

IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA  
THIRD DISTRICT

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CASE NO. 3D06-\_\_\_\_\_  
Circuit Court Case No. 04-24071 CA 13

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DAIMLERCHRYSLER CORPORATION,

Petitioner,

v.

BEATRICE HURST, as  
Personal Representative of  
the Estate of KENNETH HURST, et al.,

Respondents.

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ON PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE CIRCUIT  
COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

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MOTION OF THE ASSOCIATED INDUSTRIES OF FLORIDA,  
AMERICAN INSURANCE ASSOCIATION, CHAMBER OF COMMERCE OF  
THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM  
ASSOCIATION, AMERICAN CHEMISTRY COUNCIL, AND NATIONAL  
ASSOCIATION OF MANUFACTURERS FOR LEAVE TO FILE *AMICI  
CURIAE* BRIEF IN SUPPORT OF DEFENDANT DAIMLERCHRYSLER  
CORPORATION'S PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 9.370 of the Florida Rules of Appellate Procedure, the  
Associated Industries of Florida, American Insurance Association, Chamber of  
Commerce of the United States of America, American Tort Reform Association,

American Chemistry Council, and National Association of Manufacturers (collectively “*amici*”) hereby move for leave to file the accompanying brief in support of Defendant DaimlerChrysler Corporation’s Petition for Writ of Certiorari in the above-captioned case. In support of their motion, *amici* state as follows:

1. *Amici* urge this Court to quash the trial court’s September 19, 2006 order and direct the Court to dismiss Plaintiffs’ action pursuant to the Asbestos and Silica Compensation Fairness Act (“Act”), 2005 Fla. Laws ch. 274, Fla. Stat. §§ 774.201 *et seq.*

2. As organizations that represent companies doing business in Florida and their insurers, *amici* have a substantial interest in ensuring that Florida’s tort liability system is balanced and reflects sound public policy. In that regard, our brief will provide an overview of the litigation environment that led the Florida Legislature to enact the Act. The brief will show that the Act represents a sound and fair procedural response to what the United States Supreme Court has described as the “asbestos-litigation crisis.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997). The Legislature found the Act to be an overwhelming public necessity.

3. Founded in 1920, Associated Industries of Florida (“AIF”) is a broad-based trade association, advocating on behalf of the Florida business community before the legislative, executive, and judicial branches of government. AIF’s

mission has always included any means to encourage and support the business and industrial enterprises of Florida and afford a medium for their cooperation in support of constructive policies relating to all matters affecting them. For decades, AIF has submitted *amicus curiae* briefs in a wide spectrum of cases impacting the business community and has become commonly known as “The Voice of Florida Business.”

4. The American Insurance Association (“AIA”), founded in 1866 as the National Board of Fire Underwriters, is a national trade association representing major property and casualty insurers writing business across the country and around the world. AIA promotes the economic, legislative, and public standing of its members; it provides a forum for discussion of policy problems of common concern to its members and the insurance industry; and it keeps members informed of regulatory and legislative developments. Among its other activities, AIA files *amicus* briefs in cases before state and federal courts on issues of importance to the insurance industry.

5. The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. The Chamber represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in

court on issues of national concern to the business community. Accordingly, the Chamber has filed more than 1,000 *amicus curiae* briefs in state and federal court.

6. Founded in 1986, the American Tort Reform Association (“ATRA”) is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than a decade, ATRA has filed *amicus curiae* briefs in cases before state supreme courts that have addressed important liability issues.

7. The American Chemistry Council (“ACC”) represents the leading companies engaged in the business of chemistry. The business of chemistry is a key element of the nation’s economy, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

8. The National Association of Manufacturers (“NAM”) is the nation’s largest industrial trade association, representing small and large manufacturers in every industrial sector and in all fifty states. The NAM’s mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding

among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards.

9. Counsel for Petitioner and Respondents consented to the filing of the proposed brief.

10. For these reasons, *amici* request that the Court grant their Motion for Leave to file a brief in this case.

Respectfully submitted,



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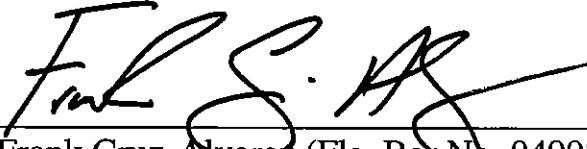
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## INDEX

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF INTEREST .....	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT .....	1
ARGUMENT .....	3
I.    An Overview of the Litigation Environment in Which the Subject Appeal Must Be Considered.....	3
A.    The “Asbestos-Litigation Crisis”: An Overview .....	3
1.    Filings by Claimants Who Are Not Sick or Lack Causation .....	4
2.    Impact of Premature or Meritless Filings .....	8
a.    Impaired Claimants with Causation Evidence .....	8
b.    Bankruptcies and the Economic Impact of Asbestos Litigation .....	9
c.    Peripheral Defendants Are Being Dragged into the Litigation .....	11
3.    Florida’s Experience Is in Line with National Trends .....	12
II.    The Asbestos and Silica Compensation Fairness Act Was a Reasonable Public Policy Response.....	14
CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	18
CERTIFICATE OF COMPLIANCE WITH RULE 9.210.....	21

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	1
<i>Eagle-Picher Indus. v. Cox</i> , 481 So. 2d 517 (Fla. 3d DCA 1985) .....	3, 16
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<i>In re Asbestos Prod. Liab. Litig. (No. VI)</i> , MDL 875, Admin. Order No. 8, 2002 WL 32151574, *1 (E.D. Pa. Jan. 16, 2002).....	8
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 (Tex. App. May 4, 2006) ..... 16

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 (Fla. 3d DCA 1992) ..... 16

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Lester Brickman, <i>On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality?</i> , 31 Pepp. L. Rev. 33 (2003).....	5
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## **STATEMENT OF INTEREST**

As organizations that represent companies doing business in Florida and their insurers, *amici* have a substantial interest in ensuring that Florida's tort liability system is balanced and reflects sound public policy.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

The United States Supreme Court has described asbestos litigation as a "crisis." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997). Asbestos lawsuits have forced an estimated eighty-five employers into bankruptcy, and the litigation is spreading. Payments to deserving asbestos claimants are threatened.

Studies indicate that *up to ninety percent* of recent asbestos plaintiffs *have no physical impairment* that affects their daily activities. Many of these claims have been generated through unreliable mass screenings. The presence of the non-sick "on court dockets and in settlement negotiations inevitably diverts legal attention and economic resources away from the claimants with severe asbestos disabilities who need help right now." Christopher Edley, Jr. & Paul C. Weiler, *Asbestos: A Multi-Billion-Dollar Crisis*, 30 Harv. J. on Legis. 383, 393 (1993).

Other claimants, such as the 75-pack year smoker in this action, have filed asbestos actions without credible evidence that exposure to asbestos contributed substantially to their cancer, as required under Florida law. *See Fla. Std. Jury Inst.*



(Civ.) 5.1(a). Such speculative actions also deplete resources needed to provide timely and adequate compensation to deserving claimants who can objectively demonstrate an impairing condition caused by asbestos.

In June 2005, the Florida Legislature enacted the Asbestos and Silica Compensation Fairness Act (“Act”), 2005 Fla. Laws ch. 274, Fla. Stat. §§ 774.201 *et seq.*, in response to an overwhelming public necessity to address these problems. A primary goal of the Act is to preserve resources for meritorious asbestos claimants and allow those claims to be resolved more quickly by deferring the enormous number of asbestos claims involving persons who lack physical impairment and causation. By changing the *timing* of a plaintiff’s traditional proof requirements, the Act’s procedures help to ensure that resources needed to pay deserving asbestos claimants are not wasted in premature or meritless litigation. Importantly, statutes of limitations are tolled for claimants who cannot make the Act’s requisite prima facie showing so that these individuals may bring a claim in the future should they demonstrate an impairing condition caused by asbestos. Thus, the law provides a benefit to claimants who might have been time-barred under previous Florida law.

Plaintiff/Respondent would have this Court nullify the legislature’s finding of an overwhelming public necessity for the Act and permit the instant case to

proceed despite Plaintiff's concession that she cannot offer evidence that the case has objective merit. This result is not supported by Florida law or sound policy.

Accordingly, *amici curiae* ask this Court to quash the trial court's order and direct the Court to dismiss Plaintiffs' action pursuant to the Act.

## ARGUMENT

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

#### **A. The "Asbestos-Litigation Crisis": An Overview**

Courts and commentators have recognized since the early 1990s the extraordinary problems created by the "elephantine mass" of asbestos cases. *Norfolk & W. Ry. Co., v. Ayers*, 538 U.S. 135, 166 (2003) (quoting *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999)); 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). This Court has noted the "vast" dimensions of the litigation. *Eagle-Picher Indus. v. Cox*, 481 So. 2d 517, 525 (Fla. 3d DCA 1985). Nationally, tens (and perhaps hundreds) of thousands of asbestos cases have been filed by plaintiffs who lack physical impairment or causation. These filings have, in turn, produced

devastating “ripple effects” impacting meritorious claimants, defendant companies, affected workers and communities, and the court system.

**1. Filings by Claimants Who Are Not Sick or Lack Causation**

The vast majority of recent asbestos claimants—up to ninety percent—are “people who have been exposed to asbestos, and who (usually) have some marker of exposure such as changes in the pleural membrane covering the lungs, but who are not impaired by an asbestos-related disease and likely never will be.” *The Fairness in Asbestos Compensation Act of 1999: Hearing on H.R. 1283 Before the House Comm. on the Judiciary*, 106<sup>th</sup> Cong., at 5 (July 1, 1999) (statement of Christopher Edley, Jr., Professor, Harvard Law School).<sup>1</sup> The RAND Institute for Civil Justice recently concluded that “a large and growing proportion of the claims entering the system in recent years were submitted by individuals who had not at the time of filing suffered an injury that had as yet affected their ability to perform the activities of daily living.” Stephen J. Carroll *et al.*, *Asbestos Litigation* 76 (RAND Inst. for Civil Justice 2005), available at <http://www.rand.org/publications/MG/MG162> [hereinafter RAND Rep.].

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<sup>1</sup> See also Roger Parloff, *The \$200 Billion Miscarriage of Justice; Asbestos Lawyers Are Pitting Plaintiffs Who Aren't Sick Against Companies that Never Made the Stuff – and Extracting Billions for Themselves*, *Fortune*, Mar. 4, 2002, at 158, available at 2002 WLNR 11958234.

Mass screenings conducted by plaintiffs' lawyers and their agents have "driven the flow of new asbestos claims by healthy plaintiffs." Hon. Griffin B. Bell, *Asbestos & The Sleeping Constitution*, 31 Pepp. L. Rev. 1, 5 (2003).<sup>2</sup> "There often is no medical purpose for these screenings and claimants receive no medical follow-up." *Id.* *U.S. News & World Report* has described the claimant recruiting process:

To unearth new clients for lawyers, screening firms advertise in towns with many aging industrial workers or park X-ray vans near union halls. To get a free X-ray, workers must often sign forms giving law firms 40 percent of any recovery. One solicitation reads: 'Find out if YOU have MILLION DOLLAR LUNGS!'

Pamela Sherrid, *Looking for Some Million Dollar Lungs*, *U.S. News & World Rep.*, Dec. 17, 2001, at 36, available at 2001 WLNR 7718069. It is estimated that over one million workers have undergone attorney-sponsored screenings. See Lester Brickman, *On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality?*, 31 Pepp. L. Rev. 33, 69 (2003).

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<sup>2</sup> These screenings are frequently conducted in areas with high concentrations of workers who may have worked in jobs where they were exposed to asbestos. See *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 723 (D. Del. 2005) ("Labor unions, attorneys, and other persons with suspect motives [have] caused large numbers of people to undergo X-ray examinations (at no cost), thus triggering thousands of claims by persons who had never experienced adverse symptoms.").

Many X-ray interpreters (called “B Readers”) hired by plaintiffs’ lawyers are “so biased that their readings [are] simply unreliable.” *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 723 (D. Del. 2005); *see also* American Bar Association Commission on Asbestos Litigation, *Report to the House of Delegates* (2003), available at [http://www.abanet.org/leadership/full\\_report.pdf](http://www.abanet.org/leadership/full_report.pdf)<sup>3</sup> (litigation screening companies find X-ray evidence that is “consistent with” asbestos exposure at a “startlingly high” rate, often exceeding fifty percent and sometimes reaching ninety percent); Joseph N. Gitlin *et al.*, *Comparison of “B” Readers’ Interpretations of Chest Radiographs for Asbestos Related Changes*, 11 Acad. Radiology 843 (2004) (B Readers hired by plaintiffs claimed asbestos-related lung abnormalities in 95.9% of the X-rays sampled, but independent B Readers found abnormalities in only 4.5% of the same X-rays).<sup>4</sup>

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<sup>3</sup> As a result of its findings, the Commission proposed the enactment of federal legislation to codify the evidence that physicians recognize is needed to show impairment. The ABA’s House of Delegates adopted the Commission’s proposal in February 2003. *See Asbestos Litigation: Hearing Before the Sen. Comm. on the Judiciary*, 107th Cong., Appen. A (Mar. 5, 2003) (statement of Hon. Dennis Archer, President-Elect, Am. Bar Ass’n), available at 2003 WL 785387.

<sup>4</sup> One of the earliest detailed reviews of B Reads in litigation arose out of information distributed to tire workers, which said that 94% of the workers screened at one location and 64% at another were found to have asbestosis. *See Raymark Indus., Inc. v. Stemple*, 1990 WL 72588 (D. Kan. May 30, 1990). In 1986, the National Institute for Occupational Safety and Health looked into the matter and found that only 0.2% of the workers they evaluated had physical changes consistent with asbestosis. *See* J. Jankovic & R.B. Reger, *Health Hazard Evaluation Report*, NIOSH Rep. No. HETA 87-017-1949 (Dep’t Health & Human Servs., NIOSH 1989). In 1998, an

(Footnote continued on next page)

One physician explained the reason plaintiffs' B Readers seem to see asbestos-related lung abnormalities on chest X-rays in numbers not seen by neutral experts: "[T]he chest X-rays are not read blindly, but always with the knowledge of some asbestos exposure and that the lawyer wants to file litigation on the worker's behalf." David E. Bernstein, *Keeping Junk Science Out of Asbestos Litigation*, 31 Pepp. L. Rev. 11, 13 (2003) (quoting Lawrence Martin, M.D.). Some attorneys reportedly even pass an X-ray around to numerous radiologists until they find one who is willing to say that the X-ray shows symptoms of an asbestos-related disease.<sup>5</sup>

Other claimants, such as the 75-pack year smoker in this action, have filed asbestos actions without credible evidence that exposure to asbestos contributed substantially to the alleged harm.

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audit by the Manville Settlement Trust determined that 59% of X-ray readings relied upon by plaintiffs' counsel to show asbestos-related abnormalities were inaccurate. *See In re Joint E. & S. Dists. Asbestos Litig.*, 237 F. Supp. 2d 297, 309 (E.D.N.Y. & S.D.N.Y. 2002). Another review conducted by medical experts appointed by an Ohio federal judge found that 65% of the claimants reviewed had no asbestos-related conditions and 20% presented only pleural plaques. *See Hon. Carl Rubin & Laura Ringenbach, The Use of Court Experts in Asbestos Litigation*, 137 F.R.D. 35, 37-39 (1991).

<sup>5</sup> *See* Stephen Hudak & John F. Hagan, *Asbestos Litigation Overwhelms Courts*, Cleveland Plain Dealer, Nov. 5, 2002, at A1, available at 2002 WLNR 269888 (reporting that one expert medical witness for plaintiffs remarked, "I was amazed to discover that, in some of the screenings, the worker's X-ray had been 'shopped around' to as many as six radiologists until a slightly positive reading was reported by the last one.").

## 2. Impact of Premature or Meritless Filings

### a. Impaired Claimants with Causation Evidence

Mass filings by unimpaired claimants and filings by claimants lacking credible evidence of causation have created judicial backlogs and are exhausting scarce resources that should go to “the sick and the dying, their widows and survivors.” *In re Collins*, 233 F.3d 809, 812 (3d Cir. 2000), *cert. denied sub nom. Collins v. Mac-Millan Bloedel, Inc.*, 532 U.S. 1066 (2001) (internal citation omitted). Substantial transaction costs are expended in such cases; as a result, compensation is “unavailable . . . to truly ascertained asbestos victims.” *In re Asbestos Prod. Liab. Litig. (No. VI)*, MDL 875, Admin. Order No. 8, 2002 WL 32151574, \*1 (E.D. Pa. Jan. 16, 2002); *see also* Susan Warren, *Competing Claims: As Asbestos Mess Spreads, Sickest See Payouts Shrink*, Wall St. J., Apr. 25, 2002, at A1.

Consider, for example, the litigation involving Johns-Manville, which filed for bankruptcy in 1982. It took six years for the company’s bankruptcy plan to be confirmed. Payments to Manville Trust claimants were halted in 1990 and did not resume until 1995. According to the Manville trustees, a “disproportionate amount of Trust settlement dollars have gone to the least injured claimants—many with no discernible asbestos-related physical impairment whatsoever.” Quenna Sook Kim, *Asbestos Trust Says Assets Are Reduced as the Medically Unimpaired File Claims*,

Wall St. J., Dec. 14, 2001, at B6. The Trust is now paying out just *five cents on the dollar* to asbestos claimants. The trusts created through the Celotex and Eagle-Picher bankruptcies also have been forced to cut payments to claimants. See Mark Goodman *et al.*, Editorial, *Plaintiffs' Bar Now Opposes Unimpaired Asbestos Suits*, Nat'l L.J., Apr. 1, 2002, at B14.

**b. Bankruptcies and the Economic Impact of Asbestos Litigation**

Asbestos has forced an estimated eighty-five employers into bankruptcy. See Martha Neil, *Backing Away from the Abyss*, ABA J., Sept. 2006, at 26, 29. The process has accelerated in recent years due to the “piling on” nature of asbestos liabilities.<sup>6</sup> For instance, RAND found: “Following 1976, the year of the first bankruptcy attributed to asbestos litigation, 19 bankruptcies were filed in the 1980s and 17 in the 1990s. Between 2000 and mid-2004, there were 36 bankruptcy filings, more than in either of the prior two decades.” RAND Rep., *supra*, at xxvii.

Nobel Prize-winning economist Joseph Stiglitz of Columbia University and two colleagues studied the direct impact of asbestos bankruptcies on workers and found that bankruptcies resulting from asbestos litigation put up to 60,000 people



out of work between 1997 and 2000. *See* Joseph E. Stiglitz *et al.*, *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms*, 12 J. Bankr. L. & Prac. 51 (2003). Those workers and their families lost up to \$200 million in wages, *see id.* at 76, and employee retirement assets declined roughly twenty-five percent. *See id.* at 83.

Another study, which was prepared by National Economic Research Associates, found that workers, communities, and taxpayers will bear as much as \$2 billion in additional costs due to indirect and induced impacts of company closings related to asbestos. *See* Jesse David, *The Secondary Impacts of Asbestos Liabilities* (Nat'l Econ. Research Assocs., Jan. 23, 2003). For every ten jobs lost directly, the community may lose eight additional jobs. *See id.* at 8. The shutting of plants and job cuts decrease per capita income, leading to a decline in real estate values, and lower federal, state, and local tax receipts. *See id.* at 11-13.

RAND has estimated that \$70 billion was spent in asbestos litigation through 2002; future costs could reach \$195 billion. *See* RAND Rep., *supra*, at 92, 106. To put these vast sums in perspective, Attorney General Bell has pointed out

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<sup>6</sup> *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 201 (3d Cir. 2005) (“For some time now, mounting asbestos liabilities have pushed otherwise viable companies into bankruptcy.”)

that asbestos litigation costs will exceed the cost of “all Superfund sites combined, Hurricane Andrew, or the September 11<sup>th</sup> terrorist attacks.” Hon. Griffin B. Bell, *Asbestos Litigation and Judicial Leadership: The Courts’ Duty to Help Solve the Asbestos Litigation Crisis*, 6:6 Briefly 4 (Nat’l Legal Center for the Pub. Interest June 2002), available at <http://www.nlcpi.org>.

c. **Peripheral Defendants Are Being Dragged into the Litigation**

As a result of these 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; see also Susan Warren, *Asbestos Suits Target Makers of Wine, Cars, Soups, Soaps*, Wall St. J., Apr. 12, 2000, at B1; Richard B. Schmitt, *Burning Issue: How Plaintiffs’ Lawyers Have Turned Asbestos into a Court Perennial*, Wall St. J., Mar. 5, 2001, at A1; Susan Warren, *Plaintiffs Target Companies Whose Premises Contained Any Form of Deadly Material*, Wall St. J., Jan. 27, 2003, at B1. As the Congressional Budget Office observed, asbestos suits have expanded “from the original manufacturers of asbestos-related products to include customers who may have used those products in their facilities.” Congress of the United States, Congressional Budget Office, *The Economics of U.S. Tort Liability: A Primer* 8 (Oct. 2003). One well-known 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). More than 8,500 defendants have been named. See Mark A. Behrens & Phil Goldberg, *Asbestos Litigation: Momentum Builds for State-Based Medical Criteria Solutions to Address Filings by the Non-Sick*, 20:6 Mealey’s Litig. Rep.: Asbestos 33 (Apr. 13, 2005). Nontraditional defendants now account for more than half of asbestos expenditures. See RAND Rep., *supra*, at 94.

### 3. Florida’s Experience Is in Line with National Trends

The asbestos litigation environment in Florida has followed the same troubling national trends, as the “whereas” clauses in the preamble to the Act make clear. See *In re Asbestos Litig.*, 933 So. 2d 613 (Fla. 3rd DCA 2006). By the 1990s, South Florida had a reputation as a “mecca for asbestos lawsuits.” Mary McLachlin, *Asbestos Litigation Clogs State Courts in South Florida*, Palm Beach Post, July 4, 2004, at 1A, available at 2004 WLNR 3018505. In 2004, Broward County was handling 4,000 to 8,000 active cases; Miami-Dade, Palm Beach, Hillsborough, and Duval Counties each had an estimated 800 to 1,750 asbestos cases. See *id.* In 2002, Palm Beach County had 3,200 asbestos cases. See Jane Musgrave, *Judge Suspends 500 Asbestos-Related Lawsuits*, Palm Beach

Post, July 9, 2005, at 3B, *available at* 2005 WLNR 10907861. As recently as June 2006, this Court noted “the large volume of asbestos personal injury cases in Miami-Dade County.” *In re Asbestos Litig.*, 933 So. 2d at 619.

The inflow of cases—many of which involved *nonresident* plaintiffs with little or no connection to Florida—led the manager of the Palm Beach asbestos docket, Judge Timothy McCarthy, to comment: “It seems we have built a machine here. . . . It’s like building the Sawgrass Expressway in the middle of nowhere. Build it, and they will come.” McLachlin, *supra*.<sup>7</sup>

The surge in premature and meritless asbestos (and silica) lawsuits, fueled by questionable mass screening practices, threaten payments to meritorious claimants in Florida, as elsewhere. These filings also clog the courts and delay justice for deserving asbestos claimants and other civil claimants with legitimate

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<sup>7</sup> Florida has also experienced the “double dipping” practices exposed in other jurisdictions. Prior to the Act’s effective date, 111 actions were filed in Broward County; seventy-two percent alleged asbestos and silica-related conditions, despite the extreme medical rarity of a person having both conditions. *See* Editorial, *Trial Bar Cleanup*, Wall St. J., Feb. 11, 2006, at A8, *abstract available at* 2006 WLNR 2515792. Broward County Circuit Judge David Krathen found that the involvement of litigation screening firms also embroiled in the federal silica multi-district litigation scandal “reek[ed] of fraud” and criticized the plaintiffs’ shotgun approach to naming eighty defendants without identifying the specific products to which the claimants were exposed. Judge Krathen was “concerned about the good clients, the good cases, and . . . the economic well-being of our economy and our companies that support jobs here,” which is why he required the lawyers to submit more detailed information to support their cases. *Id.*; *see also* Peter Geier, *Wary Judge to ‘Ride Herd’ on Florida Silica Cases*, Nat’l L.J., Feb. 7, 2006, at 6.

and serious injuries. As this Court said just a few months ago, if the Act were not enforced, “plaintiffs who cannot make the necessary prima facie showing would be permitted to proceed to trial, “clog up” the court’s busy trial docket, limit the access of current and future plaintiffs who make the requisite prima facie showing, and deny those plaintiffs who do make the requisite showing priority in obtaining a trial setting.” *In re Asbestos Litig.*, 933 So. 2d at 617-18.

In addition, premature and meritless asbestos filings helped force key Florida employers into bankruptcy, such as Tampa homebuilder Walter Industries, and Celotex Corp., which was once one of the largest companies based in Tampa Bay with as many as 2,900 employees. *See* Scott Barancik, *Asbestos Specter Haunts Walter*, St. Petersburg Times, May 1, 2003, at 1E, *available at* 2003 WL 15673020; McLachlin, *supra*; Jerome R. Stockfish, *Tampa, Fla.-Based Building Products Firm Will Close*, Tampa Trib., July 25, 2001, *available at* 2001 WLNR 10005526. These were the broad public policy issues that the legislature appropriately considered in enacting the procedures in the Act.

## **II. THE ASBESTOS AND SILICA COMPENSATION FAIRNESS ACT WAS A REASONABLE PUBLIC POLICY RESPONSE**

The Legislature enacted the Asbestos and Silica Compensation Fairness Act in response to an overwhelming public necessity to address the problems described

herein and to address an increase in questionable silica-related filings.<sup>8</sup> The law established fair procedures for claimants to bring or maintain asbestos and silica claims. The core of the new law requires the submission of evidence of impairment and causation early in the case. The purpose is to preserve resources for meritorious asbestos claimants and allow those claims to be resolved more quickly by deferring the enormous number of claims involving persons who lack physical impairment and causation. The Act's procedures help to ensure that resources needed to pay deserving asbestos claimants are not wasted in premature or meritless litigation.

Absent a prima facie showing of impairment and causation, cases are required to be dismissed without prejudice. Importantly, claimants who cannot presently make the prima facie showing required under the Act are protected from having their claims time-barred in the future. Thus, some claimants might benefit by their ability to bring claims that would have been time-barred under previous Florida law. It is also important to note that the Act merely changes the *timing* of the plaintiffs' traditional burden of proving actual physical injury for which

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<sup>8</sup> See *In re Silica Prods. Liab. Litig. (MDL No. 1553)*, 398 F. Supp. 2d 563 (S.D. Tex. 2005) (recommending that all but one of the 10,000 claims on the federal silica multi-district litigation docket should be dismissed on remand because the diagnoses were fraudulently prepared).

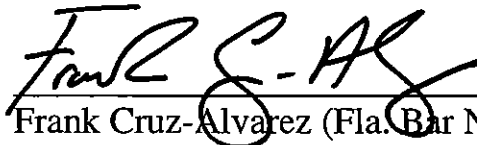
exposure to asbestos or silica was a substantial contributing factor. *See United States Mineral Prods. Co. v. Waters*, 610 So. 2d 20 (Fla. 3d DCA 1992); *Reaves v. Armstrong World Indus.*, 569 So. 2d 1307 (Fla. 4<sup>th</sup> DCA 1990); Fla. Std. Jury Inst. (Civ.) 5.1(a); *see also Eagle-Picher*, 481 So. 2d at 528 (Fla. 3d DCA 1985) (“The physical injury requirement is consistent with Florida law, necessary, and fair” because “[m]illions of people have been exposed to asbestos.”).

The Act has a compelling public policy basis, *see, e.g., Robinson v. Crown Cork & Seal Co., Inc.*, 2006 WL 1168782 (Tex. App. May 4, 2006) (upholding Texas’s recent *and retroactive* successor asbestos-related liability law as a legitimate exercise of the legislature’s police power), like other legislative enactments that have withstood constitutional challenge in Florida. *See Eller v. Shova*, 630 So. 2d 537 (Fla. 1993) (workers’ compensation); *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974) (auto negligence); *University of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (medical malpractice reform). The Act will protect limited resources for meritorious asbestos claimants, help unclog court dockets, slow the rate of asbestos-related bankruptcies, and help stem the spread of the litigation to an ever-growing list of attenuated defendants. *See* 2005 Fla. Laws ch. 274 (legislative findings).

## CONCLUSION

For these reasons, *amici curiae* ask this Court to quash the trial court's September 19, 2006 order and direct the Court to dismiss Plaintiffs' action pursuant to the Act.

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE WITH RULE 9.210**

I certify that the foregoing Brief is submitted in Times New Roman 14-point font and complies with the requirements of Rule 9.210 of the Florida Rules of Appellate Procedure.

  
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