolly*, 435 S.C. at 638, 869 S.E.2d at 836. In *Rost*, however, the Pennsylvania Supreme Court made the same mistakes that the South Carolina Court of Appeals made here: It treated the consideration of relative contributions as inconsistent with the *Lohrmann* test and as equivalent to requiring but-for causation. *See* 151 A.3d at 1051-52. *Rost* thus adds no independent support for the Court of Appeals' approach. In any event, as Scapa shows in its brief, *Rost* is an outlier that conflicts with South Carolina law. Scapa Br. 19-22.

In sum, the Court of Appeals has incorrectly departed from established principles of substantial-factor causation in asbestos cases—principles that foreclose liability when a defendant's relative contribution to a plaintiff's asbestos exposures is too small to be a substantial factor.

II. The Court of Appeals' departure from established causation principles threatens to harm businesses and the economy.

Left intact, the Court of Appeals' erroneous approach to causation in asbestos cases would harm the business community and the public.

Business defendants in asbestos cases already face serious pressure to settle for large amounts, even when their relative contributions to the plaintiff's asbestos exposures were insignificant. That is true for three reasons.

First, because asbestos cases, regardless of the legal strength of the claims, often involve sympathetic plaintiffs with terminal illnesses (such as mesothelioma), businesses face the threat of "huge verdict[s]" with "disastrous consequences" even where the facts suggest that their relative contributions to the plaintiffs' exposures were small. *See Garlock*, 504 B.R. at 73; *see also id.* at 82, 87; Bernstein at 70. When deciding whether to settle a case, and for how much, "businesses must consider the worst-case scenario." U.S. Chamber of Commerce Inst. for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* 8 (2022), https://bit.ly/3sMfUBY (*Nuclear Verdicts*).

Second, asbestos cases are expensive to defend. "The cost of expert witnesses alone is staggering," with a typical trial requiring "experts in industrial hygiene and multiple medical disciplines." *Garlock*, 504 B.R. at 87. Fact discovery is also time-intensive because asbestos cases usually involve a large number of defendants, a lengthy work history for the plaintiff, and exposures to various products. *Id.*

Third, the major producers of asbestos-containing products (such as insulation manufacturers) have long since filed for bankruptcy and can no longer be

sued. *Id.* at 83; Bernstein at 74. Plaintiffs who were exposed to these products can present their claims to bankruptcy trusts—trusts that collectively hold tens of billions of dollars in assets and provide substantial compensation to plaintiffs. *See, e.g.*, U.S. Gov't Accountability Off., *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* 3 (2011), bit.ly/3JUqZKn. Because those entities can no longer be sued in tort litigation, however, plaintiffs' lawyers have shifted their focus to suing businesses whose products did not contribute in any meaningful way to plaintiffs' diseases. *See Garlock*, 504 B.R. at 73, 83; Bernstein at 57-58, 72, 74. Minor contributors have thus become prime targets for asbestos suits merely because they have remained solvent.[4]

The Court of Appeals' departure from established causation principles would exacerbate all of these problems for South Carolina businesses, relative to businesses that operate in states that apply these mainstream principles. It would deprive minor asbestos contributors of a key defense: the defense that, in context, their products played an insignificant role in bringing about plaintiffs' harms. Deprived of that defense, solvent businesses whose products generated minimal

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[4] Making matters worse, some plaintiffs and their lawyers who have sought compensation from bankruptcy trusts have, in tort suits, withheld evidence of their exposures to bankrupt entities' products. *See, e.g.*, *Garlock*, 504 B.R. at 84-86. These plaintiffs and their lawyers have deprived defendants of critical evidence that they need to defend themselves. *Golik v. CBS Corp.*, 472 P.3d 778, 790-92 (Or. Ct. App. 2020); Peggy L. Ableman, *A Case Study from a Judicial Perspective: How Fairness and Integrity in Asbestos Tort Litigation Can Be Undermined by Lack of Access to Bankruptcy Trust Claims*, 88 TUL. L. REV. 1185, 1193-94 (2014). This history of abuse provides another reason to be wary of diluting the causation test in asbestos cases.

exposures to asbestos would face increased threats of runaway verdicts, even greater litigation costs, and ever more targeting from the plaintiffs' bar. These businesses would thus have even more powerful incentives to settle meritless cases for inflated amounts. The consequence would be to create "massive economic burdens for innocent companies." Bernstein at 74.

These increased economic burdens would directly harm the businesses that pay them. But those businesses would also pass along at least some of these costs to others in the form of higher prices, lower wages, and job cuts. *See Nuclear Verdicts* at 34-38. As a result, the costs would ultimately be borne by consumers, employees, other businesses, and the economy as a whole. *See id.*; Bernstein at 74.

The Court of Appeals' approach could also drive businesses out of South Carolina. Almost 90% of respondents in a recent business survey agreed that a state's litigation climate affects important business decisions, including where to locate their headquarters or to do business. *See* U.S. Chamber Inst. for Legal Reform, *2019 Lawsuit Climate Survey: Ranking the States* 3 (Sept. 2019), bit.ly/3XllOIz. Forcing businesses to forfeit a key defense in asbestos litigation could cause them to think twice about staying in or moving to the state. And that effect could be multiplied if the Court of Appeals' approach to causation were to bleed over to other tort cases—many of which are governed by the same substantial-factor test. *See supra* p. 4; Restatement §§ 431-433.

Nor would the impact of the Court of Appeals' decision stop at the South Carolina border. If the burden of showing causation in South Carolina decreased,

the incentive for plaintiffs' firms to bring suit in South Carolina would increase. *See* Bernstein at 57-58. As a result, businesses nationwide would bear the costs of the Court of Appeals' unsound approach to causation, so long as they had the minimum contacts with South Carolina that are needed to support personal jurisdiction here.

To prevent these harms, this Court should reverse the decision below and reaffirm the bedrock understanding that relatively insignificant contributions to a plaintiff's asbestos exposure do not give rise to liability.

CONCLUSION

This Court should reverse the decision of the Court of Appeals.

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