

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPREME COURT  
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REPRESENTATIVE FOR THE ESTATE  
OF BRIAN SCALLION,

V.

No. 05-332-M.P.

A.W. CHESTERTON COMPANY, *ET AL.*

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF  
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,  
AMERICAN TORT REFORM ASSOCIATION,  
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,  
COALITION FOR LITIGATION JUSTICE, INC.,  
NATIONAL ASSOCIATION OF MANUFACTURERS, AND  
AMERICAN INSURANCE ASSOCIATION  
AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONER, GENERAL ELECTRIC COMPANY**

The Chamber of Commerce of the United States of America, American Tort Reform Association, Pharmaceutical Research and Manufacturers of America, Coalition for Litigation Justice, Inc., National Association of Manufacturers, and American Insurance Association (collectively "*amici*") are national associations that have a substantial common interest in the fair and effective administration of justice. Thus, *amici* invite this Court to recognize the inherent power of Rhode Island courts to decline jurisdiction over cases that have little or no connection to the State of Rhode Island and that would be more appropriately decided elsewhere.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing an underlying membership of more than three million companies and professional organizations of all sizes and in all industries. In addition to the several hundred Chamber members located in Rhode Island, countless others do business within

the state and are directly affected by its litigation climate. The Chamber advocates the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

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 federal and state courts that have addressed important liability issues.

The Pharmaceutical Research and Manufacturers of America (“PhRMA”) is an association comprised of the country’s leading research-based pharmaceutical and biotechnology companies. PhRMA’s member companies are devoted to inventing medicines that will allow patients to live longer, healthier, and more productive lives and have led the way in the search for new cures. PhRMA members alone invested an estimated \$43 billion in 2006 in discovering and developing new medicines. PhRMA’s mission is to advocate for public policies that encourage the discovery of life-saving and life-enhancing new medicines for patients by pharmaceutical and biotechnology research companies.

The Coalition for Litigation Justice, Inc. (“Coalition”) is a nonprofit association formed to address and improve the asbestos litigation environment. Established by insurers, the Coalition’s mission is to encourage fair and prompt compensation to deserving current and future asbestos claimants by seeking to reduce or eliminate the abuses and inequities that exist under

the current civil justice system.<sup>1</sup> The Coalition files briefs in important matters, such as this one, that may have a significant impact on the asbestos and other toxic tort litigation environment.

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 and improve American living standards 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 importance of manufacturing to America’s economic strength.

The American Insurance Association (“AIA”), established over 140 years ago, is a national trade association representing major property and casualty insurers writing business nationwide and globally. AIA members collectively underwrote over \$450 million in direct property and casualty premiums in Rhode Island in 2005. AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files amicus briefs in cases before state and federal courts on issues of importance to the insurance industry and the insurance marketplace.

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*Forum non conveniens* is the discretionary power of a court to decline jurisdiction over matters where there is a more appropriate forum available to the parties. Nearly every state has explicitly recognized *forum non conveniens*, a doctrine that is firmly rooted in the common law.

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<sup>1</sup> The Coalition for Litigation Justice includes ACE-USA companies, Chubb & Son, a division of Federal Insurance Company, CNA service mark companies, Fireman’s Fund Insurance Company, Liberty Mutual Insurance Group, and the Great American Insurance Company.

In Rhode Island, the doctrine's availability is uncertain, allowing for imported litigation that clearly seeks to take advantage of procedures and substantive law more favorable in Rhode Island than the plaintiffs' home forum. Such "litigation tourism" imposes substantial inconvenience on the parties, given the location of witnesses and evidence. It also places a burden on the local court charged with hosting a wholly foreign dispute, delays access to the court for state residents, and imposes an unfair burden on local taxpayers whose tax dollars finance the foreign litigation, and on local jurors called to serve in such disputes.

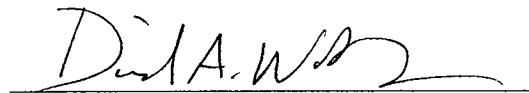
The case before this Court provides a prime example of the danger of such imported litigation. It involves claims filed by thirty-nine lifelong Canadians. All of their injuries allegedly stemmed from exposure to asbestos in Canada. They have chosen to file in the courts of Rhode Island based on the more favorable treatment they expect to receive in the judicial system of the United States rather than in their home country. Rhode Island may have been chosen because it is the only state in which the law has not developed to favor immediate dismissal of such a lawsuit on *forum non conveniens* grounds.

*Amici* have an important, independent contribution to make to the analysis of issues presented to this Court. The proposed *amicus curiae* brief does not merely repeat the Petitioner's arguments. Rather, the proposed brief discusses the public policy implications raised in this case and the national implications of this Court's decision. It first provides the Court with a close examination of the origin and history of the doctrine of *forum non conveniens*. It then considers when and how states adopted the doctrine and the status of its application in the states today. Finally, the proposed amicus brief considers the public policy importance of the doctrine, including its impact on parties, and Rhode Island citizens and local courts, as well as its potential implications for asbestos litigation in Rhode Island.

The proposed *amicus* brief concludes by urging this Court to adopt the uncontroversial principle that its courts have inherent power to decline jurisdiction over claims unrelated to Rhode Island and to provide guidance to courts as to when it is appropriate to exercise such authority. It finds that the actions of the Supreme Court of the United States and numerous state high courts clearly demonstrate that there is no need for legislative action to embrace this doctrine. Should this Court fail to recognize its availability, the Court risks opening Rhode Island to a flood of litigation whose facts are rooted in other states and from claimants who live in foreign countries whose claims have little or no connection with the State.

For these reasons, *amici* request that this Court grant their motion for leave to file the accompanying brief.

Respectfully submitted,



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Dated: April 18, 2007

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served by ~~hand delivery~~/regular First-Class U.S. mail on this 18<sup>th</sup> day of April, 2007, on the following counsel of record:

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