

IN THE
Supreme Court of Pennsylvania
30 EAP 2026

DAJAH HAGANS, AS PARENT AND NATURAL GUARDIAN OF J.H., A
MINOR, INDIVIDUALLY AND IN HER OWN RIGHT,

vs.

HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA, UNIVERSITY OF
PENNSYLVANIA HEALTH SYSTEM, TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, KRISTEN LEITNER, M.D., JULIE A. SAYAMA, M.D.,
WHITNEY R. BENDER, M.D., SARAH GUTMAN, M.D., DENISE JOHNSON,
M.D., JESSICA PETERSON, M.D., AND VICTORIA KROESCHE, R.N.

APPEAL OF: HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA

*On appeal from the judgment of the Superior Court of Pennsylvania dated July 10, 2025, in No. 536 EDA 2024,
affirming the judgment of the Court of Common Pleas of Philadelphia County dated January 19, 2024, in No.
190607280*

**BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA AND THE PENNSYLVANIA CHAMBER
OF BUSINESS AND INDUSTRY IN SUPPORT OF VACATUR**

David R. Fine
Pa. Supreme Ct. No. 66742
K&L GATES LLP
Market Square Plaza
17 North Second St., 18th Fl.
Harrisburg, PA 17101
(717) 231-4500
david.fine@klgates.com

Counsel for *Amici Curiae*

TABLE OF CONTENTS

Page

STATEMENT OF THE INTERESTS OF THE <i>AMICI CURIAE</i>	1
INTRODUCTION.....	2
ARGUMENT	4
I. Pennsylvania law does not recognize the sort of “team liability” the Superior Court endorsed.	4
II. Pennsylvania law should not recognize the sort of “team liability” the Superior Court endorsed.	7
CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Behr v. Anderson</i> , 491 P.3d 189 (Wash. Ct. App. 2021)	6
<i>Cox v. Bd. of Hosp. Managers for City of Flint</i> , 651 N.W.2d 356 (Mich. 2002)	6, 7
<i>Crowell v. City of Philadelphia</i> , 613 A.2d 1178 (Pa. 1992)	5, 9
<i>Gilbert v. Korvette, Inc.</i> , 327 A.2d 94 (Pa. 1974)	11
<i>Hagans v. Hospital of the Univ. of Pa.</i> , 343 A.3d 251 (Pa. Super. 2025)	8
<i>Hagans v. Hospital of the Univ. of Pa.</i> , No. 408 EAL 2025 (Pa. July 29, 2026)	3, 4
<i>Mamalis v. Atlas Van Lines, Inc.</i> , 560 A.2d 1380 (Pa. 1989)	5, 6
<i>Miller v. Vanderbilt University</i> , No. M2015-02223-COA-R3-CV, 2017 WL 4467445 (Tenn. Ct. App. Sept. 29, 2017)	6
<i>Muldowney v. Middleman</i> , 107 A.2d 173 (Pa. Super. 1954)	11
<i>Scampone v. Highland Park Care Center, LLC</i> , 57 A.3d 582 (Pa. 2012)	4, 5, 6, 9

Other Authorities

W. Page Keeton et al., <i>Prosser and Keeton on the Law of Torts</i> § 69, at 499 (5th ed. 1984)	5
Restatement (Second) of Torts § 328D	11
U.S. Chamber Institute for Legal Reform, <i>Tort Costs in America</i> (3d ed. Nov. 2024)	11, 12

STATEMENT OF THE INTERESTS OF THE *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America (the “U.S. Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the 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 Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the 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 “Pennsylvania Chamber”) is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth’s private workforce. Its members range from small companies to mid-size and large business enterprises across all industry sectors in the Commonwealth. The Pennsylvania Chamber’s mission is to advocate on public-policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania’s economic development for the benefit of all Pennsylvania citizens.

¹ No person or entity other than the *amici curiae*, their members or counsel paid in whole or in part for the preparation of this brief or authored this brief in whole or in part.

This case is of particular interest to the U.S. Chamber and the Pennsylvania Chamber because the Superior Court has condoned an expansion of *respondeat superior* that ignores the roots and necessary predicates of that principle by allowing the plaintiff to impose a sort of ethereal “team liability” without a jury finding of negligence by any agent or agents of the principal. That expansion, if sustained, could inappropriately impose liability on a broad array of businesses in the absence of proper findings of fact.

INTRODUCTION

Pennsylvania law provides two ways for a medical-malpractice plaintiff to impose liability on a healthcare facility: by proving direct liability or by proving derivative liability for the negligence of the facility’s agents. Each route to liability requires the plaintiff to satisfy a well-established burden of proof.

In this case, the plaintiff proved neither direct nor derivative liability against the Hospital of the University of Pennsylvania (the “HUP”). Indeed, after she abandoned her direct claim against HUP, the plaintiff’s lawyer told the trial judge that the plaintiff could not “show which individual did what when” such that he was in a “Catch-22” because, if the defendants wanted to list each individual defendant on the verdict form and ask what each did or did not do, “[t]he answer is nothing ... [W]hat we are saying is this whole team, on this day, failed this patient.”

Under the law, that admission should have ended the case against the hospital. But the trial court allowed the case to go to the jury with a verdict form that did not call for the jurors to assess whether any particular hospital agent had acted negligently (even though those individual employees were defendants), and the jury awarded the largest medical-malpractice verdict in Pennsylvania history. The trial court and the Superior Court sustained that verdict even though HUP identified several significant errors that warrant reversal.

Amici focus here on one of those errors—the creation of a new “team” liability theory that eschews the sort of proof Pennsylvania courts have long required—because its potential consequences for Pennsylvania law loom large not only in medical malpractice but in broader contexts.² As *Amici* demonstrate below, under Pennsylvania law, a principal’s liability under *respondeat superior* necessarily relies on a finding that the principal’s agent, acting within the scope of the agency, acted culpably and caused the plaintiff some harm. The law does not permit the plaintiff to avoid proving the agent’s culpability by pointing to a team of agents and suggesting that the team must somehow have been culpable. And the Court should not extend the law to

² The Court granted allowance of appeal on three issues. *See Hagans v. Hospital of the Univ. of Pa.*, No. 408 EAL 2025 (Pa. July 29, 2026) (granting allowance of appeal). In focusing on the first of those issues, *Amici* do not mean to suggest that they disagree with HUP’s positions on the others. They do not.

allow such liability since doing so would unfairly relieve the plaintiff of her burden of proof and encourage juries to find liability simply because there was a poor outcome.

Amici ask this Court to correct the Superior Court’s mistaken holding and confirm that a plaintiff seeking to hold a principal liable under *respondeat superior* must prove to the jury—and have the jurors make a finding—that an identifiable agent of that principal has committed a tort in the course of the agency.

ARGUMENT

I. Pennsylvania law does not recognize the sort of “team liability” the Superior Court endorsed.

In its order granting allowance of appeal, the Court accepted the following question:

Is it reversible error to allow vicarious liability to be imposed on a principal where the principal’s agents were named defendants in the same negligence action but the jury was not asked to and did not find liability on the part of any individual agent who stood trial?

Hagans v. Hospital of the Univ. of Pa., No. 408 EAL 2025 (Pa. July 29, 2026).

As the Court has held, there are two means to prove corporate liability: direct and derivative. *Scampone v. Highland Park Care Center, LLC*, 57 A.3d 582, 597 (Pa. 2012).

When a business breaches a duty it owes directly to a third party—*e.g.*, to maintain safe premises or to hire competent employees—it may be held directly liable to that third party. *Id.* at 598. When an agent of the business breaches a duty in the course and scope of his agency, the business may be held liable derivatively. *Id.* The

plaintiff's direct-liability claim against HUP was dismissed, and that route to liability is not before the Court.

“Vicarious liability, sometimes referred to as imputed negligence, means in its simplest form that, by reason of some relation existing between A and B, the negligence of A is to be charged against B although B has played no part in it, has done nothing whatever to aid or encourage it, or indeed has done all that he possibly can to prevent it.” *Crowell v. City of Philadelphia*, 613 A.2d 1178, 1181 (Pa. 1992) (quoting Prosser and Keeton on Torts § 69 at 499 (5th ed.1984)). Derivative liability is not a means to establish tortious conduct; it is, instead, a means of sharing established liability because of public-policy determinations about risk and availability of resources for a plaintiff to recover. *Scampone*, 57 A.3d at 597.

The derivative liability of the principal is inexorably tied to the liability of its individual agent. *Mamalis v. Atlas Van Lines, Inc.*, 560 A.2d 1380, 1381 (Pa. 1989) (“vicarious liability is inseparable from the claim against the agent since any cause of action is based on the acts of only one tortfeasor.”).

It is important to underscore what that legal requirement means. The plaintiff bears a burden to prove that one or more individual agents acted tortiously within the scope of the agency and caused harm whether those individuals are named as defendants (as in this case) or not. But the predicate finding is crucial since, as this

Court has explained time and again, derivative liability must arise from an agent's tortious conduct. *See, e.g., Scampone*, 57 A.3d at 597; *Mamalis*, 560 A.2d at 1381.

In this case, the plaintiff not only did not ask the trial court to obtain jury findings about the negligence of any of the healthcare professionals named as defendants and agents of HUP, she specifically asked that the jury only make a finding as to the negligence of the hospital itself “acting through” its agents. Before the Superior Court entered its decision in this case, no Pennsylvania appellate court had approved derivative liability in that setting. The trial court gave a verdict form to the jury that reflected a theory of direct liability against HUP itself, even though the court had previously dismissed plaintiff's direct-liability claim.

Notably, courts in other jurisdictions have squarely rejected the idea the Superior Court accepted here. In *Cox v. Bd. of Hosp. Managers for City of Flint*, 651 N.W.2d 356 (Mich. 2002), the Michigan Supreme Court found error when a trial court instructed the jury that it could impose liability on a hospital if its neonatal intensive care unit breached a standard of care. 651 N.W.2d at 361. The court concluded that the plaintiff had to prove negligence by at least one agent of the hospital to sustain her burden of proof. *Id.*; *see also, Miller v. Vanderbilt University*, No. M2015–02223–COA–R3–CV, 2017 WL 4467445 at *5 n.5 (Tenn. App. Sept. 29, 2017) (same); *Behr v.*

Anderson, 491 P.3d 189 (Wash. App. 2021) (rejecting argument that trial court erred by refusing to give “team liability” charge).³

There is simply no basis in Pennsylvania law for “team liability” as an avenue for derivative liability. This Court should reverse the Superior Court’s misapplication of tort law and, in light of the fatally flawed verdict form, remand for a new trial on derivative liability.

II. Pennsylvania law should not recognize the sort of “team liability” the Superior Court endorsed.

Neither should this Court extend Pennsylvania law to permit “team liability.” There are a number of reasons counseling against this reversal of settled course and dramatic expansion of the tort law.

1. There is no basis for allowing vicarious liability to alleviate the plaintiff’s duty to prove that *someone* acted tortiously and harmed the plaintiff, but the theory accepted here by the Superior Court would allow a plaintiff to obscure his inability to meet that burden. Indeed, that is what happened here. The plaintiff’s counsel conceded to the trial judge that he could not say which individual defendants may

³ The Michigan court was unswayed by the plaintiff’s suggestion that it would be “too difficult” to prove a specific agent’s liability: “no principle of law provides that plaintiffs are required to prove every element of their case unless it is ‘too difficult’ to do so.” 651 N.W.2d at 362 n.12. The same point applies here to the plaintiff’s counsel’s plea at the charging conference. An inability to prove individual negligence is not an excuse for omitting that burden.

have acted negligently, and the trial court allowed the case to proceed to the jury notwithstanding that concession.

Without the rigor of requiring jurors to make specific findings, the “team liability” theory urged by the plaintiff and accepted by the Superior Court invites jurors to impose a sort of absolute liability: something bad resulted, and so there *must* have been negligence or other wrongdoing. That danger is all the greater in cases with difficult facts, which may inflame the passions of jurors and encourage them to depart from the burden of proof to address a perceived wrong. It is also probably easier for jurors to hold faceless corporations liable—appropriately or not—than it is for them to hold individual persons liable. The Court should resist turning a policy-based principle into a form of absolute liability.⁴

2. That danger—of “team liability” amounting to absolute liability—is not limited to the healthcare setting. Nearly every business of any scale organizes its operations through teams: a manufacturing line staffed by machine operators and a shift supervisor; a trucking dispatch office staffed by dispatchers and safety coordinators; a retail store staffed by associates, shift leads, and a store manager; a

⁴ The Superior Court asserted that the plaintiff used expert testimony and other evidence to demonstrate the standard of care for individual employees and how their breaches of those standards harmed the plaintiff. *Hagans*, 343 A.3d at 268. But that begs the question: if the plaintiff offered evidence on those issues, why not ask the jurors to indicate on the verdict form which, if any, of that evidence they found credible? And the Superior Court’s assertion ignores plaintiff’s counsel’s concession that he could not prove which person or persons acted negligently.

bank branch staffed by tellers, personal bankers, and a branch manager; a construction site staffed by a crew and a foreman; a call center staffed by representatives and a floor supervisor. If a jury may impose liability on the enterprise by finding only that the conduct of the business, “acting by and through” a list of named employees, fell below some collective and unspecified standard of care—without finding that any particular employee, measured against the standard applicable to that employee’s role, was negligent—then every one of these enterprises faces the same exposure. A plaintiff who cannot prove which employee erred or how need only prove that an adverse outcome occurred while a team was present and then ask the jury to hold the business collectively responsible. That is not vicarious liability. It is liability without fault, dressed in vicarious liability’s terminology, and it can arise in any industry in which more than one employee ever works on the same task.

3. Vicarious liability—including through *respondeat superior*—is a policy-driven means to allocate risk. *Scampone*, 57 A.3d at 597. Vicarious liability serves two basic policy interests: (1) it assumes that the principal is better positioned to police the conduct of its agents and, so, allows imputed liability; and (2) it seeks to ensure that injured plaintiffs have recourse to a party that can pay a judgment if the agent cannot. *Id.*; *Crowell*, 613 A.2d at 1182.

“Team liability” undercuts at least the first of those policies. Where a verdict does not require that the negligence of any particular employee be identified, it is far

harder to justify derivative liability on the basis that the employer could have reduced the risk of harm by any specific, correctable practice or by better training, supervision or staffing.

4. The danger of juries imposing absolute liability is compounded by the scale of contemporary jury verdicts. Businesses across industries have faced a marked increase in particularly large verdicts in recent years, a trend that commentators and courts alike have attributed in part to litigation strategies designed to focus a jury's attention on a well-resourced institutional defendant rather than on the proven conduct of any particular individual. A legal rule that permits such verdicts to be sustained without even the traditional predicate finding of an identified agent's negligence compounds the unpredictability businesses already face from the scale of modern verdicts, and it rewards exactly the kind of undifferentiated, institution-focused argument that sound tort doctrine has always resisted.

5. Pennsylvania already recognizes the doctrine of *res ipsa loquitur* as an exception to the general tort law, shifting the burden of proof to allow plaintiffs to recover in certain situations where they cannot point to a specific instance of negligence. But this is not a *res ipsa loquitur* case: the plaintiff did not plead it, the trial court did not instruct on it, and the parties did not brief the Superior Court on it. Rather, the Superior Court accepted a “team liability” that ignores the limits of *res ipsa loquitur*—limits that carefully developed over the common law's long history. *See*

Gilbert v. Korvette, Inc., 327 A.2d 94, 99 (Pa. 1974) (adopting Restatement (Second) of Torts § 328D) (allowing inference of negligence where (a) the event is of a kind that does not ordinarily occur in the absence of negligence; (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff). If a plaintiff cannot satisfy the elements of *res ipsa*, this Court's precedent excludes that plaintiff from the narrow set of cases in which it will apply a presumption of negligence. The Superior Court's rule here extends the benefit of what amounts to a *res ipsa* presumption far beyond what this Court and the common law have recognized.

6. Pennsylvania permits a principal held liable under *respondeat superior* to seek indemnification from its agent. *Muldowney v. Middleman*, 107 A.2d 173, 175 (Pa. Super. 1954). If there is no need to identify which agent engendered derivative liability, the principal will be frustrated should it wish to seek indemnification. At the very least, a subsequent indemnification action would be far more complicated because the principal would effectively have to join the whole team and then try to prove the liability of one or more members.

7. The interstate character of American commerce magnifies the stakes of this question. Tort costs amounted to \$529 billion, or 2.1 percent of the U.S. gross domestic product, in 2022. U.S. Chamber Inst. For Legal Reform, *Tort Costs in America*

(3d ed. Nov. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf. Pennsylvania rates as one of the 15 most expensive jurisdictions in the country by tort costs, with each household in the state losing over \$3,700 per year to the tort system. *Id.*

National and multistate businesses structure their compliance programs, insurance placement, and risk allocation across every jurisdiction in which they operate, and they do so by reference to the settled, majority understanding of *respondeat superior*: that a principal is subject to liability for the torts of its agents committed within the scope of employment, not for the undifferentiated conduct of an enterprise considered as a whole. Where a court departs from that settled, cross-jurisdictional understanding, businesses operating in that jurisdiction are forced either to accept materially greater and less predictable liability exposure there than elsewhere in the country or to alter their operations, staffing structures, and risk-management practices specifically to account for that jurisdiction's outlier rule. Neither outcome serves the interests of the jurisdiction, its businesses, or the customers, patients, and members of the public those businesses serve.

8. Finally, there is no reason for the expansion of derivative liability—and the concomitant easing of the plaintiff's burden of proof—that the Superior Court allowed. Whether in the context of medical malpractice or any other form of negligence, plaintiffs have available to them the full panoply of discovery rules

Pennsylvania recognizes to identify which individual agent, if any, was negligent. They may rely on depositions and document requests to ferret out information and on experts to interpret that information as necessary. If those tools do not allow a plaintiff to prove negligence, it may simply be because there was no negligence. The answer to that is a defense verdict, not an easing of the requirements of proof.

This case is an example of that point. Plaintiff's counsel told the court he could not identify which individual employee might have been negligent. That concession should have been dispositive. Instead, it led the trial and intermediate appellate courts to expand a doctrine to accommodate the plaintiff's lack of proof.

For the foregoing reasons, *Amici* respectfully submit that vicarious liability should not be sustained on a verdict form that asks a jury only whether a business, acting through an undifferentiated “team” of agents, fell below some collective standard of care. *Respondeat superior* has always required, and should continue to require, a finding that a specific, identified agent was negligent before that negligence is imputed to the principal. This Court should decline invitations to relax that requirement, however sympathetic the underlying facts, because doing so would convert a fault-based doctrine that every business relies on into a rule of effectively strict liability for any enterprise that organizes its work through more than one employee—which is to say, for virtually every business in the country.

CONCLUSION

Amici Curiae the Chamber of Commerce of the United States of America and the Pennsylvania Chamber of Business and Industry ask the Court to vacate the judgment of the Superior Court.

Respectfully submitted,

K&L GATES LLP



David R. Fine
PA66742
Market Square Plaza
17 North Second St., 18th Fl.
Harrisburg, PA 17101
(717) 231-4500
david.fine@klgates.com
Counsel for Amici Curiae

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CERTIFICATE OF COMPLIANCE: LENGTH OF BRIEF

I hereby certify that the foregoing brief consists of 3,304 words based on the word-count function of the word-processing program on which it was prepared, excluding the title page, table of contents, table of citations, and signature blocks, and thus complies with the requirement of Pennsylvania Rules of Appellate Procedure 531 and 2135 that *amicus* briefs shall not exceed 7,000 words.

/s/ David R. Fine

CERTIFICATE OF COMPLIANCE: PUBLIC ACCESS POLICY

I certify that this brief 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.

/s/ David R. Fine

PROOF OF SERVICE

I certify that, on October 7, 2026, I filed the attached brief with the Court's PACFile system such that all counsel will receive service automatically, which satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121.

/s/ David R. Fine