IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 156, 2008

LILLIAN RIEDEL,

Plaintiff-Appellant.

v.

ICI AMERICAS INC.,

Defendant-Appellee.

BRIEF OF DELAWARE STATE CHAMBER OF COMMERCE, DELMARVA POWER & LIGHT CO., COALITION FOR LITIGATION JUSTICE, INC., CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, NFIB SMALL BUSINESS LEGAL CENTER, AMERICAN INSURANCE ASSOCIATION, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, AMERICAN CHEMISTRY COUNCIL, AMERICAN PETROLEUM INSTITUTE, AND CHRYSLER LLC AS *AMICI CURIAE* IN SUPPORT OF APPELLEE AND IN SUPPORT OF AFFIRMANCE OF THE DECISION OF THE TRIAL COURT

Mark A. Behrens (*pro hac*)
Phil S. Goldberg (*pro hac*)
SHOOK, HARDY & BACON L.L.P.
600 14th Street, NW, Suite 800
Washington, DC 20005-2004
(202) 783-8400 (Telephone)
(202) 783-4211 (Facsimile)

John C. Phillips, Jr.
(Delaware Bar #110)
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806
Tel. (302) 655-4200
Fax (302) 655-4210

(Of Counsel Listed on Next Page)

Of Counsel

Paul W. Kalish
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
Tel: (202) 624-2500
Counsel to the Coalition
for Litigation Justice, Inc.

Robin S. Conrad
Amar D. Sarwal
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337

Jan Amundson
Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 637-3000

Donald D. Evans
AMERICAN CHEMISTRY COUNCIL
1300 Wilson Boulevard
Arlington, VA 22209
Tel: (703) 741-5000

Ann W. Spragens
Sean McMurrough
PROPERTY CASUALTY INSURERS
ASSOCIATION OF AMERICA
2600 South River Road
Des Plaines, IL 60018
Tel: (847) 553-3826

Lynda S. Mounts
Kenneth A. Stoller
AMERICAN INSURANCE ASSOCIATION
1130 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036
Tel: (202) 828-7158

Gregg Dykstra
NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES
3601 Vincennes Road
Indianapolis, IN 46268
Tel: (317) 875-5250

Harry M. Ng
Erik G. Milito
AMERICAN PETROLEUM INSTITUTE
1220 L Street, NW
Washington, D.C. 20005
Tel: (202) 682-8000

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STATEMENT OF IDENTITY, INTEREST & AUTHORITY

The *amici curiae* are the Delaware State Chamber of Commerce, Delmarva Power & Light Co., Coalition for Litigation Justice, Inc.,[1] Chamber of Commerce of the United States of America, National Association of Manufacturers, NFIB Small Business Legal Center, American Insurance Association, Property Casualty Insurers Association of America, National Association of Mutual Insurance Companies, American Chemistry Council, American Petroleum Institute, and Chrysler LLC. As associations representing Delaware premises owners and their insurers, *amici* have a significant interest in the subject litigation and are well-suited to provide a broad perspective to this Court.

In this appeal, the Court must decide whether premises owners may be liable under Delaware law for injuries to remote plaintiffs as a result of secondhand exposure to asbestos or other substances emitted in the workplace. The action involves a wife who alleges injury from asbestos dust allegedly carried home by her husband on his person and work clothes. *Amici* agree with the Superior Court's conclusion that imposing a broad new duty rule on Delaware premises owners to protect against remote, off-site exposure to asbestos or other toxic substances emitted in the workplace would be: (1) contrary to Delaware law, (2) inconsistent with decisions by numerous courts that utilize a

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[1] The Coalition is a nonprofit association formed by insurers to address and improve the asbestos litigation environment. The Coalition includes Century Indemnity Company; Chubb & Son, a division of Federal Insurance Company, CNA service mark companies, Fireman's Fund Insurance Company, Liberty Mutual Insurance Group, and the Great American Insurance Company.

duty analysis similar to Delaware's and have uniformly rejected claims such as the one presented here, and (3) would represent unsound public policy. If the Court were to reverse the Superior Court's well-reasoned decision and impose a broad new duty rule here, Delaware employers would be subject to potentially limitless and indefinite liability, and the recent increase in asbestos filings in Delaware would intensify.

In accordance with Supreme Court Rule 28(c)(3), *amici* submitted concurrently with this brief a motion requesting leave to file this brief.

STATEMENT OF FACTS

Amici adopt Defendant-Appellee's Statement of Facts.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Now in its fourth decade, asbestos litigation has been sustained by the plaintiffs' bar's search for new defendants, new theories of liability, and new jurisdictions in which to file their cases. In particular, the connection between plaintiffs' and asbestos-containing products has become increasingly remote, and the liability connection more attenuated. This appeal is an example.

Premises owner liability for off-site exposure to asbestos is of relatively recent vintage. In earlier years, asbestos litigation was focused mostly on the manufacturers of asbestos-containing products, often called "traditional defendants." Most of those companies have been forced into bankruptcy. As a result, plaintiffs' lawyers began to target "peripheral defendants," including premises owners for alleged harms to independent contractors exposed to asbestos on the owners' premises. Plaintiffs' lawyers are now targeting property owners for alleged harms to secondarily exposed "peripheral plaintiffs." Like this action, these claims involve workers' family members who allege exposure to asbestos off-site, typically through contact with a directly exposed worker or that worker's soiled work clothes.

A growing number of courts have faced the issue of whether premises owners owe a duty to "take home" exposure claimants. As the court below correctly explained, these claims have been uniformly rejected by courts that employ a Delaware-like duty analysis, including the highest courts in Georgia, New York, and Michigan. Such

claims also have been rejected by Texas and Iowa appellate courts; a federal court applying Kentucky law, and a Maryland appellate court. Only jurisdictions that apply a duty analysis that is inapplicable in Delaware have found a duty to exist in some circumstances, including the New Jersey Supreme Court and a few lower courts, sometimes in unpublished and even noncitable decisions.

A broad new duty requirement for premises owners would allow plaintiffs' lawyers to name scores of employers and other premises owners directly in asbestos and other toxic tort suits. The impact would be to augment these litigations and subject *amici*'s members to potentially limitless and indefinite liability, particularly here in Delaware, where so many corporations are subject to suit. *See* Steve Korris, *Delaware Court Seeing Upsurge in Asbestos Filings*, The Record (Madison/St. Clair Counties, Ill.), July 1, 2005 ("[A] deluge of filings is keeping clerks in a Delaware court working nights and weekends to keep up."), *available at* http://madisonrecord.com/news/contentview.asp?c=162494.

ARGUMENT

I. AN OVERVIEW OF THE LITIGATION ENVIRONMENT IN WHICH THE SUBJECT APPEAL MUST BE CONSIDERED

"For decades, the state and federal judicial systems have struggled with an avalanche of asbestos lawsuits." *In re Combustion*

Eng'g, Inc., 391 F.3d 190, 200 (3d Cir. 2005).[2] The United States Supreme Court has described the asbestos litigation as a "crisis." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997). Through 2002, approximately 730,000 asbestos claims had been filed. *See* Stephen J. Carroll *et al.*, *Asbestos Litigation xxiv* (RAND Inst. for Civil Justice 2005).[3]

An estimated eighty-five employers have been pushed into bankruptcy, *see* Martha Neil, *Backing Away from the Abyss*, ABA J., Sept. 2006, at 26, 29, with devastating impacts on the companies' employees, retirees, shareholders, and surrounding communities.[4] Bankrupt companies and communities are not the only ones affected:

> The uncertainty of how remaining claims may be resolved, how many more may ultimately be filed, what companies may be targeted, and at what cost, casts a pall over the finances of thousands and possibly tens of thousands of American businesses. The cost of this unbridled litigation diverts capital from productive purposes, cutting investment and jobs. Uncertainty about how future claims may impact their finances has made it more difficult for affected companies to raise capital and attract

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[2] *See also* Mark A. Behrens, *Some Proposals for Courts Interested in Helping Sick Claimants and Solving Serious Problems in Asbestos Litigation*, 54 Baylor L. Rev. 331 (2002); Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 Miss. L.J. 1 (2001).

[3] RAND has estimated that $70 billion was spent in the litigation through 2002; future costs could reach $195 billion. *See* RAND Rep. at 92, 106.

[4] *See* Joseph E. Stiglitz *et al.*, *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms*, 12 J. Bankr. L. & Prac. 51 (2003); *see also* Christopher Edley, Jr. & Paul C. Weiler, *Asbestos: A Multi-Billion-Dollar Crisis*, 30 Harv. J. on Legis. 383 (1993).

> new investment, driving stock prices down and borrowing costs up.

George S. Christian & Dale Craymer, *Texas Asbestos Litigation Reform: A Model for the States*, 44 S. Tex. L. Rev. 981, 998 (2003).

As a result of the large number of bankruptcies, "the net has spread from the asbestos makers to companies far removed from the scene of any putative wrongdoing." Editorial, *Lawyers Torch the Economy*, Wall St. J., Apr. 6, 2001, at A14, *abstract available* at 2001 WLNR 1993314.[5] More than 8,500 defendants have been named, *see* Deborah R. Hensler, *California Asbestos Litigation – The Big Picture*, HarrisMartin's Columns – Raising The Bar In Asbestos Litig., Aug. 2004, at 5, including at least one company in nearly every U.S. industry. One well-known asbestos plaintiffs' attorney has described the litigation as an "endless search for a solvent bystander." *'Medical Monitoring and Asbestos Litigation'-A Discussion with Richard Scruggs and Victor Schwartz*, 17:3 Mealey's Litig. Rep.: Asbestos 5 (Mar. 1, 2002) (quoting Mr. Scruggs). Nontraditional defendants such as ICI now account for more than half of asbestos expenditures. *See* RAND Rep., *supra*, at 94.

Recently, a number of state courts and legislatures have acted to address these serious problems and improve the asbestos litigation

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[5] *See also* Susan Warren, *Asbestos Suits Target Makers of Wine, Cars, Soups, Soaps*, Wall St. J., Apr. 12, 2000, at B1, *available at* 2000 WLNR 2042486; Susan Warren, *Asbestos Quagmire: Plaintiffs Target Companies Whose Premises Contained Any Form of Deadly Material*, Wall St. J., Jan. 27, 2003, at B1, *available at* 2003 WLNR 3099209.

environment in their states.[6] The instant case provides this Court with an opportunity to establish a sound precedent for asbestos premises owner litigation in Delaware and beyond.

II. THE SUPERIOR COURT CORRECTLY DECIDED THAT ICI OWED NO DUTY TO PLAINTIFF FOR OFF-SITE, SECONDHAND EXPOSURE TO ASBESTOS

It is well-established that "an antecedent duty of care with respect to the interest involved must be established before liability is imposed." *Furek v. Univ. of Delaware*, 594 A.2d 506, 516 (Del. 1991). "Whether a duty exists is entirely a question of law to be determined . . . by the court." *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002) (internal quotation omitted).

In Delaware, the law is settled that a duty of care will be imposed on a defendant only when "such *a relationship exists between the parties* that the community will impose a legal obligation upon one for the other." *Naidu v. Laird*, 539 A.2d 1064, 1070 (Del. 1988) (emphasis added); *Furek*, 594 A.2d at 516 ("The scope of the duty of care often turns on the *relationship* between the party claiming harm and the party charged with negligence.") (emphasis added); *see also Kuczynski v. McLaughlin*, 835 A.2d 150, 153 (Del. Super. 2003) ("Duty is essentially a question of whether *the relationship* between the actor and the injured person gives rise to any legal obligation on the

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[6] *See* Mark A. Behrens & Phil Goldberg, *The Asbestos Litigation Crisis: The Tide Appears to Be Turning*, 12 Conn. Ins. L.J. 477 (2006); James A. Henderson, Jr., *Asbestos Litigation Madness: Have the States Turned a Corner?*, Mealey's Tort Reform Update, vol. 3:6, Jan. 18, 2006, at 23.

actor's part for the benefit of the injured person.") (emphasis added); *Freedman v., Tennessee Dev. Corp.*, 1993 U.S. Dist. LEXIS 11021, at *41 (D. Del. Aug. 3, 1993) ("In the absence of some relationship, actual or constructively construed, [the plaintiff and defendant] are legal strangers.").

Thus, in *Naidu*, this Court held that because of the "special relationship that exists between a psychiatrist and a patient," a state hospital psychiatrist had a duty to exercise reasonable care in the treatment and release of a psychiatric patient who later became involved in an automobile accident and killed plaintiff's decedent while in a psychotic state. 539 A.2d at 1072. Similarly, in *Furek*, this Court held that the University of Delaware could be liable for the hazing death of a fraternity member on campus because of the "sufficiently close and direct" relationship between the University and its students. 594 A.2d at 522. The Court stressed, "[t]he university-student relationship is certainly unique." *Id.* at 516; *see also Pipher v. Parsell*, 930 A.2d 890 (Del. 2007) (driver-passenger). Here, however, there was no relationship at all between Plaintiff and ICI, much less the type of "special" or "direct" relationship that would give rise to a duty owed.

Plaintiff argues that ICI owed a duty to Plaintiff if her alleged harm was "foreseeable." Foreseeability, however, is a factor in assessing the significance of the relationship between the parties, *see Kuczynski v. McLaughlin*, 835 A.2d 150, 154 (Del. Super. 2003), and defines the scope of a duty *once the court determines that a duty*

exists. *See Delmarva Power & Light Co. v. Burrows*, 435 A.2d 716, 718 (Del. 1981) ("Delaware law measures duties owed in terms of reasonableness.... [O]ne's duty encompasses protecting against reasonably foreseeable events."); *see also Freedman v. Tennessee Dev. Corp.*, 1993 U.S. Dist. LEXIS 11021, at *42-43 n.6 (D. Del. Aug. 3, 1993) ("[I]t is clear that the [*Furek*] Court did not evaluate the imposition of primary negligence liability solely on grounds of the foreseeable risk of harm, but instead determined whether a duty exists in the first instance.").

For example, the Court in *Naidu* found that the "ultimate question" of whether a duty is owed depends on whether "a relationship exists between the parties." 539 A.2d at 1070. The Court added, "Delaware law *measures* duties owed in terms of reasonableness." *Id.* (emphasis added). Likewise, in *Delmarva Power & Light Co. v. Burrows*, 435 A.2d 716 (Del. 1981), foreseeability was discussed in the context of measuring - not defining - the scope of the defendant's duty. There, the jury was instructed at trial, "Now, ladies and gentlemen of the jury, an electric company is under a duty to safeguard the public against injury arising from the use of its dangerous agency. . . ." *Id.* at 718. Having been told that a duty was owed, the jury also was instructed that an electric company has a duty to protect against "reasonably foreseeable" danger and "events which may be reasonably expected to occur." *Id.* This Court found the charge to correctly state the law with respect to the definition of foreseeability. The Court explained, "Delaware law *measures* duties in terms of

reasonableness. . . . Stated differently, one's duty *encompasses* reasonably foreseeable events." *Id.* (emphasis added); *see also Sirmans v. Penn*, 588 A.2d 1103, 1107 (Del. 1991) (quoting *Delmarva's* definition of foreseeability as "measure[ing] duties owed" and not discussing duty analysis beyond how foreseeability should be defined).

These cases make clear that the relationship between the parties is paramount, but even then a legal duty does not necessarily exist. Foreseeability of harm also must be considered to prevent potential absolute liability for unforeseeable events.[7] Contrary to Plaintiff's assertion, foreseeability, standing alone, is not the test. As the Superior Court explained, Delaware law "recognizes several instances where a defendant's conduct might foreseeably harm another and yet the defendant is held to owe no duty to that person." *In re Asbestos Litig.*, 2007 WL 4571196, at *7 (providing examples).

III. Courts That Utilize a Delaware-Like Duty Approach Have Uniformly Rejected The Duty Rule Sought Here

Courts that employ a Delaware-like duty analysis focusing on the relationship (or lack thereof) between a premises owner defendant and

[7] Thus, when Judge Slights said in *Kuczynski* that "[c]ourts [typically will] take a broad view of the class of risks and the class of victims that are foreseeable for the purpose of finding a duty," 835 A.2d at 155, he was not saying that courts should take a broad view in creating new duties; rather, he was saying that courts should be careful not to foreclose remedies for plaintiffs where a duty is found to exist in the first instance.

a secondarily exposed plaintiff have uniformly rejected the duty rule espoused by Plaintiff here.

For example, the Michigan Supreme Court in *In re Certified Question from Fourteenth Dist. Court of Appeals of Texas (Miller v. Ford Motor Co.)*, 740 N.W.2d 206 (Mich. 2007), held that a property owner (Ford Motor) did not owe a duty to protect plaintiff from asbestos fibers carried home on the clothing of a family member who worked at a Ford plant. Michigan's duty law is comparable to Delaware: "The most important factor to be considered is the relationship of the parties. . . . [E]ven where there is a relationship between the parties, a legal duty does not necessarily exist. . . . Before a duty can be imposed there must be a relationship between the parties and the harm must have been foreseeable." 740 N.W.2d at 211-213.

As here, the *Miller* plaintiff "had never been on or near defendant's property and had no further relationship with defendant" outside of being a household member of someone who worked on its premises. *Id.* at 216. Therefore, the court found, "the 'relationship between the parties' prong of the duty test, which is the most important prong in this state, strongly suggests that no duty should be imposed." *Id.* Additionally, the court concluded, "no duty should be imposed because protecting every person with whom a business's employees . . . come into contact, or even with whom their clothes come into contact, would impose an extraordinary and unworkable burden." *Id.* at 217.

New York's highest court, with one justice abstaining, unanimously reached the same conclusion and overturned an appellate court in *In re New York City Asbestos Litig.* (*Holdampf v. A.C. & S., Inc.*), 840 N.E.2d 115 (N.Y. 2005).[8] *Holdampf* involved an action by the spouse of a former Port Authority employee whose wife developed mesothelioma from washing her husband's asbestos-soiled work clothes. The court rejected plaintiff's foreseeability approach, explaining that "foreseeability bears on the scope of a duty, not whether a duty exists in the first place." *Id.* Under New York law, a duty may arise only "when there is a relationship either between the defendant and a third-person tortfeasor." *Id.* at 119 (quoting *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1061 (N.Y. 2001)).

The *Holdampf* court found that there was "no relationship" between the Port Authority and the plaintiff that would give rise to a duty owed, "much less that of master and servant (employer and employee), parent and child or common carrier and passenger" - examples where liability has been imposed in other cases. 840 N.E.2d at 120.

The court further stated that the duty rule sought by plaintiffs would be unworkable in practice and unsound as a matter of policy. The court expressed skepticism that a new duty rule could be crafted to avoid potentially open-ended liability for premises owners. The appellate court had tried to avoid this problem by limiting its

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[8] *See also In re Eighth Jud. Dist. Asbestos Litig. (Rindfleisch v. AlliedSignal, Inc.)*, 12 Misc. 3d 936, 815 N.Y.S.2d 815 (N.Y Sup. Ct. 2006).

holding to members of the employee's household, but the Court of Appeals said this "line is not so easy to draw." *Id.* at 122. The new duty rule could potentially cover anyone who might come into contact with a dusty employee or that person's dirty clothes, such as a baby-sitter or an employee of a local laundry.

In *CSX Transportation, Inc. v. Williams,* 608 S.E.2d 208 (Ga. 2005), the Georgia Supreme Court unanimously held, "Georgia negligence law does not impose any duty on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace." *Id.* at 210. The court noted that in Georgia, as in New York, foreseeability of harm had been rejected as a basis for extending a duty of care. *Id.* at 209. The court also said that its decision was guided by important public policy considerations: "The recognition of a common-law cause of action under the circumstances of this case would . . . expand traditional tort concepts beyond manageable bounds and create an almost infinite universe of potential plaintiffs." *Id.* (quoting *Widera v. Ettco Wire and Cable Corp.*, 204 A.D.2d 306, 307-08, 611 N.Y.S.2d 569,571 (N.Y. App. Div. 1994), *leave denied,* 650 N.E.2d 414 (N.Y. 1995)); *see also Adams v. Owens-Illinois, Inc.,* 705 A.2d 58, 66 (Md. Ct. Spec. App. 1998) ("If liability for exposure to asbestos could be premised on [decedent's] handling of her husband's clothing, presumably Bethlehem [the premises owner] would owe a duty to others who came into close contact with [decedent's husband], including other family members, automobile passengers, and co-workers. Bethlehem owed

no duty to strangers based upon providing a safe workplace for employees.").

IV. **Courts That have Found a Duty Have Applied Principles That Are Not Applicable in Delaware**

"In nearly every instance where courts *have* recognized a duty of care in a take home exposure case, the decision turned on the court's conclusion that the foreseeability of risk was the primary (if not only) consideration in the duty analysis." *In re Asbestos Litig.*, 2007 WL 4571196, *11 (emphasis in original).[9]

For example, the New Jersey Supreme Court in *Olivo v. Owens-Illinois, Inc.*, 895 A.2d 1143, 1148 (N.J. 2006), described the "foreseeability of harm" as "a crucial element in determining whether imposition of a duty on an alleged tortfeasor is appropriate." Likewise, in *Satterfield v. Breeding Insulation, Inc.*, 2007 WL 1159416, *5 (Tenn. App. Apr. 19, 2007), *appeal granted* (Tenn. Sept. 17, 2007), the court said that, in Tennessee, "foreseeability is the test of negligence." In *Condon v. Union Oil Co. of Cal.*, 2004 WL 1932847, *5 (Cal. App. Aug. 31, 2004) (unpublished), the court did not engage in a thorough duty analysis, but relied exclusively on the foreseeability factor to summarily conclude "it was foreseeable" that

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[9] *But see Alcoa, Inc. v. Behringer,* 235 S.W.3d 456 (Tex. App.-Dallas 2007); *Fossen v. MidAmerican Energy Co.*, 746 N.W.2d 278, 2008 WL 141194 (Iowa App. Jan. 16, 2008) (unpublished); *Martin v. General Elec. Co.,* 2007 WL 2682064 (E.D. Ky. Sep. 5, 2007) (unpublished) - all rejecting claims against premises owners.

workers' family members were at risk of exposure if the workers were exposed.[10] As explained, Delaware law requires more.

Plaintiff and *Amicus* Delaware Trial Lawyer's Association also cite two Louisiana cases, *Chaisson v. Avondale Indus., Inc.*, 947 So. 2d 171 (La. App. 2006), and *Zimko v. American Cyanamid*, 905 So. 2d 465 (La. App. 2005), *writ denied*, 925 So. 2d 538 (La. 2006), which found a duty to guard against off-site, secondhand asbestos exposure. Louisiana - unlike Delaware - relies "heavily upon foreseeability when finding a duty." *Chaisson*, 947 So. 2d at 182.[11]

Moreover, in *Zimko*, the court said it found the New York appellate court's decision in *Holdampf* to be "instructive." *Id.* at 483. As explained, that decision was overturned by the New York Court of Appeals after *Zimko* was decided. The Michigan Supreme Court noted this history when it declared, "we do not find *Zimko* to be persuasive." 740 N.W.2d at 215. Furthermore, the validity of *Zimko* has been called into question in Louisiana:

> *One must clearly understand the factual and legal basis upon which Zimko was premised and its history.*
>
> *Zimko* was a 3 to 2 decision of this court. [The father's employer] was found liable to the plaintiff and [plaintiff's' employer] was found not liable to the plaintiff. Neither [company]

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[10] Furthermore, California Rule of Court 977(a) prohibits courts and parties from citing or relying on unpublished opinions, so *Condon* has no authoritative value, even in California.

[11] In *Chaisson*, the court made crystal clear that its holding was limited to the facts and circumstances of that particular case. The court did not find a categorical duty rule. *See Chaisson*, 947 So. 2d at 184, *see also id.* at 200 (per curiam opinion on rehearing).

> sought supervisory review from the Louisiana Supreme Court, but the plaintiff did on the issue of the liability of [his employer]. . . . Thus, the Supreme Court was not reviewing the correctness of the majority opinion respecting [the liability of the father's employer]. . . . *Any person citing Zimko in the future should be wary of the majority's opinion in Zimko in view of the Louisiana Supreme Court never being requested to review the correctness of the liability of American Cyanamid.*
>
> The Court of Appeals of New York (that state's highest court) briefly alluded to the problem in *Zimko* in the case of *In re New York City Asbestos Litigation*. . . and chose not to follow *Zimko*.

Thomas v. A.P. Green Indus., Inc., 933 So. 2d 843, 871-72 (La. App. 2006) (Tobias, J., concurring) (emphasis added).

Plaintiff also cites an unpublished Washington appellate decision, *Rochon v. Saberhagen Holdings, Inc.* 140 Wash. App. 1008, 2007 WL 2325214 (Wash. App. Aug 13, 2007) (unpublished), which applied a different analytical approach than the one used in Delaware. "It is also clear that, like Tennessee, New Jersey, and Louisiana, Washington emphasizes the foreseeability of injury when determining whether a duty exists." *In re Asbestos Litig.*, 2007 WL 4571196, *11 n.83.

V. THE BROAD NEW DUTY RULE SOUGHT BY PLAINTIFF IS UNSOUND AND WOULD HAVE PERVERSE RESULTS: ASBESTOS LITIGATION WOULD WORSEN AND OTHER CLAIMS WOULD RISE

A broad new duty requirement for landowners would allow plaintiffs' lawyers to name countless premises owners directly in asbestos and other suits. A new cause of action against landowners by remote plaintiffs injured off-site would exacerbate the current asbestos litigation and augment other toxic tort claims. *See* Mark A. Behrens & Frank Cruz-Alvarez, *A Potential New Frontier in Asbestos*

Litigation: Premises Owner Liability for "Take Home" Exposure Claims, 21:11 Mealey's Litig. Rep.: Asbestos 32 (July 5, 2006). As one commentator has explained,

> If the law becomes clear that premises-owners or employers owe a duty to the family members of their employees, the stage will be set for a major expansion in premises liability. The workers' compensation bar does not apply to the spouses or children of employees, and so allowing those family members to maintain an action against the employer would greatly increase the number of potential claimants.

Patrick M. Hanlon, *Asbestos Litigation in the 21st Century: Developments in Premises Liability Law in 2005*, SL041 ALI-ABA 665, 694 (2005).

Future potential plaintiffs might include anyone who came into contact with an exposed worker or his or her clothes. Such plaintiffs could include co-workers, children living in the house, extended family members, renters, house guests, baby-sitters, carpool members, bus drivers, and workers at commercial enterprises visited by the worker while wearing work clothes, as well as local laundry workers or others who handled the worker's clothes. *See In re Certified Question from Fourteenth Dist. Court of Appeals of Texas,* 740 N.W.2d at 219; *In re New York City Asbestos Litig.,* 840 N.E.2d at 122; *In re Asbestos Litig.*, 2007 WL 4571196, *12. The Court must consider all potential filings that might occur. The history of asbestos litigation makes clear that, with respect to those types of claims, "if you build it, they will come."

Moreover, potential defendants may not be limited to corporate property owners like ICI. Landlords and private homeowners also might be liable for secondhand exposures that originate from their premises. In an attempt to reach for homeowners' insurance policies, private individuals could be swept into the "dragnet search" for potentially responsible parties in asbestos cases.

CONCLUSION

For these reasons, the Court should affirm the Superior Court's decision granting summary judgment to Defendant-Appellee ICI.

Respectfully submitted,

/s/ John C. Phillips, Jr.
John C. Phillips, Jr. (DE Bar #110)
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806
Tel. (302) 655-4200
Fax (302) 655-4210

Mark A. Behrens (*pro hac*)
Phil S. Goldberg (*pro hac*)
SHOOK, HARDY & BACON L.L.P.
600 14th Street, NW, Suite 800
Washington, DC 20005
Tel. (202) 783-8400
Fax: (202) 783-4211

Attorneys for *Amici Curiae*

Paul W. Kalish
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
Tel. (202) 624-2500
Counsel to the Coalition
for Litigation Justice, Inc.

Robin S. Conrad
Amar D. Sarwal
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Tel. (202) 463-5337

Jan Amundson
Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, NW
Washington, DC 20004
Tel. (202) 637-3000

Sherman Joyce
AMERICAN TORT REFORM ASSOCIATION
1101 Connecticut Avenue, NW, Suite 400
Washington, DC 20036
Tel. (202) 682-1163

Lynda S. Mounts
Kenneth A. Stoller
AMERICAN INSURANCE ASSOCIATION
1130 Connecticut Ave., NW, Suite 1000
Washington, DC 20036
Tel. (202) 828-7158

Ann W. Spragens
Sean McMurrough
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA
2600 South River Road
Des Plaines, IL 60018
Tel. (847) 553-3826

Gregg Dykstra
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES
3601 Vincennes Road
Indianapolis, IN 46268
Tel: (317) 875-5250

Donald D. Evans
AMERICAN CHEMISTRY COUNCIL
1300 Wilson Boulevard
Arlington, VA 22209
Tel. (703) 741-5000

Harry M. Ng
Erik G. Milito
AMERICAN PETROLEUM INSTITUTE
1220 L Street, NW
Washington, D.C. 20005
Tel: (202) 682-8000

Of Counsel

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