THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. 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.

RESPONDENT'S RESPONSE IN OPPOSITION TO BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE SOUTH CAROLINA CHAMBER OF COMMERCE

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INTRODUCTION

Amici Curiae the Chamber of Commerce of the United States of America and the South Carolina Chamber of Commerce (collectively "Amici") ask this Court to respond to a problem that does not exist in the law generally or in this case specifically. They argue that the Court of Appeals' decision in this case "*forbids* consideration of a defendant's relative contribution to an asbestos plaintiff's harm" and, as a consequence, "a defendant can be liable for asbestos exposures that are . . . insignificant." (Br. of Amici p. 3). The Court of Appeals' decision absolutely did not forbid consideration of a defendant's relative contribution. The proximate cause standard in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), already takes into account that there may be multiple sources of a plaintiff's asbestos exposure.

Regardless, Scapa's main defense at trial was that other asbestos products caused Stewart's mesothelioma. The lower court and jury fully considered that argument and evidence, yet still ruled in favor of Stewart based on the direct and circumstantial evidence that Scapa's asbestos was a substantial cause of Stewart's disease and death.

The Court should reject Amici's arguments and affirm the lower court's decision based on established South Carolina law. Stewart incorporates his Statement of the Case from the Brief of Respondent.

ARGUMENT

Amici's entire argument misreads the Court of Appeals' decision. The Court of Appeals did not forbid consideration of relative contribution. Instead, it analyzed a JNOV argument based on expert testimony. This is not an appeal about relative contribution. Scapa was allowed to fully present a defense arguing about the relative contribution of other actors but the jury rejected it in the face of direct and circumstantial evidence of Stewart's extensive exposure to Scapa's asbestos dryer felts.

Amici asks this Court to change the law on proximate cause in toxic tort cases. It argues that the substantial causation "test has two elements." (Br. of Amici p. 13). According to *Amici*,

> *Lohrmann's*[1] frequency, regularity, and proximity test speaks to the first element: whether the defendant's conduct made **some** contribution to the plaintiff's harm. 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.

(Br. of Amici p. 13) (emphasis added). Amici argue for a *Henderson/Lohrmann*-plus test—that a plaintiff must prove the *Lohrmann* test (adopted by this Court in *Henderson*) **plus** that its contribution was substantial in comparison to all other exposures. This wholly ignores that the *Henderson/Lohrmann* frequency, regularity, and proximity test already takes into account that a plaintiff may have asbestos exposures from multiple sources over various industries. The test itself is how a plaintiff proves "'**substantial** causation from circumstantial evidence.'" *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007) (quoting *Lohrmann*, 782 F.2d at 1162) (emphasis added).

Scapa never made a *Henderson/Lohrmann*-plus argument in this case. The Court of Appeals never addressed the argument. The law does not support it, and this Court should reject it.

I. *HENDERSON/LOHRMANN* ALREADY ACCOUNTS FOR RELATIVE CONTRIBUTION.

The *Henderson/Lohrmann* frequency, regularity, proximity test is the standard for proximate causation in asbestos cases. The test already accounts for multiple sources of a plaintiff's exposure to asbestos. Taking into account varying exposures is a purpose of the test.

The frequency, regularity, and proximity test comes from the Fourth Circuit's opinion in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1163 (4th Cir. 1986). The facts of *Lohrmann* give important context to the Fourth Circuit's adoption of the test. Lohrmann argued

[1] *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986).

he developed asbestosis from exposure to asbestos products during his 39-year career as a pipefitter at a shipyard. *Id.* at 1158. The defendants disputed his asbestosis diagnosis, and no expert testified that Lohrmann had cancer or would develop cancer. *Id.* at 1158-60. Lohrmann sued nineteen defendants but, after others went bankrupt, settled, or were dismissed, he proceeded to trial against seven defendants. *Id.* at 1158. The trial judge granted three defendants a directed verdict, and the jury found in favor of the remaining four defendants. *Id.* Lohrmann appealed.

Lohrmann asked the Fourth Circuit to "adopt a rule that if the plaintiff can present any evidence that a company's asbestos-containing product was at the workplace while the plaintiff was at the workplace, a jury question has been established as to whether that product contributed as a proximate cause to the plaintiff's disease." *Id.* at 1162. In other words, he asked for a rule of law that any exposure was enough to send the issue of proximate cause to the jury. The Fourth Circuit rejected that rule as contrary to the law on substantial causation. *Id.*

The Court noted that Maryland trial courts dealing with large workplaces used "a standard for evaluating the sufficiency of the evidence of exposure" that depended on "the frequency of the use of the product and the regularity or extent of the plaintiff's employment in proximity thereto." *Id.* at 1162. The Fourth Circuit described this is "a *de minimus* rule since a plaintiff must prove more than a causal or minimum contact with the product." *Id.* The Court explained that, in general, "to allow a finding of causal connection" based on "circumstantial evidence," the "permissible inferences must be within the range of reasonable probability." *Id.* at 1163. "The 'frequency, regularity, and proximity test' . . . is an application of this principle in an asbestosis setting." *Id.* The purpose of the test was to enable a factfinder to decide whether a plaintiff adequately connected a particular defendant's product to the plaintiff's injury, particularly where a plaintiff had multiple exposures, such as a large workplace. *Id.* at 1162-63.

Applying the test to Lohrmann's situation, the Court found that there was no evidence that he was even exposed to three of the defendants' products. *Id.* at 1163-64. As to the fourth defendant, Lohrmann showed only that he was exposed to its product "on ten to fifteen occasions of between one and eight hours" during his career. *Id.* at 1163. The Fourth Circuit affirmed the trial court's ruling that this evidence "was not sufficient to raise a permissible inference that such an exposure was a substantial factor" in his asbestosis. *Id.*

There was no relative contribution issue in *Lohrmann*. The factual issue was whether there was any contribution at all, and the evidence did not rise to a level of substantial causation. *Lohrmann* does not support Amici's argument. It is contrary to Amici's argument because *Lohrmann* included numerous defendants whose asbestos products were in one workplace but, in analyzing whether a defendant was a "substantial factor" Lohrmann's injuries, the Fourth Circuit applied only the frequency, regularity, and proximity test. *Id.* at 1163-64.

This Court adopted the *Lohrmann* test in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Henderson sued numerous asbestos-product defendants alleging that he was exposed to their products while working in various jobs at various industrial sites in South Carolina. *Id.* at 181-82, 644 S.E.2d at 725. The trial court granted summary judgment to some defendants on the basis that Henderson failed to prove he was exposed to their asbestos products. *Id.* at 182, 644 S.E.2d at 726. On appeal, this Court "adopt[ed] the 'frequency, regularity, and proximity test'" in *Lohrmann*. *Id.* at 185, 644 S.E.2d at 727. It held that, "[t]o support a reasonable inference of **substantial** causation from circumstantial evidence, there must be 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.* at 185, 644 S.E.2d at 727 (internal quotation marks omitted) (emphasis added).

This Court held that because "presence in the vicinity of static asbestos is not exposure to asbestos" and Henderson did not show exposure to asbestos products in South Carolina, he failed to satisfy the frequency, regularity, and proximity test. *Id.* Like *Lohrmann*, *Henderson* also did not discuss relative contribution as part of the causation analysis in an asbestos case.

The *Henderson* Court's use of the phrase "substantial causation" is important. *Id.* at 185, 644 S.E.2d at 727 (internal quotation marks omitted). Amici argue that the *Henderson/Lohrmann* test only proves whether a defendant's product "made **some** contribution to the plaintiff's harm" but that "an analysis of relative contributions" is necessary to "show that the defendant's contribution was **substantial**." (Br. of Amici p. 13) (emphasis added). This argument is directly contradicted by this Court's pronouncement in *Henderson* that, to show "**substantial** causation from circumstantial evidence, there must be 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." *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727 (emphasis added). Period. That is the entire requirement. There is no step one for some contribution and step two for substantial contribution.

If, when a plaintiff proves substantial causation under the *Henderson/Lohrmann* test, a defendant still wants to argue that its contribution is too small to hold it liable, South Carolina law provides for that defense in S.C. Code Ann. § 15-38-15(D). It codifies a defendant's "right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party." S.C. Code Ann. § 15-38-15(D). This statute existed when this Court adopted the *Lohrmann* test in the *Henderson* opinion.

An asbestos manufacturer has always been able to argue that another tortfeasor contributed to a plaintiff's injuries and should be liable for all of the plaintiff's damages. As explained more

fully below, that is exactly what Scapa was allowed to do in this case. What Amici want is for this Court to morph that from a defense to an affirmative burden of proof for a plaintiff.[2] They fail to articulate why asbestos defendants should receive this special treatment not afforded to other defendants in situations where multiple tortfeasors may be liable for the same injury.

Section 15-38-15 also addresses Amici's contention that the Court of Appeals' decision will "harm the business community and the public" in South Carolina because, *inter alia*, "[i]t would deprive minor asbestos contributors of a key defense" that "their products played an insignificant role in bringing about plaintiffs' harms." (Br. of Amici pp. 15-18). The empty chair defense has been used for all multiple tortfeasor situations, including other businesses and industries, without harming the economy. Amici's extreme prediction is without any proof and ignores the reality in this case.

Amici's proposed *Henderson/Lohrmann*-plus test looks a lot like but-for causation, which is not required in toxic tort cases. The *Henderson* test does not require but-for causation, but still absolves defendants who were not responsible for a plaintiff's injuries because the plaintiff's contact with their product was only casual. *See Lohrmann*, 782 F.2d at 1162; David E. Bernstein, *Getting to Causation in Toxic Tort Cases*, 74 BROOK. L. REV. 51, 56 (2008). However, even if a but-for causation standard applied, Stewart presented sufficient evidence for a jury to find Scapa's asbestos dryer felts are a but-for cause of his mesothelioma. Stewart's case involves direct and circumstantial evidence of exposure. (R. p. 1489-92). The *Lohrmann* test is for determining "a reasonable inference of substantial causation from **circumstantial** evidence." *Henderson v. Allied*

[2] Amici do not explain how their proposed test would work. For example, Amici argues that their proposed test is based on "principles that foreclose liability when a defendant's relative contribution to a plaintiff's asbestos exposures is too small to be a substantial factor" but they fail to define "too small." Is too small something below a certain numerical threshold? Is too small a legal issue or a jury issue?

Signal, Inc., 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007) (emphasis added) (internal quotation marks omitted). In this case, there is direct evidence, viewed in a light most favorable to Stewart, that 23 Scapa asbestos-containing felts were used on machine number one while he worked on that machine in jobs that involved physical handling of the felts and being in the building to breathe in the asbestos fibers released by the felts. (R. pp. 578-79, 576-78, 704, 759-62, 770-86, 789-90, 795, 1056, 1545, 2105-07, 2032-35, 2051-56, 2071-98, 2081-82, 2132, 2140-65, 2173-74).

Amici cite to *Connor v. Covil Corp.*, 996 F.3d 143 (4th Cir. 2021), as support for their proposed *Henderson/Lohrmann*-plus test. (Br. of Amici pp. 7, 12). Connor spent "the vast majority of his employment history" as a railroad machinist working next to and underneath steam engines with boilers wrapped in asbestos. *Id.* at 146. He was regularly covered in asbestos dust piled up on his clothes. *Id.* Connor also worked for nine years at a production plant with pipes insulated by defendant's asbestos. *Id.* at 147. "For all but a few months" of this job, Connor worked in an office building separate from the production plant. *Id.* The Fourth Circuit affirmed the district court's decision to grant summary judgment to the defendant. It held Connor failed to meet the frequency, regularity, and proximity test because he "put forth no evidence that" he interacted with the piping crew "outside of the asbestos-free P building . . . when the [] workers were using [defendant]'s asbestos products." *Id.* at 151-54. The Court further stated, "[a]s a separate basis for" affirming summary judgment "that whatever level of asbestos exposure Mr. Connor may have experienced [from defendant] is dwarfed by the far more frequent, regular, and close-proximity exposure to asbestos" from the railroad job. *Id.* at 155. This ruling is the one which Amici contend creates the *Henderson/Lohrmann*-plus test. They misread the Fourth Circuit.

The Court never held that a relative contribution analysis is a separate, second element of proof of proximate cause.[3] It merely ruled on the specific facts of Connor's case—finding that he failed to prove substantial causation from the defendant's asbestos products and that the facts actually showed another asbestos product was a substantial factor. The Court did not state that the *Lohrmann* test only shows some contribution.

Finally, Amici cite to the Restatement (Second) of Torts § 433 as supporting a *Henderson/Lohrmann*-plus test. (Br. of Amici pp. 4-5, 7, 13). It does not. First, § 433 only suggests "considerations" to help "in determining whether the actor's conduct is a substantial factor in bringing about the harm to another." § 433. Comment d. discusses that the consideration of others' negligence may "prevent [the defendant's negligence] from being a substantial factor." But the Comment does not make it a plaintiff's affirmative burden of proof to show that the defendant's negligence was "substantial" within the context of all negligence. Instead, the burden is to present evidence "[t]o support a reasonable inference of **substantial causation** from circumstantial 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." *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162-63 (4th Cir. 1986) (emphasis added). Second, counsel could not find a South Carolina case that cites to § 433. It is not law that applied at the trial of this case as a requirement. Third, Scapa was allowed to and did fully present a defense that other actors'

[3] Earlier this year, the Fourth Circuit cited to *Connor* for the proximate cause standard in an asbestos case and said **nothing** about a relative contribution analysis. *Foushee v. R.T. Vanderbilt Holding Co.*, No. 21-1074, 2023 U.S. App. LEXIS 8596, at *2 (4th Cir. Apr. 11, 2023) ("To establish that Defendants are liable for asbestos exposure under North Carolina law, Plaintiff must prove that Defendants' alleged misconduct was a substantial factor causing [plaintiff]'s death. To do so, Plaintiff must satisfy the frequency, regularity, and proximity test set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162 (4th Cir. 1986)." (internal quotation and alteration marks omitted)).

negligence contributed to Stewart's mesothelioma to such an extent that it was not a substantial factor. The jury simply rejected that argument. Section 433 does not support Amici's argument.

Amici's arguments are wrong on the merits. The law already accounts for relative contribution, and there is no legal support or policy reason to put a greater burden of proof on a plaintiff in a toxic tort case. As explained below, this is also a factually and procedurally improper case for the Court to address these arguments.

II. SCAPA DID PRESENT A "RELATIVE CONTRIBUTION" DEFENSE.

Amici argues that the Court of Appeals and trial court forbid consideration of the relative contribution of other asbestos-manufacturer products. This is false and ignores what actually happened at trial. "This court will not issue advisory opinions and cannot alter precedent based on questions presented in the abstract." *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 148, 414 S.E.2d 127, 130 (1992).

From Scapa's opening through its closing, its main defense at trial was that Bowater and other asbestos products at Bowater caused Stewart's mesothelioma. In its opening, Scapa argued to the jury:

> - there was some Scapa dryer felts there but not a lot, there are four other manufacturers of dryer felts, but the thermal insulation was there the whole time. . .
>
> - Bowater bought that thermal insulation, Scapa didn't have a single thing to do with that. . . .
>
> - It's Bowater that allowed the thermal insulation to be used, it's also Bowater that bought our felts. But ladies and gentlemen, at the close of the case we're going to submit to you that the fault here lies with Bowater and thermal insulation and not Scapa. Nothing Scapa would have done would have prevented Mr. Stewart to be exposed to asbestos from thermal insulation and it caused his illness.

(R. pp. 461-62, 468-69). During trial, Scapa questioned twelve witnesses about other asbestos-containing products at Bowater and Bowater's use of them:

- Dr. Arthur Frank: R. pp. 2288-90, 2293-95, 2301-03, 2325-26
- Dr. Arnold Brody: R. p. 660
- Mr. Fred Steele: R. pp. 723-24, 726-28, 733-35, 739, 747-48
- Dr. James Millette: R. pp. 801-02, 818-21
- Mr. Christopher DePasquale: R. pp. 875, 877, 880-82, 884, 890-94
- Mr. Harold Ward, Jr.: R. pp. 945-48, 953, 957-60, 962-63
- Dr. David Harpole: R. p. 1015
- Mr. Jim Doherty: R. pp. 1045-46, 1056-57, 1075-76
- Dr. Tim Oury: R. pp. 1136, 1149-50, 1168-70
- Mr. Paul Carlson: R. pp. 1240-41, 1244-45, 1248-50, 1253-55, 1259-65, 1268-69, 1283
- Dr. James Crapo: R. pp. 1355, 1362-65, 1371-72, 1392-93
- Mr. Steven R. Stewart: R. pp. 1460-63

Scapa named thirteen manufacturers or suppliers of other asbestos-containing products at Bowater: (1) Mount Vernon: R. pp. 2303, 723-24, 739, 821, 877, 884, 953, 1245; (2) Asten-Hill: R. pp. 2303, 821, 1245; (3) Lockport: R. pp. 2316, 723-24, 739, 821, 877, 1245; (4) Albany: R. pp. 723-24, 739, 821, 877, 953, 1045, 1245; (5) Daniel: R. pp. 726-28, 957-59; (6) Aspen: R. pp. 723, 739, 953; (7) Goulds: R. pp. 747, 960, 2113; (8) Industrial Holdings: R. p. 877; (9) Drytech: R. p. 953; (10) PPM: R. pp. 957-58; (11) Ingersoll Rand: R. p. 960; (12) Nash: R. p. 960; (13) Johns-Manville: R. p. 1248. All three of Scapa's experts directly testified that other manufacturer's products caused Mr. Stewart's mesothelioma. (R. pp. 1170, 1283, 1365).

In its closing argument, Scapa used the word "insulation" 34 times and told the jury:

> [I]t's not a secret that our defense is that we don't believe that Scapa dryer felts caused or substantially contributed to Mr. Stewart's mesothelioma. We believe the thermal insulation that Mr. Jekell never mentioned in his opening statement, but we showed you and brought you full evidence of it was the cause. . . .
>
> We're not blaming anything on Lockport, Mt. Vernon, Asten, or Albany, but the truth of the case is, ladies and gentlemen, which we told you, not the Plaintiff, there were five dryer felt suppliers at Bowater. And the workers all said Mt. Vernon was

> the major supplier. . . . [Plaintiff] didn't even tell you that those manufacturers were there until we brought it out in the evidence. . . .
>
> So what was the substantial contributing factor to Mr. Stewart's mesothelioma? We brought you evidence, three quarters of a mile of thermal insulation connected to paper machine number one. . . .
>
> Do we blame Bowater? Yes, we do, ladies and gentleman. . . . they were required by law to remove the asbestos products at their mill . . . . We had no control over that. We had no control over all this insulation and this insulation work and this insulation exposure.
>
> [Bowater] had an obligation to provide them a safe workplace. . . . Scapa was not in charge of Bowater. Bowater was.

(R. pp. 1568, 1572, 1574-75, 1577, 1588). Scapa presented a relative contribution defense.

It is unfair for Amici to create a strawman argument on facts that do not exist in this case just so it can try to use this case as a platform to argue a new causation test. Because Scapa was allowed to do what Amici asks for—argue that its relative contribution to Stewart's mesothelioma was so minimal that it should not be liable—the Court should reject Amici's argument.

III. THE COURT OF APPEALS DID NOT "FORBID" OR "FORECLOSE" CONSIDERATION OF RELATIVE CONTRIBUTION.

The Court of Appeals did not address "relative contribution" because it was never raised to the Court or an issue in this case.[4] *See* Rule 213, SCACR (stating that an amicus curiae "brief shall be limited to the argument of the issues on appeal as presented by the parties"). Scapa never even made a legal argument about relative contribution, and trial counsel never understood that to be at issue in this case. It is unjust to seek reversal of a jury verdict on an argument that was never at issue during the trial.

Scapa argued that the lower court erred in denying its JNOV motion "because [Stewart]'s experts (1) used the 'cumulative dose' theory in formulating their opinions and (2) did not provide

[4] The parties disputed whether Scapa or other asbestos manufacturers should be liable for Stewart's injuries but never disputed whether Scapa could argue that others contributed to his injuries.

a specific amount of asbestos Stewart was exposed to from its dryer felts or the threshold exposure to asbestos above which he had an increased risk of developing mesothelioma." *Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 411, 878 S.E.2d 696, 704 (Ct. App. 2022). Neither argument involves relative contribution or asks for a *Henderson/Lohrmann*-plus test.

Scapa does not argue that it was prohibited from presenting evidence of relative contribution. Given the testimony and evidence outlined above, it could not credibly argue that. Instead, Scapa's argument on appeal as to the JNOV issue was that Dr. Frank testified to an allegedly improper cumulative-dose theory and that Stewart did not prove an amount of his asbestos exposure to Scapa's product. (Br. of App. in Ct. of App. pp. 10-25).

Amici argue that, on page 19 of Scapa's brief to the Court of Appeals, it "asked the court to consider Mr. Stewart's exposures to asbestos from other products." (Br. of Amici p. 10). That is a misreading of Scapa's brief. Scapa listed five reasons why it believed "Plaintiff's attempt to prove causation through the 'cumulative dose' theory requires reversal." (Br. of App. in Ct. of App. p. 19). The fourth reason was that "the cumulative dose approach is [] at odds with the requirement that a claimant account for other potential exposures." *Id.* at p. 19. Scapa argued "[b]ecause of their adherence to the belief that *any* exposure constituted a 'substantial one', Plaintiff's experts made no effort to address the role played by Mr. Stewart's exposures to other products." *Id.* Scapa complained about *expert* testimony and argued that Stewart's *experts* should have taken other exposures into account.[5] It did not argue that the lower court "foreclosed consideration of relative contributions in asbestos litigation." (Br. of Amici p. 10). Amici take the argument too far and cry foul about a problem that **does not exist in this case**.

[5] The experts did take other exposures into account, as argued in the Brief of Respondent.

Amici is trying to use this case to overturn the Court of Appeals' decision in *Jolly v. Gen'l Electric Co.*, 435 S.C. 607, 865 S.E.2d 12 (Ct. App. 2021). *See* Mot. to Consolidate *Jolly* and *Edwards*, filed Aug. 25, 2023.[6] Amici argue that, in *Jolly*, "[t]he Court of Appeals inferred that the *Lohrmann* test *forecloses* consideration of relative contributions." (Br. of Amici p. 12). *Jolly* is an asbestos-mesothelioma case that included an appellate challenge to the lower court's denial of the defendant's JNOV motion based on Dr. Frank's expert testimony about cumulative exposure. *Id.* at 620, 865 S.E.2d at 18. The Court of Appeals decided the JNOV issue in the plaintiff's favor. The appellant in *Jolly* filed a petition for writ of certiorari, and this Court denied the petition as to the JNOV motion. *Jolly v. GE*, Appellate Case No. 2022-000272, Order (Sup. Ct. Jan. 12, 2023).

Amici is using this case to continue an attack on *Jolly*. In *Jolly*, the defendants-appellants argued that asbestos valves from "ten additional manufacturers were located where [plaintiff] worked and this decreased the likelihood that their own products caused" his mesothelioma. 435 S.C. at 637, 865 S.E.2d at 27-28. The Court of Appeals rejected that as a basis for a JNOV because the *Lohrmann* test "requires a plaintiff to show more than a causal or minimum contact with the product of the defendant rather than a comparison of those exposures to the exposures to other defendants' products." *Id.* at 638, 865 S.E.2d at 28 (internal quotation marks omitted). As explained above, that is a correct statement of the law—a reasonable inference of substantial causation is shown with evidence that plaintiff's exposure to the defendant's asbestos product was more than casual or minimum. Regardless, Scapa never argued **in this case** that the lower court erred in granting its JNOV motion because other manufacturers' products caused Stewart's

[6] Respondent will file a response in opposition to the motion to consolidate.

mesothelioma. Amici should not be allowed as a non-party to interject an issue in this case for the purpose of seeking a reversal of *Jolly*.

CONCLUSION

The Court should reject Amici's argument and affirm the Court of Appeals' decision.

Respectfully submitted,

August 30, 2023

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