

**SUPREME COURT OF LOUISIANA**

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**NO. 2023-C-00170**

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**HENRY PETE**

**VERSUS**

**BOLAND MARINE AND MANUFACTURING, LLC, ET AL.**

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**FROM THE RULING OF THE FOURTH CIRCUIT COURT OF APPEAL  
DOCKET NO. 2021-CA-0626**

**ON APPEAL FROM THE CIVIL DISTRICT COURT  
FOR ORLEANS PARISH, STATE OF LOUISIANA  
CASE NO. 19-10545, DIVISION N-8  
THE HONORABLE ETHEL S. JULIEN PRESIDING**

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**CIVIL PROCEEDING**

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**BRIEF OF *AMICI CURIAE* LOUISIANA ASSOCIATION OF BUSINESS AND  
INDUSTRY, LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION, THE  
LOUISIANA CHEMICAL ASSOCIATION AND THE LOUISIANA LEGAL REFORM  
COALITION IN SUPPORT OF APPLICANT**

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## I. STATEMENT OF *AMICI* INTEREST

The Louisiana Association of Business & Industry (“**LABI**”) is a non-profit trade association representing over 2,500 business and industry members that works to uphold its mission to foster economic growth by championing the principles of the free enterprise system and to represent the general interest of the business community. LABI’s membership includes both large and small businesses engaged in all sectors of the economy, all of which are directly and indirectly affected by disproportionate verdicts rendered in cases such as the one before this Court.

Louisiana Mid-Continent Oil and Gas Association (“**LMOGA**”) represents the interests of major and independent oil and gas exploration and production companies operating in Louisiana. LMOGA currently has over 100 member companies employing thousands of employees in the oil and gas business, both within and outside Louisiana. LMOGA’s interest in the outcome of this case includes supporting its members and protecting their interests against excessive and unfair judicial outcomes in Louisiana.

The Louisiana Chemical Association (“**LCA**”) is a nonprofit Louisiana corporation, composed of sixty-eight (68) members with over one hundred (100) chemical manufacturing plant sites in Louisiana. LCA was formed in 1959 to promote a positive business climate for chemical manufacturing that ensures long-term economic growth for its member companies. LCA members are committed to excellence in safety, health, security, and environmental performance and to earning our “license to operate.” LCA participates on behalf of its members in administrative proceedings and in litigation arising from those proceedings. LCA’s membership are directly and indirectly affected by disproportionate verdicts rendered in cases such as the one before this Court.

The Louisiana Legal Reform Coalition (“**LLRC**”) is a coalition of businesses, corporations, and trade associations doing business in Louisiana with an interest in improving the efficiency and fairness of the civil justice system in the state. LLRC files *amicus curiae* briefs in cases involving liability issues that are important to its mission.

The excessive damages award in this case, and others like it, will have a chilling effect on Louisiana's effort to recruit and retain business and industry. *Amici* advocates herein for the business enterprises, small and large alike, that employ and support the citizens of the State of Louisiana and the state’s economy. In the words of Rule VII, Section 12, LABI, LMOGA, LCA

and LLRC have “substantial, legitimate interests” in the outcome of this case. For these reasons, LABI, LMOGA, LCA and LLRC respectfully pray for leave to file their *amici curiae* brief in support of the position taken by Applicant and respectfully appreciate the Court’s consideration of their position applicable to this pending writ.

## II. STATEMENT OF THE CASE

For the purposes of this *amici* brief, Louisiana Association of Business and Industry, Louisiana Mid-Continent Oil and Gas Association, The Louisiana Chemical Association, and The Louisiana Legal Reform Coalition, *amici curiae* herein, adopt the facts as set forth by Defendant-Applicant, Ports America Gulfport, Inc., in its brief on the merits to the Court. Further, *amici* join with Applicant in urging the Court to reverse and/or amend the ruling by the Louisiana Fourth Circuit Court of Appeal herein as it relates to the jury’s excessive award of general damages in this asbestos-related civil action.

## III. SUMMARY OF THE ARGUMENT

The jury’s general damages award of \$9.8 million dollars in this case “shocks the conscience”,<sup>1</sup> is not reasonably based on the evidence and should be found excessive as a matter of law. The issue now before this Court is not *whether* injured parties should be compensated. Rather, this Court must decide *what amount* constitutes fair and reasonable compensation for general damages based on record evidence—and the consequences of leaving general damages awards not reasonably supported by the record and applicable legal standards undisturbed. Compensatory damages “are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct.”<sup>2</sup> To the extent a general damages award is unfair and unreasonable, the margin of unfairness and unreasonableness in the general damages award essentially becomes a punitive damage award, which is not permissible in this case and is against Louisiana’s well established public policy.<sup>3</sup>

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<sup>1</sup> *Pete v. Boland Marine and Manufacturing Company, LLC*, 356 So.3d 1147, 1164, 2021-0626 La.App. 4 Cir. 1/5/23, 1 (La. App. 4 Cir., 2023) (Judge Dysart, dissenting).

<sup>2</sup> *Chauvin v. Exxon Mobil Corp.*, 158 So.3d 761, 769, 2014-0808 La. 12/9/14, 11 (La. 2014) (citing *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416, 123 S.Ct. 1513, 1519, 155 L.Ed.2d 585 (2003)).

<sup>3</sup> The general public policy in Louisiana is against punitive damages. *Ross v. Conoco, Inc.*, 02–0299, p. 14 (La.10/15/02), 828 So.2d 546, 555. Thus, punitive or other penalty damages are not allowed unless expressly authorized by statute. And even when a statute does authorize the imposition of punitive damages, it is strictly construed. *Id.*

*Amici* submit this brief not to repeat Applicant’s arguments, but to illustrate that the jury’s award in this action is but one in a series of excessive awards affirmed by the Fourth Circuit Court of Appeal, which, if left unchecked, will likely lead to the growth of a cottage litigation industry in Louisiana. If the Louisiana judicial system is viewed by business in this state and the rest of the nation as providing and supporting an opportunistic litigation strategy resulting from unfair and excessive jury verdicts, the business climate and capital investment in Louisiana will be adversely impacted. Such an incentivized litigation system will unnecessarily strain this state’s judicial system. A fair balancing of interests is necessary for all citizens—individuals and businesses alike. For this reason, *amici* respectfully ask to be heard by this Court in considering the issues before the Court.

#### IV. ARGUMENT

**A. Absent clear guidance on what constitutes an unreasonable damages award, unreasonably excessive and unfair jury awards in asbestos cases will negatively impact Louisiana’s judicial system.**

The jury award in *Pete* is one of three post-COVID era jury awards in asbestos cases that, despite being grossly excessive, have recently been affirmed by the Louisiana Fourth Circuit Court of Appeal in prior months. The first of these decisions came in January of 2023 in the instant case, *Pete*, in which the Fourth Circuit affirmed a \$9.8 million general damages award in favor of a 74-year-old Plaintiff with asbestos related cancer.<sup>4</sup> The jury awarded general damages in the following amounts and categories:<sup>5</sup>

Past and Future Physical Pain and Suffering:	\$2,000,000
Past and Future Mental Pain and Suffering:	\$2,300,000
Past and Future Physical Disability:	\$3,000,000
Past and Future Loss of Enjoyment of Life:	\$2,500,000

The second excessive award affirmed by the Louisiana Fourth Circuit in February of 2023 was in *Stauder*,<sup>6</sup> where the court affirmed an award of \$10.35 million, including \$2.75 million wrongful death awards to each of the *Stauder* decedent’s adult children.<sup>7</sup> The wrongful death awards in *Stauder* were grossly disproportionate to prior Louisiana precedents, including the

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<sup>4</sup> *Pete v. Boland Marine & Mfg. Co., LLC*, 2021-0626, p. 4 (La.App. 4 Cir. 1/5/23); 356 So.3d 1147, 1152, writ granted, 2023-00170 (La. 4/18/23).

<sup>5</sup> *Id.*

<sup>6</sup> *Stauder v. Shell Oil Co.*, 2022-0593, p. 11 (La.App. 4 Cir. 2/15/23).

<sup>7</sup> *Id.*

Fourth Circuit’s own analysis from April of 2021 in *Lege v. Union Carbide Corp.*, which involved a substantially similar evidentiary record to that in *Stauder*. The Fourth Circuit in *Lege v. Union Carbide Corp.* reviewed applicable jurisprudence and found that awards to adult children for the death of an elderly parent ranged from \$12,500 to \$150,000.<sup>8</sup> The wrongful death damages affirmed by Louisiana Fourth Circuit in *Stauder* are believed to be the highest wrongful death damages awarded to adult children in any personal injury litigation in this state. An application for supervisory writs of certiorari, mandamus, and review in the *Stauder* case is currently pending before this Court.<sup>9</sup>

The third and most recent example of unreasonably excessive damages occurred just last month, when the Louisiana Fourth Circuit affirmed an unprecedented verdict of \$36.75 million to William Walker, an 80-year-old, with asbestos related cancer.<sup>10</sup> Of the \$36.75 million awarded by the jury in *Walker*, \$35.75 million were general damages in the following categories:<sup>11</sup>

Past Physical Pain and Suffering:	\$ 750,000.00
Future Physical Pain and Suffering:	\$ 2,500,000.00
Past Mental Anguish:	\$ 2,500,000.00
Future Mental Anguish:	\$ 5,000,000.00
Physical Disability:	\$ 5,000,000.00
Loss of Enjoyment of Life:	\$20,000,000.00

Despite the award in *Walker* being many multiple times more than the reported survival damages awards in asbestos cases in Louisiana, the Louisiana Fourth Circuit did not find that “the jury’s award is ‘beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff,’ such that the jury abused its broad discretion.”<sup>12</sup> Additionally, the *Walker* court noted that “general damages awards will fluctuate and increase over time given changes in economic conditions, particularly rampant inflation.”<sup>13</sup>

While the *Stauder* decision by the Louisiana Fourth Circuit is troubling with respect to its effect on excessive wrongful death awards, *Pete* and *Walker* both relate to the issue before this

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<sup>8</sup> *Lege v. Union Carbide Corp.*, 2020-0252 (La.App. 4 Cir. 4/1/21, 31–32), as clarified on reh’g, 2020-0252 (La.App. 4 Cir. 5/12/21), writ denied, 2021-00792 (La. 10/1/21); 324 So.3d 1054, and writ denied, 2021-00775 (La. 10/1/21); 324 So.3d 1059. Despite this finding, the *Lege* court affirmed a jury’s award of \$500,000 each to the two adult children of a mesothelioma decedent who testified at trial.

<sup>9</sup> Docket No. 2023-C-0619.

<sup>10</sup> *Walker v. Anco Insulations, Inc.*, 2022-0763, p. 22 (La.App. 4 Cir. 5/3/23).

<sup>11</sup> *Id.* at p. 2.

<sup>12</sup> *Id.* at p. 8 (quoting *Guillory v. Lee*, 2009-0075, p. 6 (La. 6/26/09), 16 So.2d 1104, 1117).

<sup>13</sup> *Id.*



Court now: at what point does a general damages award becomes unfair and unreasonable as a matter of law in Louisiana? Here, the appellate court erroneously did not consider the robust reported history of past general damages awards for similar injuries, which constrained a meaningful review of the general damages in this case. To be clear, the juries' awards in *Pete* and *Walker* are far and away higher in multiples than the range of prior awards in similar cases.

Nonetheless, the general damages awarded by the jury in the District Court and affirmed by the Fourth Circuit in *Pete* and *Walker* should not be analyzed in a vacuum, but rather viewed in context in order to recognize what they truly represent—exponentially increasing Louisiana jury damages awards in the cottage litigation industry known as asbestos litigation.

The following are reported awards for general damages in asbestos litigation survival actions arranged from lowest to highest:

- *Chaisson v. Avondale Industries, Inc.*:<sup>14</sup> approximately 60-year-old woman contracted mesothelioma from exposure to asbestos on the work clothes of her husband. General survival damages: \$1,416,580.54
- *Bagwell v. Union Carbide Corp.*:<sup>15</sup> a 57-year-old working man contracted mesothelioma due to exposure while working on oil rigs and living within a short distance from an asbestos cement plant. He died at age 60. The jury awarded \$750,000 in general damages for the survival action. The Fourth Circuit increased the survival award to the lowest reasonable award. General survival damages: \$1,450,000.
- *Romano v. Metro. Life Ins. Co.*:<sup>16</sup> a 74-year-old man contracted mesothelioma from exposure to asbestos during his work at a chemical plant. The jury awarded \$500,000 in general damages. The Fourth Circuit increased the award to the lowest reasonable award. General survival damages: \$1,500,000.
- *Craft v. Ports Am. Gulfport, Inc.*:<sup>17</sup> an 82-year-old man contracted mesothelioma after working as a longshoreman on the New Orleans Riverfront for many years. General survival damages: \$1,600,000.
- *Torrejon v. Mobil Oil Co.*:<sup>18</sup> a 77-year-old man contracted mesothelioma after working and living on vessels as a merchant mariner and thereafter during land-based employment. General survival damages: \$1,800,000.

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<sup>14</sup> *Chaisson v. Avondale Industries, Inc.*, 2005-1511 (La. App. 4 Cir. 12/20/06), 947 So. 2d 171, writ denied, 2007-0411 (La. 4/5/07), 954 So. 2d 145.

<sup>15</sup> *Bagwell v. Union Carbide Corp.*, 2020-01242, p. 2 (La. 1/12/21); 308 So. 3d 289, 290, reh'g denied, 2020-01242 (La. 3/16/21); 312 So. 3d 590.

<sup>16</sup> *Romano v. Metro. Life Ins. Co.*, 2016-0954 (La. App. 4 Cir 05/24/17), 221 So. 3d 176, writ denied, 2017-1072 (La. 10/9/2017), 228 So. 3d 747.

<sup>17</sup> *Craft v. Ports Am. Gulfport, Inc.*, 2018-0814, p. 1 (La.App. 4 Cir. 5/8/19); 273 So. 3d 517, 520, writ denied, 2019-00940 (La. 10/15/19); 280 So.3d 587.

<sup>18</sup> *Torrejon v. Mobil Oil Co.*, 2003-1426 (La. App. 4 Cir 06/02/04), 876 So. 2d 877, writ denied, 2004-1660 (La. 9/24/04), 882 So. 2d 1125.

- *Oddo v. Asbestos Corporation, Ltd.*:<sup>19</sup> an 81-year-old man contracted mesothelioma after working in a shipyard, then a chemical facility, and next as an automobile mechanic for 25 years. General survival damages: \$2,100,000.
- *Hennegan v Cooper/T. Smith Stevedoring Co., Inc.*:<sup>20</sup> a 54-year-old man contracted mesothelioma as a result of working as a deckhand aboard a fleet of derrick barges. He died 3 years later. General survival damages: \$2,500,000.
- *Rando v. Anco Insulations Inc.*:<sup>21</sup> a 59-year-old man was diagnosed with mesothelioma due to exposure in his career as a pipefitter. General survival damages: \$2,800,000.
- *Berry v. Anco Insulations*:<sup>22</sup> a 65-year-old woman contracted mesothelioma from exposure to asbestos on the work clothes of her husband. Although the jury found liability and awarded some expenses, it awarded nothing for general damages. The trial court added the award. General survival damages: \$3,000,000.
- *Williams v. Placid Oil Co.*:<sup>23</sup> a 59-year-old woman contracted mesothelioma from exposure to asbestos on the work clothes of her husband. A jury awarded damages for survival and wrongful death and only the wrongful death award was challenged on appeal. General survival damages: \$3,000,000.
- *Roberts v. Owens-Corning Fiberglas Corp.*:<sup>24</sup> an approximately 74-year-old man contracted mesothelioma from his exposure to asbestos at refineries and other industrial facilities. General survival damages: \$3,000,000.
- *White v. Entergy Gulf States La., L.L.C.*:<sup>25</sup> a 79-year-old man contracted mesothelioma from his exposure to asbestos from his work at an electricity-generating facility. Trial court awarded \$3.8 million in general damages. Appellate court affirmed while commenting that the award was “on the high end.” General survival damages: \$3,800,000.
- *Lege v. Union Carbide Corp.*:<sup>26</sup> an approximately 66-year-old man contracted mesothelioma from his exposure to asbestos at various industrial plants. General survival damages: \$4,000,000.

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<sup>19</sup> *Oddo v. Asbestos Corporation, Ltd.*, 2014-0004 (La. App. 4 Cir 08/20/15), 173 So. 3d 1192, *writ denied*, 2015-1712 (La. 11/6/15), 180 So. 3d 308.

<sup>20</sup> *Hennegan v Cooper/T. Smith Stevedoring Co., Inc.*, 2002-0282 (La. App. 4 Cir. 12/30/02); 837 So. 2d 96.

<sup>21</sup> *Rando v. Anco Insulations Inc.*, 16 So. 3d 1065 (La. 2009).

<sup>22</sup> *Berry v. Anco Insulations*, 52671 (La. App. 2 Cir. 05/22/19); 273 So. 3d 595, *writ denied*, 280 So. 3d 127 (La. 10/1/19).

<sup>23</sup> *Williams v. Placid Oil Co.*, 2016-0839 (La. App. 3 Cir. 08/02/2017), 224 So. 3d 1101, *writ denied*, 2017-1501 (La. 11/17/17), 229 So. 3d 929.

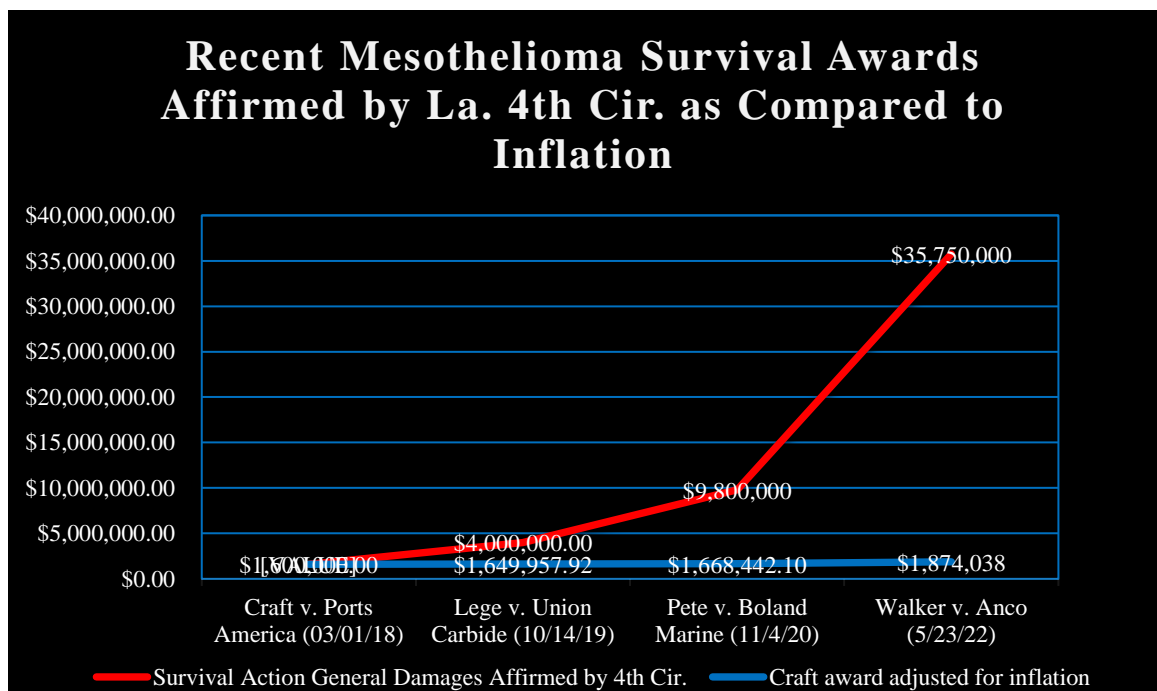
<sup>24</sup> *Roberts v. Owens-Corning Fiberglas Corp.*, 2003-0248 (La. App. 1 Cir. 4/2/04), 878 So. 2d 631, *writ denied*, 2004-1834 (La. 12/17/04), 888 So. 2d 863.

<sup>25</sup> *White v. Entergy Gulf States La., L.L.C.*, 2013-1608 (La. App. 1 Cir 11/10/14), 167 So. 3d 764, *writ denied*, 2015-0478 (La. 05/15/15), 170 So. 3d 163.

<sup>26</sup> *Lege v. Union Carbide Corp.*, 2020-0252 (La. App. 4 Cir 04/01/21), 2021 WL 1227137, *clarified on rehearing*, 2020-0252 (La. App. 4 Cir 05/12/21), 2021 WL 1917784, *writ denied*, 2021-00775 (La. 10/01/21), 324 So. 3d 1059.

- *Terrance v. Dow Chem. Co.*:<sup>27</sup> an approximately 58-year-old man contracted mesothelioma from his exposure to asbestos from work at an oil refinery and other industrial facilities as a maintenance/laborer. He was diagnosed with mesothelioma in September 2001 and died four months later. Jury awarded \$5 million in general damages and First Circuit affirmed, commenting that the award was “arguably on the high end.” General survival damages: \$5,000,000.

*Amici* have not spoken up in prior cases brought to this Court for review in asbestos cases involving the general damages range outlined above. However, the juries’ verdicts in both *Pete* and *Walker* grossly exceed verdicts rendered in similar cases, affirmed after review by the appellate courts. Even when compared to the highest previously affirmed survival award in *Terrance v. Dow Chem. Co.*, *Pete* and *Walker* are aberrations. Moreover, a review of recently affirmed asbestos litigation general damages clearly demonstrates that the general damages awarded in *Pete* and *Walker* have far outpaced inflation:<sup>28</sup>



The recognition that general damages cannot be set with pecuniary precision does not empower juries to award compensatory damages without limit. Juries should not be enabled to

<sup>27</sup> *Terrance v. Dow Chem. Co.*, 2006-2234 (La. App. 1 Cir 9/14/07), 971 So. 2d 1058, writ denied, 2007-2042 (La. 12/14/07), 970 So. 2d 534.

<sup>28</sup> See *Craft v. Ports Am. Gulfport, Inc.*, 2018-0814, p. 1 (La.App. 4 Cir. 5/8/19); 273 So.3d 517, 520, writ denied, 2019-00940 (La. 10/15/19); 280 So.3d 587; *Lege v. Union Carbide Corp.*, 2020-0252 (La. App. 4 Cir 04/01/21), 2021 WL 1227137, clarified on rehearing, 2020-0252 (La. App. 4 Cir 05/12/21), 2021 WL 1917784, writ denied, 2021-00775 (La. 10/01/21), 324 So. 3d 1059; *Pete v. Boland Marine & Mfg. Co., LLC*, 2021-0626, p. 4 (La.App. 4 Cir. 1/5/23); 356 So.3d 1147, 1152, writ granted, 2023-00170 (La. 4/18/23).; *Walker v. Anco Insulations, Inc.*, 2022-0763, p. 2 (La.App. 4 Cir. 5/3/23). U.S. Bureau of Labor Statistics CPI Inflation Calculator was used to calculate inflation since the *Crafts v. Ports America* award at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

render excessive and unfair general damages awards in Louisiana through the lens of lottery money. The legal standard that a jury's award may be reduced if unreasonable necessarily and prudently means that a standard of reasonableness exists.<sup>29</sup> Because juries are not provided guidance on what constitutes a reasonable award of general damages, the lower courts must serve as gatekeepers to reduce unreasonable damages awards. This Court can and should use this case to set parameters for the lower courts to follow to ensure the efficient and consistent administration of justice when juries award excessive damages.

**B. Without this Court's intervention, excessive verdicts in asbestos cases will be a driving force in the creation and growth of a litigation industry in Louisiana, negatively impacting its business climate, over-stretching its judicial resources, and stifling economic growth.**

In the absence of clear guidelines from this Court as to what constitutes a reasonable award of general damages in asbestos litigation, fair and reasonable compensation will be overtaken by litigious opportunism in asbestos cases in Louisiana. Such an atmosphere will negatively impact business development throughout the state.

*a. The growth of an asbestos litigation industry in Louisiana will further-stretch judicial resources and place additional strain on judges, juries, and court personnel in Louisiana.*

The connection between large, eye-catching jury awards and an increase in filings of new cases is apparent. For example, a Los Angeles County jury awarded \$43,799,850 in a mesothelioma case in May of 2022.<sup>30</sup> By the end of the year, asbestos-related cases filed in Los Angeles County were up 50 percent compared to 2021.<sup>31</sup>

Louisiana already has a hotspot for asbestos litigation—Orleans Parish. Eighty-four percent of all asbestos-related cases filed in the United States in 2022 were filed in just 15 jurisdictions.<sup>32</sup> Orleans Parish consistently ranks within the top 15.<sup>33</sup> In those asbestos lawsuits filed in Orleans Parish in 2022, there was an average number of 39 defendants named in each suit.<sup>34</sup> Unchecked excessive jury awards in asbestos cases in Louisiana will do nothing but cause

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<sup>29</sup> *Youn v. Maritime Overseas Corp.*, 92-3017 (La. 9/3/93), 623 So. 2d 1257, 1261.

<sup>30</sup> *Warren v. Algoma Hardwoods, Inc.*, 2022 WL 16627708, at \*1 (Cal.Super.).

<sup>31</sup> KCIC Asbestos Litigation: 2022 Year in Review, p. 6 (2022).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

these numbers to grow ever higher, in turn placing undue strain on every aspect of our judicial system.

In addition to growth in the number of cases filed in Louisiana, excessive verdicts threaten to decrease efficiency in all asbestos cases in Louisiana, both existing and newly filed. The chance of obtaining an excessively high verdict may lead a plaintiff, encouraged by his or her lawyer, to reject reasonable settlement offers based on a cross section of reported decisions and instead go to trial seeking a lottery result—requiring the time of a judge, jurors, attorneys, and witnesses. Even if the case ultimately reaches a reasonable amount through post-trial litigation or a settlement, the parties will have spent significant and unnecessary sums to arrive at this result. Achieving this result may also needlessly exhaust significant judicial resources (both trial and appellate)—affecting other litigants in other matters—perhaps only to arrive at a “reasonable” verdict that could or should have occurred in the first place. The result of unfair and unreasonable jury awards is wholesale inefficiency across the board for parties and the judiciary.

***b. Excessive jury awards will adversely affect capital investment in Louisiana.***

A jury verdict in a personal injury or wrongful death action that awards tens of millions of dollars against a business or other civil defendants often has far-reaching implications. To date, there have been over 130 asbestos-related bankruptcies,<sup>35</sup> including virtually all major asbestos producers.<sup>36</sup> As University at Buffalo School of Law Professor Todd Brown has explained, “Defendants who were once viewed as tertiary have increasingly become lead defendants in the tort system, and many of these defendants have also entered bankruptcy in recent years.”<sup>37</sup> The spread of the litigation to remote defendants is evident in the sheer number of companies that have been swept into the litigation. “In 2019, more than 10,000 individual entities were named as defendants in asbestos litigation.”<sup>38</sup> Companies formerly viewed as peripheral defendants are “now bearing the majority of the costs of awards relating to decades of asbestos use.”<sup>39</sup>

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<sup>35</sup> A 2021 Look at Bankruptcy Trust and Transparency Issues in Asbestos Litigation, Mealey's Litig. Rep.: Asbestos, Apr. 28, 2021, at 1.

<sup>36</sup> See Mark D. Plevin et al., *Where Are they Now, Part Eight: An Update on Developments in Asbestos-Related Bankruptcy Cases*, 16 Mealey's Asbestos Bankr. Rep. 1, Chart 1 (Sept. 2016).

<sup>37</sup> S. Todd Brown, *Bankruptcy Trusts, Transparency and the Future of Asbestos Compensation*, 23 Widener L.J. 299, 306 (2013).

<sup>38</sup> KCIC, *Asbestos Litigation: 2019 Year in Review* 11 (2020).

<sup>39</sup> American Academy of Actuaries' Mass Torts Subcommittee, *Overview of Asbestos Claims Issues and Trends* 3 (Aug. 2007).

Because mesothelioma claims continue at a steady pace, leaving excessive damages awards unchecked will threaten the viability of some businesses and deplete limited funds that otherwise may be needed to compensate future plaintiffs.

*c. Unchecked high awards of damages impact the business climate in Louisiana and Louisiana's economy as a whole.*

Excessive verdicts in one particular jurisdiction draw in additional litigation, which has a definable adverse impact to the business climate in Louisiana. A massive verdict can also loom large over a business' operations during the months or years before it is reduced on appeal or settled for a substantially lower amount, delaying the hiring of new workers and other investments that build the business. For larger businesses, an unreasonable verdict can disrupt an entire industry or sector of the economy, in addition to the adverse impacts on the business itself. Higher costs of lawsuits brought about by inflated damage awards make it more costly to make a product or service available to consumers and consequently, more costly to do business within the state of Louisiana.

The unpredictability concomitant with excessive awards also creates insurability problems. Insurers underwrite policies based on expected costs given particular risks. Asbestos cases present an even more unusual dilemma. Asbestos litigation that is defended by businesses in this state—business premises owners, industrial facility owners, construction and maintenance contractors—is always based on allegations of negligence or strict liability arising from employment or work performed by a plaintiff that occurred thirty, forty, or sometimes fifty years ago. With this unique distinction, the litigation does not easily resolve through managed risk obtained through insurance because often the insurance policies that may have been written decades ago are lost or the insurers may no longer be in business. Importantly, as to those liabilities for which viable insurance coverage may still exist, the policy limits of \$100,000 per occurrence that were generally obtained in the 1950's and 1960's were not analyzed through the lens of litigation risk that exists with multi-million jury verdicts in 2023. Bargained for "risk transfer" to insurers does not mitigate or offset the enormous risk and damage created by unreasonable aberrations in jury awards in asbestos cases.

Moreover, asbestos litigation in Louisiana is peculiar in that it has remained immune to legislative efforts and judicial reforms that have been implemented in previous decades. For example, through Act Three of the First Extraordinary Session of 1996, the Louisiana Legislature

enacted significant tort reform that expressly rejected the application of solidary liability in nonintentional tort cases<sup>40</sup> and was designed to make a nonintentional tortfeasor liable only for his own share of the fault.<sup>41</sup> Despite the elimination of solidary liability in 1996, pre-comparative fault law, which apportioned liability based on virile shares, applies when the claimant alleges significant exposure to asbestos-containing products prior to Louisiana's move to a comparative fault system.<sup>42</sup> Thus, in asbestos litigation, defendants cannot rationally assess litigation risks based upon their potential percentage of fault, but rather on pure solidary liability, offset only by virile share settlement credits or potential contribution from joint tortfeasors. If an asbestos defendant is in for a penny of a \$35 million verdict, that defendant is in potentially for the full \$35 million, even if their share under comparative fault would be .1 percent. As a result, defendants in asbestos suits essentially become insurers of entities that are now insolvent regardless of whether and how much as a percentage the insolvent entity contributed to plaintiff's injury. Thus, excessive verdicts in asbestos litigation, especially with no meaningful review, are particularly problematic because companies are forced to pay damages well in excess of their actual contribution to the plaintiff's injuries.

While excessive litigation and unreasonably high verdicts certainly impact businesses on an individual basis, there is also a significant cumulative impact on Louisiana as a whole. Excessive verdicts unquestionably discourage investment and reinvestment in a state or local economy. For example, 89% of respondents of a recent Institute for Legal Reform survey of state legal climates expressed agreement that a state's litigation environment is likely to impact important business decisions, including where to locate or to do business.<sup>43</sup> When damage awards increasingly display signs of unreasonableness, the incentives shift to do business elsewhere.

An October 2022 study revealed that excessive tort litigation in Louisiana caused nearly \$270 million in state fiscal impact and nearly \$225 million in local fiscal impact.<sup>44</sup> That same

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<sup>40</sup> Act No. 3, 3 West La. Sess. Law Serv. No. 1 (1996).

<sup>41</sup> Frank L. Maraist & Thomas C. Galligan, Jr., *Burying Caesar: Civil Justice Reform and the Changing Face of Louisiana Tort Law*, 71 Tul. L. Rev. 339, 398 (1996).

<sup>42</sup> *Cole v. Celotex Corp.*, 599 So. 2d 1058 (La. 1992).

<sup>43</sup> *2019 Lawsuit Climate Survey: Ranking the States*, U.S. Chamber Inst. for Legal Reform (Sept. 2019), at 1.

<sup>44</sup> *Economic Benefits of Tort Reform: An assessment of excessive US tort costs and potential economic benefits of reform*, October 2022, The Perryman Group, at p. 31.

study found that excessive tort litigation in Louisiana caused billions of dollars of impact on business activity and cost Louisiana citizens tens of thousands of jobs.<sup>45</sup>

**The Estimated Annual Impact Associated with Excessive Tort Costs  
on Business Activity in Louisiana**

Industry	Total Expenditures	Gross Product	Personal Income	Employment
Agriculture	-\$0.176 b	-\$0.052 b	-\$0.033 b	-459
Mining	-\$0.223 b	-\$0.053 b	-\$0.029 b	-152
Construction	-\$0.531 b	-\$0.120 b	-\$0.052 b	-200
Utilities	-\$0.628 b	-\$0.300 b	-\$0.247 b	-3,091
Total Manufacturing	-\$1.570 b	-\$0.517 b	-\$0.289 b	-3,659
Transportation and Utilities	-\$0.385 b	-\$0.260 b	-\$0.150 b	-1,515
Information	-\$1.295 b	-\$0.975 b	-\$0.568 b	-15,422
Wholesale Trade	-\$0.371 b	-\$0.241 b	-\$0.159 b	-1,932
Retail Trade	-\$0.320 b	-\$0.197 b	-\$0.084 b	-670
Financial Activities	-\$2.049 b	-\$0.746 b	-\$0.284 b	-2,587
Business Services	-\$1.462 b	-\$1.056 b	-\$0.861 b	-9,346
Health Services	-\$0.409 b	-\$0.283 b	-\$0.239 b	-3,520
Other Services	-\$0.716 b	-\$0.369 b	-\$0.292 b	-6,143
<b>TOTAL</b>	<b>-\$10.135 b</b>	<b>-\$5.170 b</b>	<b>-\$3.289 b</b>	<b>-48,696</b>

Units: Dollar amounts in billions of 2021 US dollars, employment in permanent jobs  
Notes: Retail Trade includes Restaurants, Financial Activities includes Real Estate  
Source: The Perryman Group

These are only a few of the ways excessive verdicts burden society through inflated costs. The reality is that these awards permeate innumerable aspects of every Louisiana citizen’s daily life. While some jurors and members of the public might think of a high verdict as “sticking it” to a business, the reality is that they are, in fact, sticking added layers of costs to themselves and their communities.

**V. CONCLUSION**

Given the recent string of excessive awards affirmed by Louisiana appellate courts, this Court should provide clear guidelines that can be followed by lower courts as to what constitutes an unreasonable award of general damages under Louisiana law. For the reasons explained above, the Amici respectfully urge the Court to reverse the Louisiana Fourth Circuit’s decision and reduce the jury’s general damages award.

*[signature on following page]*

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<sup>45</sup> *Id.* at p. 51.



Respectfully submitted,

**BIENVENU, BONNECAZE, FOCO, & VIATOR,  
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**AFFIDAVIT OF CERTIFICATION**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned authority, personally came and appeared

**DAVID M. BIENVENU, JR.**

who after first being duly sworn did depose and state:

I certify that all counsel have been notified either by telephone, email or facsimile that this Brief of *Amici Curiae* has been filed and a copy of this Brief of *Amici Curiae* has been served forthwith on the following by hand delivery, email, or overnight delivery:

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SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public, this 5<sup>th</sup> day of June, 2023.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Bar Roll Number