

IN THE SUPERIOR COURT OF PENNSYLVANIA

Docket No. 3200 EDA 2024

ANDRE GARCIA and DANIELLE CASTALEITE
Plaintiffs/Appellants,

v.

FOLEY, INC., FOLEY RENTS, FOLEY INCORPORATED d/b/a FOLEY
RENTS, and CATERPILLAR INC.,
Defendants/Appellees,

**BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR
CIVIL JUSTICE REFORM, CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, PENNSYLVANIA CHAMBER
OF BUSINESS AND INDUSTRY, PENNSYLVANIA
MANUFACTURERS' ASSOCIATION, AMERICAN PROPERTY
CASUALTY INSURANCE ASSOCIATION, INSURANCE
FEDERATION OF PENNSYLVANIA, AMERICAN TRUCKING
ASSOCIATION, PENNSYLVANIA MOTOR TRUCKING
ASSOCIATION, AND CHESTER COUNTY MEDICAL SOCIETY
IN SUPPORT OF APPELLEES**

Appeal from the Order of the Philadelphia County Court of
Common Pleas, Civil Division, July Term, 2023, No. 387 entered
on October 24, 2024, granting Defendants/Appellees' Motion to
Dismiss for *Forum Non Conveniens*

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STATEMENT OF INTEREST OF *AMICI CURIAE*

A coalition of organizations collectively representing the business, healthcare, insurance, and trucking industries has signed on to this *amicus* brief, underscoring the statewide significance of this appeal.

The Pennsylvania Coalition for Civil Justice Reform (“PCCJR”) is a statewide, bipartisan alliance of organizations and individuals representing health care providers, professional and trade associations, business, nonprofit entities, taxpayers, and other perspectives. PCCJR is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform.

The Chamber of Commerce of the United States of America (“U.S. Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the U.S. Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive

Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Pennsylvania Chamber of Business and Industry (the "PA Chamber") is the Commonwealth's largest broad-based business advocacy association, whose membership comprises over 13,000 member businesses of all sizes—from sole proprietors to Fortune 100 companies—and industry sectors throughout Pennsylvania. It represents approximately 50% of the private workforce in the Commonwealth. The PA Chamber's purpose is to provide a unified voice for businesses in the halls of the state Capitol and to advocate for job creation in Pennsylvania to lead to greater prosperity for its residents. The PA Chamber works to create a fair, balanced, and common-sense civil litigation system that gives predictability and certainty and achieves greater efficiencies and unbiased justice.

Since its founding in 1909, the Pennsylvania Manufacturers' Association ("PMA") has served as a leading voice for Pennsylvania manufacturing, its 540,000 employees on the plant floor, and the millions of additional jobs in supporting industries. From its

headquarters in the Frederick W. Anton, III, Center, across from the steps to the Capitol in Harrisburg, PMA seeks to improve the Commonwealth's competitiveness by promoting pro-growth public policies that reduce the cost of creating and keeping jobs in Pennsylvania. PMA has forcefully advocated for civil justice reforms that will bring balance and stability to Pennsylvania's legal system.

American Property Casualty Insurance Association ("APCIA") is the leading national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent approximately 66% of the U.S. property-casualty insurance market and approximately 69% of Pennsylvania's market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits amicus curiae briefs in significant cases before federal and state courts.

The Insurance Federation of Pennsylvania, Inc. ("IFP"), a nonprofit organization, is Pennsylvania's leading insurance trade association, representing over 200 insurance companies in Pennsylvania. The IFP's members are of all sizes and issue every type of insurance policy. These members represent half of the insurance premiums written in the Commonwealth. The IFP seeks to ensure a balanced and fair insurance environment in Pennsylvania. It routinely serves as the voice of the insurance trade in litigation in the Commonwealth where those interests are implicated. The IFP enjoys a well-earned reputation for integrity in the pursuit of its members' interests.

The American Trucking Associations ("ATA") is a united federation of motor carriers, state trucking associations (including the Pennsylvania Motor Truck Association), and national trucking conferences created to promote and protect the interests of the trucking industry. Its direct membership includes over 3,000 trucking companies and industry suppliers, and in conjunction with its federation of affiliated organizations, it represents over 30,000 motor carriers and suppliers of every type and class of operation

in the United States. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States, and virtually all operate in interstate commerce among the states, including Pennsylvania. ATA regularly files briefs as *amicus curiae* in courts throughout the nation, to represent the common interests of motor carriers in cases, like this one, involving issues of great importance for the trucking industry.

The Pennsylvania Motor Truck Association (“PMTA”), which is a non-profit entity formed in 1928 with almost 1,200 members, represents the interests of over 72,000 trucking companies employing almost 372,000 individuals in the Commonwealth of Pennsylvania, ranging from large multinational corporations to small businesses and single owner-operators. The mission of PMTA is to promote the professional and economic growth of the trucking industry and the businesses that support it. Roadway safety, which PMTA promotes through education, advocacy, collaboration, and recognition programs, is among its highest priorities.

Chester County Medical Society (“CCMS”) is an independent, non-profit, membership organization for physicians. Its members

include D.O.s, M.D.s, medical residents, fellows, and active and retired physicians. CCMS is open to all physician specialties and is the only physician organization in Chester County. It is also the oldest medical society in the Commonwealth of Pennsylvania. The mission of CCMS is to support and advocate for all physicians who work or live in Chester County and their patients. To that end, CCMS is involved in political advocacy at the county and state levels, the continuing education of their physician members, providing access to practice management resources and assistance, physician leadership programs, and ensuring the health of the Chester County community. Together with the other counties across the state and with the Pennsylvania Medical Society, CCMS provides a powerful voice of unity, awareness, and strength for the medical profession.

This appeal involves the doctrine of *forum non conveniens*, which has long been a part of Pennsylvania jurisprudence. See *Plum v. Tampax, Inc.*, 160 A.2d 549, 552 (Pa. 1960) (adopting the doctrine of *forum non conveniens*). Indeed, the doctrine is codified/memorialized in both the Pennsylvania Rules of Civil

Procedure and the Pennsylvania Uniform Interstate and International Procedure Act. See Pa.R.Civ.P. 1006(d)(1) (“For the convenience of parties and witnesses, the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.”); 42 Pa.C.S. § 5322(e) (“When a tribunal finds that in the interest of substantial justice the matter should be heard in another forum, the tribunal may stay or dismiss the whole matter in whole or in part on any conditions that may be just.”).

Forum non conveniens serves a vital purpose. The doctrine acts as a “necessary counterbalance to insure fairness and practicality,” *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989), *overruled on other grounds by Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997), by allowing a court to transfer a case to a more appropriate forum in Pennsylvania when litigating in the plaintiff’s chosen forum would be oppressive or vexatious (*i.e.*, intrastate *forum non conveniens*), *see, e.g., Bratic v. Rubendall*, 99 A.3d 1, 7 (Pa. 2014); or dismiss a case when, in the interests of justice and convenience of the parties, the litigation

can more appropriately be conducted in another forum outside of Pennsylvania (*i.e.*, interstate *forum non conveniens*), *Plum*, 160 A.2d at 552.

The doctrine has taken on greater significance in recent years in light of *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), which held that Pennsylvania’s consent-by-registration statute broadly confers personal jurisdiction in Pennsylvania for out-of-state corporations for conduct that occurred outside the Commonwealth against an out-of-state plaintiff. *Id.* at 125; see *id.* at 150 (Alito, J., concurring in part and concurring in the judgment). While other potential challenges exist to the statute—namely, a dormant Commerce Clause challenge, see *id.* at 150, 157–163) (Alito, J., concurring in part and concurring in the judgment)—as it presently stands, corporate defendants who are not “at home” in Pennsylvania now face the real prospect of suit in the Commonwealth for claims arising in any jurisdiction by a plaintiff with no ties to Pennsylvania.

This case illustrates the concern: it involves an accident at a worksite in New Jersey involving injuries sustained by an employee

who resides in New Jersey (Plaintiff/Appellant Andrew Garcia) when he was struck by an excavator being operated by one of his coworkers. The excavator was manufactured by a Delaware corporation with a principal place of business in Texas (Defendant/Appellee Caterpillar Inc.) and leased to the injured worker's employer by a Delaware corporation with a principal place of business in New Jersey (Defendant/Appellee Foley, Inc.). (See Br. of Appellants, Ex. B at 2.) Thus, the only basis for jurisdiction against Caterpillar and Foley is that each is registered to do business in the Commonwealth.

Because PCCJR, U.S. Chamber, PA Chamber, PMA, APCIA, IFP, ATA, PMTA, and CCMS (collectively "*Amici*"), and their respective members wish to avoid forum shopping and the resultant adverse impact on their respective industries and the economy as a whole, *Amici* have a compelling interest in this appeal. Pursuant to Pa.R.A.P. 531(b)(2), *Amici* each file this *amicus* brief in their own right and on behalf of their respective members. *Amici* state that no person, other than their respective

members and their respective counsel, paid for or authored this brief, in whole or in part.

SUMMARY OF ARGUMENT

This appeal involves an order granting a motion to dismiss for *forum non conveniens* where it is undisputed that the plaintiff does not live or work in Pennsylvania; the defendants are not incorporated here, nor do they maintain their respective principal place of business in the Commonwealth; the accident in question took place in another state; the plaintiff did not receive medical treatment for his injuries here; and the incident was investigated by non-Pennsylvania authorities. (See Br. of Appellants, Ex. B at 2.) The only purported connection between this case and the Commonwealth of Pennsylvania is the bank of one of the defendants required payments for leases of its equipment to be submitted to a P.O. box in Philadelphia. (See R.R.331a.) In other words, the connection between the plaintiffs and their claims, on the one hand, and the Commonwealth of Pennsylvania, on the other, is nonexistent.

Amici concur with Appellees that the Common Pleas Court correctly held that dismissal is warranted on *forum non conveniens* grounds, pursuant to Section 5322(e) of the Judicial Code, 42 Pa.C.S. § 5322(e). Indeed, given the undisputed facts of this case,

it defies logic to suggest, as Plaintiffs do, that Caterpillar's evidentiary showing was "deficient" and "[i]nsufficient" to establish *forum non conveniens*. (Br. of Appellants at 19, 20.)

Amici write separately because this appeal is one of several recent cases addressing the doctrine of interstate *forum non conveniens* albeit with disparate results. *Amici* therefore urge this Court to use the instant appeal to clarify or reaffirm three aspects of the doctrine for the benefit of the bench, the bar, and litigants: (1) whether courts should consider the nexus between the dispute and the forum; (2) the deference, if any, owed to a plaintiff's choice of forum where neither the plaintiff nor the cause(s) of action have any connection to Pennsylvania; and (3) there is no "affidavit requirement" or other particular form of proof to establish dismissal under 42 Pa.C.S. § 5322(e).

ARGUMENT

I. The Court Should Affirm the Trial Court's Order Granting Caterpillar's Motion to Dismiss for *Forum Non Conveniens*, and in the Process, Clarify the Contours of the Doctrine of Interstate *Forum Non Conveniens*

A. History of the Common Law Doctrine of *Forum Non Conveniens*

Amici begin with a discussion of the history of the common law doctrine of *forum non conveniens* because, by “[a]cknowledging the forces at work behind the doctrine's spread and evolution,” it should aid this Court in clarifying the doctrine, “unencumbered by a mythological past.” William S. Dodge, *et al.*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. 1163, 1173 (2023).

Forum non conveniens is a common law doctrine that allows a court to dismiss a case when, although personal jurisdiction and venue are proper, such a dismissal would serve the convenience of the parties and the ends of justice. *See generally* Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Colum. L. Rev. 1 (1929). The purpose of the doctrine is to permit a trial court to go beyond technical jurisdictional considerations and

to focus instead on how justice can be best served in a particular case. *See, e.g., Wright v. Consolidated Rail Corp.*, 215 A.3d 982, 991 (Pa. Super. Ct. 2019). At its core, *forum non conveniens* exists to prevent a plaintiff from invoking the power of the court to “bring [a] suit in an inconvenient forum in the hope that they will secure easier or larger recoveries or so add to the costs of the defense that the defendant will take a default judgment or compromise for a larger sum.” *Hovatter v. CSX Transp.*, 193 A.3d 420, 424 (Pa. Super. Ct. 2018) (internal citation and quotation marks omitted).

Various courts have described *forum non conveniens* as an “ancient” doctrine, *e.g., Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1302 n.4 (11th Cir. 2002), with a “long history,” *e.g., Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 248 n.13 (1981), and “deep roots in the common law,” *e.g., In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 675 (Tex. 2007). But the reality is that the doctrine in its modern form “is a relatively recent addition to the law.” Gordon E. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change*, 25 S. ILL. U. L. J. 461, 462 (2001). Indeed, “federal courts have only exercised this

discretionary power since 1947,” and “[w]ith the exceptions of New York and Massachusetts, state courts only began recognizing a discretion to decline jurisdiction at the turn of the last century.” Dodge, *supra*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. at 1165–1167.

While there is no single doctrine of *forum non conveniens*, see, e.g., *Am. Dredging Co. v. Miller*, 510 U.S. 443, 453, 456 (1994), “the majority of states use a doctrine similar or identical to that of [*Gulf Oil v. Gilbert*, 330 U.S. 501 (1947)].” Dodge, *supra*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. at 1168. This includes Pennsylvania, which adopted the *Gulf Oil* formulation of the doctrine of *forum non conveniens* in 1960. See *Plum*, 160 A.2d at 553.¹

¹ The Pennsylvania Supreme Court discussed *forum non conveniens* for the first time in *Fairchild Engine & Airplane Corp. v. Bellanca Corp.*, 137 A.2d 248 (Pa. 1958), *id.* at 250, but did not expressly adopt the doctrine until two years later in *Plum*. See *Alpers v. N.J. Bell Tel. Co.*, 170 A.2d 360, 363 (Pa. 1961) (Cohen, J., dissenting) (noting “[o]ur courts have recently adopted the doctrine of forum non conveniens” and citing *Plum* as support for that proposition).

In doing so, the Pennsylvania Supreme Court indicated that it was within the discretionary power of the trial court, after weighing various factors, to decline to exercise its jurisdiction and dismiss the suit under the doctrine of *forum non conveniens*. See *id.* at 560 (citing *Gulf Oil*, 330 U.S. at 501; *Koster v. Lumbermen's Mut. Cas. Co.*, 330 U.S. 518 (1947)). Citing the Tentative Draft of the Second Restatement, Conflict of Laws, the Pennsylvania Supreme Court then stated that the “two most important factors” that a trial court should look to in deciding whether to apply *forum non conveniens* are “(1) that since it is for the plaintiff to choose the place of suit, his choice of a forum should not be disturbed except for weighty reasons, and (2) that the action will not be dismissed in any event unless an alternative forum is available to the plaintiff.” *Plum*, 160 A.2d at 560–561. To guide the trial court’s discretion in applying that test, the Pennsylvania Supreme Court adopted the list of “private interest factors” affecting the convenience of the litigants, as well as the list of “public interest factors” affecting the convenience of the forum, set forth in *Gulf Oil*. *Plum*, 160 A.2d at 561–562.

B. Following its Adoption in Pennsylvania, *Forum Non Conveniens* Evolved Into Two Separate and Distinct Doctrines

Around the time of *Gulf Oil*, “state courts were only considering declining jurisdiction in cases that had no in-state party and no in-state cause of action.” Dodge, *supra*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. at 1180. *Gulf Oil* itself was such a case, as the plaintiff, a resident of Virginia, sued a Pennsylvania corporation in New York over alleged violations of a local Virginia ordinance. 330 U.S. at 502. Then, in 1954, “New Jersey quietly revolutionized the doctrine’s scope by explicitly permitting forum non conveniens dismissals of cases involving in-state defendants.” Dodge, *supra*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. at 1185.

Pennsylvania quickly followed suit. In 1967, the Pennsylvania Supreme Court adopted Pennsylvania Rule of Civil Procedure 1006(d), which allows a court to transfer an action to “the appropriate court of any other county where the action could originally have been brought” “[f]or the convenience of parties and witnesses.” Pa.R.Civ.P. 1006(d)(1); see *U.S. Cold Storage Corp.*

v. Phila., 235 A.2d 422, 424 (Pa. 1967) (discussing adoption of Rule 1006).

Later, in 1978, the General Assembly adopted Act 53 of 1978, as amended 42 Pa.C.S. § 5322(e). Modeled after Section 1.05 of the Uniform Interstate and International Procedure Act, see *Westerby v. Johns-Manville Corp.*, 8 Phila. 335, 357–358 (Phila. Cnty. Ct. Com. Pl. 1982), Section 5322(e) provides: “When a tribunal finds that in the interest of substantial justice the matter should be heard in another forum, the tribunal may stay or dismiss the matter in whole or in part on any condition that may be just.” 42 Pa.C.S. § 5322(e).

Although similar, Rule 1006(d)(1) and Section 5322(e) have several notable differences. For one, the remedies differ as Rule 1006(d)(1) enables a court to transfer an action to another county within the Commonwealth; in contrast, because Pennsylvania courts lack authority to transfer cases to the courts of its sister states, dismissal is the “only permissible result” under Section 5322(e). *Alford v. Phila. Coca-Cola Bottling Co.*, 531 A.2d 792, 794 (Pa. Super. Ct. 1987).

Moreover, the effect of each provision is “drastic[ly] differen[t].” *Id.* A Rule 1006(d)(1) transfer “does not extinguish the litigation,” while a Section 5322(e) dismissal “terminates the litigation in the courts of this Commonwealth.” *Id.* Further, the standard to establish *forum non conveniens* varies depending upon whether Rule 1006(d)(1) or Section 5322(e) applies. “[A] showing of oppressiveness or vexatiousness is essential to the *forum non conveniens* inquiry under Rule 1006(d)(1) in all cases.” *Tranter v. Z&D Tour, Inc.*, 343 A.3d 1106, 1123 (Pa. 2025). Section 5322(e), on the other hand, requires the defendant to satisfy a two-part test—(1) whether there are “weighty reasons” to disturb the plaintiff’s choice of forum, and if so, (2) whether there is an alternate forum available, *see, e.g., Ficarra v. Consol. Rail Corp.*, 242 A.3d 323, 330 (Pa. Super. Ct. 2020)—with the first prong involving consideration of the *Gulf Oil* factors, *see, e.g., Jessop v. ACF Industries, LLC*, 859 A.2d 801, 803–804 (Pa. Super. Ct. 2004). Additionally, the defendant bears a “heavier burden” of proof under Rule 1006(d)(1) than Section 5322(e). *Wright*, 215 A.3d at 992. Finally, the former applies in instances of intrastate *forum non*

conveniens, whereas the latter applies in instances of interstate *forum non conveniens*. See, e.g., *Alford*, 531 A.2d at 794 (collecting cases).

Thus, while *forum non conveniens* was originally a one-size-fits-all concept, today, it is two separate and distinct doctrines.

C. As the Doctrine Has Evolved, So, Too, Has the Emphasis on the Nexus Between the Dispute and the Forum in the Interstate Context

As time has gone on, this Court has recognized that the nexus between the dispute and the forum is a relevant consideration when deciding whether to dismiss a case on *forum non conveniens* grounds. See, e.g., *Engstrom v. Bayer Corp.*, 855 A.2d 52, 54, 56 (Pa. Super. Ct. 2004); *Cinousis v. Hechinger Dep't Store*, 594 A.2d 731, 732–733 (Pa. Super. Ct. 1991). Such caselaw is consistent with the widespread view that *Gulf Oil* set forth a non-exhaustive list of factors for *forum non conveniens*. See, e.g., *Sunline USA LLC v. Ezzi Grp., Inc.*, 708 F. Supp. 3d 585, 594 (E.D. Pa. 2023); *S.R.J. v. Marriott Int'l Inc.*, No. 2:21-CV-1863, 2022 U.S. Dist. LEXIS 191019, at *3 (W.D. Pa. Oct. 19, 2022). This Court's jurisprudence is also in keeping with the Pennsylvania Supreme

Court's observation in *Plum* that the "situs of the case" may warrant a trial court declining jurisdiction for *forum non conveniens*. *Plum*, 160 A.2d at 560. Pennsylvania courts, though, have been slow to update their recitation of the applicable factors to reflect this development.

For instance, in *Engstrom*, this Court affirmed an order dismissing five complaints filed in a mass tort products liability action on the basis of interstate *forum non conveniens*. 855 A.2d at 58. In doing so, this Court quoted the private and public interest factors announced in *Gulf Oil*, verbatim. *See id.* at 56 (quoting *Petty v. Suburban Gen. Hosp.*, 525 A.3d 1230, 1232 (Pa. Super. Ct. 1987), *abrogated on other grounds as stated in Tranter v. Z&D Tour, Inc.*, 343 A.3d 1106, 1123 (Pa. 2025), in turn, quoting *Gulf Oil*, 330 U.S. at 508–509). But this Court nevertheless credited the trial court's finding that "there is no connection between Pennsylvania and the specific facts of these cases." *Id.* (internal citation and quotation marks omitted). Indeed, this Court opened its opinion by underscoring the lack of nexus between the dispute

and Pennsylvania even though it was not one of the enumerated factors for *forum non conveniens* at the time:

Appellants in this matter are citizens of Missouri, Washington state, Arizona and Hawaii; none has ever resided in Pennsylvania. In no case did the purchase of the medication containing PPA, or the onset, diagnosis or treatment of any Appellant's illness occur in Pennsylvania. No providers of medical service, medical records or their custodians are located in Pennsylvania. None of the witnesses material to demonstration of Appellants' damage claims reside in Pennsylvania.

Engstrom, 855 A.2d at 54.

Similarly, in *Cinousis*, this Court affirmed an order dismissing a case brought by an out-of-state plaintiff on *forum non conveniens* grounds. 594 A.2d at 733. Like *Engstrom*, this Court quoted the *Gulf Oil* factors. *Id.* at 732 (quoting *Plum*, 160 A.2d at 553, quoting, in turn, *Gulf Oil*, 330 U.S. at 508–509). And like *Engstrom*, this Court nonetheless focused on the lack of nexus between the dispute and the forum when applying the doctrine:

The plaintiffs are not residents of Pennsylvania. The pertinent events giving rise to the cause of action occurred outside of Pennsylvania. The relevant medical records of plaintiff's physician after the alleged accident are located outside of Pennsylvania. The known witnesses reside outside of Pennsylvania and any additional witnesses will most likely reside outside of Pennsylvania.

Cinousis, 594 A.2d at 733 (internal citation and quotation marks omitted). This Court added: “*In view of the absence of any significant contact between appellant's cause of action and this Commonwealth*, the need to apply the substantive law of New Jersey, and the significant backlog of cases which currently plagues the dockets of the Philadelphia court system, we hold that the trial court did not abuse its discretion when it dismissed appellant's action in the instant case.” *Id.* (emphasis added).

By way of another example, in *Pisieczko v. Children's Hosp.*, 73 A.3d 1260 (Pa. Super. Ct. 2013), this Court affirmed an order dismissing a complaint based on interstate *forum non conveniens*. *Id.* at 1261, 1265. In reaching that conclusion, and similar to *Cinousis* and *Engstrom*, this Court recited the private and public interest factors from *Gulf Oil*, virtually word-for-word. *See id.* at 1263. And yet, just like *Cinousis* and *Engstrom*, this Court still concentrated on the lack of nexus between the dispute and the Commonwealth when addressing *forum non conveniens*, writing: “While Appellee's headquarters are located in Philadelphia County, the cause of action arose from injuries sustained in New Jersey,”

adding: “Appellants are New Jersey residents suing about an accident that took place in New Jersey.” *Id.* at 1263–1264.

Likewise, in *Horvatter*, this Court vacated a trial court’s order denying a motion to dismiss for *forum non conveniens*. 193 A.3d at 422. As with *Cinousis*, *Engstrom*, and *Pisieczko*, this Court began by quoting the *Gulf Oil* factors. *Id.* at 424–425 (quoting *Petty*, 525 A.3d at 1232, in turn, quoting *Gulf Oil*, 330 U.S. at 508–509). But just like *Cinousis*, *Engstrom*, and *Pisieczko*, this Court ultimately emphasized the lack of nexus between the dispute and the Commonwealth when applying the doctrine—despite the fact that it is not one of the *Gulf Oil* factors—stating:

Neither Appellee resides in Pennsylvania (Hovatter resides in Maryland; Wilson, in Kentucky); Hovatter's injury allegedly occurred in Cumberland, Maryland; Wilson's in Kentucky, Ohio, and Indiana; Hovatter received his medical treatment in Maryland; his witnesses are in Maryland.

Wilson received all of his medical treatment in Kentucky and Ohio. All of his claims arise from alleged acts and omissions of Appellant in Kentucky, Ohio, Indiana, or Florida. There are no relevant witnesses to any of the working conditions in Pennsylvania. There are no employment records or other documents of relevance to either case in Pennsylvania. Appellant states that all sources of proof in these matters are located outside of Pennsylvania.

* * *

We are constrained to conclude that the trial court abused its discretion.

Hovatter, 193 A.3d at 427–428.

Other instances in which this Court focused on the lack of nexus between the case and Pennsylvania when applying the doctrine of interstate *forum non conveniens* include *Ficarra v. Consol. Rail Corp.*, 242 A.3d 323, 333 (Pa. Super. Ct. 2020) (“Plaintiff[s’] claim[s have] no relation to Philadelphia.” (internal citation and quotation marks omitted.)); *Gravenor-Reuter v. Acme Markets, Inc.*, No. 580 EDA 2024, 2025 Pa. Super. Unpub. LEXIS 571, at *10 (Pa. Super. Ct. Mar. 11, 2025) (“[T]he connection between this case and Pennsylvania is, at most minimal.”);² *Jessop*, 859 A.2d at 804 (“Philadelphia has no connections with the allegations Plaintiff has put forth in this action. Simply put, there is no relationship between the facts of this case in [sic] Philadelphia County. Plaintiff has no connection to Philadelphia County

² See Pa. Super. Ct. IOP § 65.37 (permitting parties to cite non-precedential decisions after May 1, 2019).

whatsoever.” (alteration in original; internal citation and quotation marks omitted.)); and *Kennedy v. Crothall Healthcare, Inc.*, 321 A.3d 1065, 1081 (Pa. Super. Ct. 2024) (“The trial court also did not abuse its discretion in finding that the public factors greatly favor dismissal where this case centers on medical treatment rendered in a Florida hospital that led to injury to a minor who continues to live with Plaintiff in Florida.”).³

Notably, each one of the foregoing cases had more of a connection to Pennsylvania than Plaintiffs here.

³ It is also worth noting that other states have taken a page out of this Court’s book and placed a greater emphasis on the degree of nexus between the dispute and the forum when evaluating a request for dismissal on *forum non conveniens* grounds. See Dodge, *supra*, *The Many State Doctrines of Forum Non Conveniens*, 72 Duke L.J. at 1207; see, e.g., *State ex rel. Chicago, Rock Island & Pac. R.R. Co. v. Riederer*, 454 S.W.2d 36, 39 (Mo. 1970) (factors for *forum non conveniens* include “place of accrual of the cause of action,” “the residence of the parties,” and “any nexus with the place of suit”); *Summa Corp. v. Lancer Indus.*, 559 P.2d 544, 546 (Utah 1977) (factors for *forum non conveniens* include “the location of the primary parties” and “where the fact situation creating the controversy arose”); *Islamic Republic of Iran v. Pahlavi*, 467 N.E. 245, 248 (N.Y. Ct. App. 1984) (factors for *forum non conveniens* include “that both parties to the action are non residents and that that transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction” (citation omitted)).

D. Consistent With This Court's Own Jurisprudence, This Court Should Clarify That the Nexus Between the Dispute and the Forum is a Relevant Consideration When Deciding Whether to Dismiss a Case on Interstate *Forum Non Conveniens* Grounds

In light of this long line of cases, *Amici* respectfully request that this Court use this appeal to make clear that, despite not being an enumerated *Gulf Oil* factor, the nexus between the dispute and the forum is a relevant consideration when deciding whether to dismiss a case on interstate *forum non conveniens* grounds. *Amici* defer to this Court, but it stands to reason that such nexus should be characterized as an additional public interest factor.

Regardless how this Court characterizes the nexus between the dispute and the forum, it is dispositive of the instant appeal because the connection between this case and Pennsylvania is nonexistent. As noted above, it is undisputed that the plaintiff does not live or work in Pennsylvania; the defendants are not incorporated here, nor do they maintain their respective principal place of business in the Commonwealth; the accident in question took place in another state; the plaintiff did not receive medical treatment for his injuries here; and the incident was investigated

by non-Pennsylvania authorities. (See Br. of Appellants, Ex. B at 2.) Again, the only purported connection between this case and the Commonwealth of Pennsylvania is the bank of one of the defendant's required payments for leases of its equipment to be submitted to a P.O. box in Philadelphia, (see R.R.331a), which is utterly and completely irrelevant to Plaintiffs' claims for strict liability, negligence, and loss of consortium. Simply put, and as correctly noted by the Common Pleas Court, "Philadelphia County has very little[,] if any, interest in this Matter." (Br. of Appellants, Ex. B at 5.)

"In view of the absence of any significant contact between [plaintiffs'] cause[s] of action and this Commonwealth," *Cinouis*, 594 A.2d at 733, the Common Pleas Court properly exercised its discretion in dismissing this case on *forum non conveniens* grounds. See *Engstrom*, 855 A.2d at 56; *Horvatter*, 193 A.3d at 427-428; *Pisieczko*, 73 A.3d at 1263-1264. The Common Pleas Court's Order should therefore be affirmed.

E. This Court Should Also Clarify That Plaintiff's Choice of Forum is Afforded No Deference For Purposes of *Forum Non Conveniens* Where Neither the Plaintiff Nor the Cause(s) of Action Have Any Connection to Pennsylvania

The other issue that merits clarification in *Amici's* view is the issue of deference. Pennsylvania courts have repeatedly stated that a plaintiff's choice of forum is entitled to some form of deference in the context of a *forum non conveniens* analysis—whether that be “great deference,” *e.g.*, *Mundy v. Lake Mtn. Co.*, 59 Pa. D. & C.4th 424, 427 (Phila. Cnty. Ct. Com. Pl. 2001); “great weight,” *e.g.*, *Brown v. Conrail*, 77 Pa. D. & C.5th 402, 410 (Phila. Cnty. Ct. Com. Pl. 2019); regular, run-of-the-mill deference, *e.g.*, *Wood v. E.I. du Pont de Nemours & Co.*, 829 A.2d 707, 711 (Pa. Super. Ct. 2003) (internal citation and quotation marks omitted); or “less deference,” *e.g.*, *Bochetto v. Piper Aircraft Co.*, 94 A.3d 1044, 1056 (Pa. Super. Ct. 2014). Indeed, Plaintiffs’ *amicus* invokes the concept of deference, albeit indirectly, by repeatedly claiming that a “heavy burden” is required to overcome a plaintiff’s choice of forum. (Br. of *Amici Curiae* Pa. Ass’n for Justice at 5, 6.)

But framing the plaintiff's choice of forum in terms of "deference" invariably leads to the problem of quantifying the various degrees of deference—which are inherently amorphous. The other, more fundamental issue is that the concept of deference in the *forum non conveniens* context traces back to *Koster v. Lumbermens Mutual Casualty Company*, 330 U.S. 518 (1947), which was a companion case to *Gulf Oil*. Indeed, both cases were decided on the same day, March 10, 1947. See *Gulf Oil*, 330 U.S. at 501; *Koster*, 330 U.S. at 518. *Lumbermens*, however, did not involve a situation in which a plaintiff chose to bring his or her claims in a foreign state. Instead, the plaintiff in *Lumbermens* filed suit in his "home jurisdiction." *Id.* at 524 ("Where there are only two parties to a dispute, there is good reason why it should be tried in the plaintiff's *home forum* if that has been his choice. He should not be deprived of the presumed advantages of his *home jurisdiction* except upon a clear showing of facts which either (1) establish such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent, or (2) make trial in the chosen

forum inappropriate because of considerations affecting the court's own administrative and legal problems.” (emphasis added).) While there are reasons to presume that a forum is reasonable, for *forum non conveniens* purposes, when the plaintiff files suit in his or her “home jurisdiction,” no such reasons exist when the plaintiff has no connection to the forum state. This is especially true when the situs of the plaintiff’s cause(s) of action occurred elsewhere like Plaintiffs here. (See Br. of Appellants, Ex. B at 2.)

Moreover, to continue to afford deference where neither the plaintiff nor the cause(s) of action have a connection to the forum only incentivizes forum shopping. This case illustrates that problem because not only does it lack any significant connection to Pennsylvania, it also lacks any significant connection to Philadelphia County. Plaintiffs argue otherwise, asserting that there are “profound ties” between this case and their chosen forum because of the location of the excavator. (Br. of Appellants at 10.) Plaintiffs even proclaim that the “product’s physical presence” is a “weighty reason why this case should remain in Philadelphia County instead of being dismissed in favor of refiling in the State

of New Jersey.” (*Id.* at 18.) But the excavator is stored in Bucks County, not Philadelphia County. (See *id.* at 11) This begs the question: if the location of the excavator is key to Plaintiffs’ choice of forum, then why did Plaintiffs file suit in Philadelphia County? The answer is obvious: Plaintiffs want the potential for a lottery-ticket style verdict. See *Mallory*, 600 U.S. at 153–154 (Alito, J., concurring in part and concurring in the judgment) (acknowledging forum shopping by Philadelphia plaintiffs to a “venue [] reputed to be especially favorable to tort plaintiffs”); see also Br. of *Amici Curiae* PCCJR, *et al.* in *Tranter v. Z&D Tours, Inc.*, Nos. 18 EAP 2024 to 32 EAP 2024 (Pa.), at 26–27 (explaining that “Philadelphia has become the epicenter of the recent trend of nuclear verdicts (\$10 million+) and thermonuclear verdicts (\$100 million+) in Pennsylvania” and including a chart of recent large verdicts to substantiate the point). Yet, *forum non conveniens* is intended to avoid a plaintiff from haling a defendant into an inconvenient forum “in the hope that they will secure easier or larger recoveries.” *Hovatter*, 193 A.3d at 424 (internal citation and quotations marks omitted).

And this is not the only case pending before this Honorable Court where plaintiffs have engaged in forum shopping. In the *In re: Paraquat Products Liability Litigation*, No. 154 EDA 2026 (Pa. Super. Ct.) (pending), over one thousand plaintiffs have filed a civil action in a mass tort program, and more than 91% of them have identified zero connection between their claims and Pennsylvania. (See Br. of Appellants in *In re: Paraquat Prods. Liab. Litig.* at 4.) That includes the nine bellwether plaintiffs as they “have never lived or worked in Pennsylvania,” “do not allege paraquat exposure or any other injurious conduct in Pennsylvania,” and “did not receive treatment for their injuries in Pennsylvania;” “there are no witnesses, documents, or other evidence specific to their claims located in Pennsylvania;” and “other states’ substantive law would likely govern their claims.” Order in *In re: Paraquat Prods. Liab. Litig.*, No. 179 EDM 2025, *slip op.* at 3 (Pa. Super. Ct. Jan. 14, 2026) (*per curiam*). Plaintiffs here similarly have no ties to Pennsylvania. They do not live here. They do not work here. They do not pay taxes here. And the accident in question happened somewhere else. In contrast, Plaintiffs live, work, and pay taxes

in New Jersey, and the accident happened there. Under these circumstances, why should a Pennsylvania court defer to Plaintiffs' choice of forum, particularly when a New Jersey court has already welcomed these New Jersey residents with open arms? (See Br. of Appellants at 36–37.)

Without further guidance from this Court, it stands to reason that the forum shopping plaguing Pennsylvania courts will only get worse. Accordingly, this Court should clarify that a plaintiff's choice of forum is entitled to no deference for purposes of *forum non conveniens* where, as here, neither the plaintiff nor the cause(s) of action have any connection to Pennsylvania.

F. This Court Should Reaffirm That, Pursuant to Binding Precedent, There Is No “Affidavit Requirement” or Other Particular Form of Proof to Establish *Forum Non Conveniens*

The last aspect of the doctrine of interstate *forum non conveniens* that *Amici* believe requires this Court's attention is the type and quantum of proof to establish that dismissal is appropriate under 42 Pa.C.S. § 5322(e). Plaintiffs repeatedly fault Caterpillar for submitting a “lone affidavit” in support of its Motion to Dismiss for *Forum Non Conveniens*. (See Br. of Appellants at 22, 24.) But

just last year, the Pennsylvania Supreme Court reiterated that “there is no ‘affidavit requirement’ at all” to establish *forum non conveniens*. *Tranter*, 343 A.3d at 1126.⁴

Likewise, in its now vacated opinion, the Superior Court panel below construed *Tranter* as setting forth a brightline rule requiring a party seeking a *forum non conveniens* dismissal to “give at least a general statement of potential witnesses’ identities and a brief summary of their anticipated testimony.” *Garcia v. Foley, Inc.*, No. 3200 EDA 2024, *slip op.* at 15 (Pa. Super. Ct. Mar. 31, 2026). But *Tranter* held that “no particular form of proof is required” for *forum non conveniens*. 343 A.3d at 1126. It also held that “[t]here is no fixed litmus for the content of a witness affidavit.” *Id.* And *Tranter* reaffirmed the Pennsylvania Supreme Court’s decision in *Bratic v. Rubendall*, 99 A.3d 1 (Pa. 2014), including its observations that “[i]t is not necessary to articulate to a jurist the inherently

⁴ Although *Tranter* dealt with a *forum non conveniens* transfer between counties and not a *forum non conveniens* dismissal in favor of another jurisdiction, this Court has applied *Tranter*’s reasoning in the context of interstate *forum non conveniens*. See *Duxbury v. Reconstructive Orthopedic Assocs. II, P.C.*, 354 A.3d 551, 562 n.8. (Pa. Super. Ct. 2026).

empirical concept that distance and expedience are inversely proportional;” “[t]he trial judge need not be told like a child how the distance in and of itself makes things more disagreeable and disruptive to the persons obliged to travel;” “one needs no detailed affidavit to understand the difference in logistics necessitated by a separation of 100 miles;” “the oppressiveness of trial 100 miles away, which is manifestly troublesome;” and “it may be presumed without fear of contradiction that to each of [the witnesses], time indeed is money, and days of participating in trial in Philadelphia would impact their duties/operations.” *Id.* at 9–10 (internal citation and quotation marks omitted).

Therefore, and because the undisputed facts in this case show the absence of any meaningful contact between Plaintiffs and their claims, on the one hand, and the Commonwealth of Pennsylvania, on the other, and since the distance from the Philadelphia courthouse is approximately 92 miles away from the site of the accident (see Br. of Appellee at 21), the “lone affidavit” submitted by Caterpillar was more than adequate to establish *forum non conveniens* under *Bratic* and *Tranter*—and this Court should

reaffirm that there is no “affidavit requirement” or other particular form of proof to establish dismissal under 42 Pa.C.S. § 5322(e).

CONCLUSION

For the foregoing reasons, as well as the additional reasons set forth in the Brief of Appellees, *Amici* respectfully request that this Court affirm the Common Pleas Court’s Order granting Defendants’ Motion to Dismiss for *Forum Non Conveniens* and dismiss this case. *Amici* ask that, in the process, this Court clarify or reaffirm the contours of the doctrine of interstate *forum non conveniens*, namely, that the nexus between the dispute and the forum is a relevant consideration; plaintiff’s choice of forum is entitled to no deference where neither the plaintiff nor the cause(s) of action have any connection to Pennsylvania; and there is no “affidavit requirement” or other particular form of proof to establish *forum non conveniens*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, *ET AL.* complies with the word-count limit set forth in Pa.R.A.P. 531(b)(3). Based on the word-count function of the word processing system used to prepare the Brief, the substantive portions of the Brief (as required by Pa.R.A.P. 2135(b) and (d)), contain 6,825 words.

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 4, 2026 /s/ Casey Alan Coyle
Casey Alan Coyle, Esquire

PROOF OF SERVICE

I hereby certify that, on this 4th day of September, 2026, I am causing this document to be filed via PACFile, which will serve a copy on all counsel of record.

/s/ Casey Alan Coyle
Casey Alan Coyle, Esquire