

SUPREME COURT OF LOUISIANA

DOCKET NO. 2023-C-00170

HENRY PETE

PLAINTIFF-RESPONDENT

VERSUS

BOLAND MARINE AND MANUFACTURING
COMPANY, LLC, ET AL.

DEFENDANTS-APPLICANTS

*On Writ of Certiorari and/or Review;
Civil District Court, Parish of Orleans, No. 2019-10545;
Court of Appeal, Fourth Circuit, No. 2021-CA-0626*

**MOTION FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF BY THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND
COALITION FOR LITIGATION JUSTICE, INC.
AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPLICANTS**

**TAYLOR, WELLONS, POLITZ,
& DUHE, LLC**

By: 
Samuel M. Rosamond, III (17122)
1555 Poydras Street, Ste. 2000
New Orleans, LA 70112
Tel: (504) 525-9888
Fax: (504) 525-9899
srosamond@twpdllaw.com

*Counsel for Amici Curiae Chamber of
Commerce of the United States of America
and The Coalition for Litigation Justice, Inc.*

Paul W. Kalish
Whitney M. Costin
Mintz Levin Cohn Ferris
Glovsky and Popeo PC
555 12th Street NW, Suite 1100
Washington, D.C. 20004
Tel: (202) 434-7300
pwkalish@mintz.com
wmcostin@mintz.com

Of Counsel

SUPREME COURT OF LOUISIANA

DOCKET NO. 2023-C-00170

HENRY PETE

PLAINTIFF-RESPONDENT

VERSUS

BOLAND MARINE AND MANUFACTURING
COMPANY, LLC, ET AL.

DEFENDANTS-APPLICANTS

*On Writ of Certiorari and/or Review;
Civil District Court, Parish of Orleans, No. 2019-10545;
Court of Appeal, Fourth Circuit, No. 2021-CA-0626*

**MOTION FOR LEAVE OF COURT TO FILE AMICI CURIAE BRIEF BY THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND
COALITION FOR LITIGATION JUSTICE, INC.**

The Chamber of Commerce of the United States of America (“Chamber”) and Coalition for Litigation Justice, Inc. (“Coalition”), through their undersigned counsel and pursuant to Rule VII, sec. 12 of the Rules of the Supreme Court of Louisiana, submit this motion to file an *amici curiae* brief in this matter.

The purpose of this brief is to provide the Court with a comparison of the way Louisiana courts apply the abuse of discretion standard when evaluating potentially excessive compensatory damages verdicts with the more robust way many other jurisdictions apply the same or similar standards, and to discuss the potential impacts of same.

In Louisiana, historically there has been a two-step test for review of potentially excessive damages awards, the first of which often results in precluding consideration of prior verdicts—one of the most important tools in objectively assessing if a damages award is excessive—even though prior awards are typically presented to the reviewing court at the outset of their assessment. As set forth by this Court, “[t]he initial inquiry is whether the award for the particular injuries and their effects under the particular circumstances on the particular injured person is a clear abuse of the ‘much discretion’ of the trier of fact.” *Youn v. Maritime Overseas Corp.*, 623 So. 2d 1257,

1260 (La. 1993). Then, “[o]nly after such a determination of an abuse of discretion is a resort to prior awards appropriate and then for the purpose of determining the highest or lowest point which is reasonably within that discretion.” *Id.* In other words, the *Youn* court seemingly contemplated that the abuse of discretion issue would be resolved without ever considering other verdicts or prior awards, thus denying courts an important tool—which typically is before the court anyway, should the second analytical step be necessary—in addressing that issue.

Many other jurisdictions allow courts to consider comparable verdicts/prior awards during the initial abuse of discretion analysis. Analysis of comparable awards often has a meaningful impact on the ultimate resolution of this issue, and would assist Louisiana jurists in ensuring that no single award represents a gross and arbitrary deviation from judgments in factually similar Louisiana cases. Indeed, as the dissent recognized in the Court of Appeal below, “[r]ecent awards for the particular type of damages suffered by plaintiffs in cases similar to the instant case would suggest that a general damage award should be somewhere in the neighborhood of half of what was awarded to Mr. Pete.” *Pete v. Boland Marine & Mfg. Co., LLC*, 21-0626 (La. App. 4 Cir., 01/05/23); 356 So. 3d 1147, 1164.

Amici respectfully suggest that Louisiana clarify its position of reviewing courts’ use of prior awards, and specifically allow courts to evaluate and consider comparable cases as part of the abuse of discretion analysis. Strict application of *Youn* ties judges’ hands from utilizing a powerful guidepost to what is excessive in comparable cases.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici represent businesses, insurers, and others that are concerned with the predictability and fairness of Louisiana’s civil justice system.

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million 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 Coalition for Litigation Justice, Inc. (“Coalition”) is a nonprofit association formed by insurers in 2000 to address and improve the litigation environment for asbestos and other toxic tort claims.¹ The Coalition files *amicus curiae* briefs in important cases that may have a significant impact on the mass tort litigation environment.

Neither the Chamber nor the Coalition have been compensated for submitting this *amicus curiae* brief.

WHEREFORE, *amici* move the Court for an order granting them leave to file the *amicus curiae* brief in this matter submitted with this motion.

Respectfully submitted:

**TAYLOR, WELLONS, POLITZ,
& DUHE, APC**

By: 

Samuel M. Rosamond, III (17122)
1555 Poydras Street, Ste. 2000
New Orleans, LA 70112
Tel: (504) 525-9888
Fax: (504) 525-9899
srosamond@twpdlaw.com

*Counsel for Amici Curiae Chamber of Commerce of
the United States of America and Coalition for
Litigation Justice, Inc.*

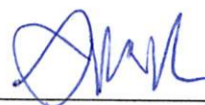
Paul W. Kalish
Whitney M. Costin
Mintz Levin Cohn Ferris
Glovsky and Popeo, PC
555 12th Street NW, Suite 1100
Washington, DC 20004
Tel: (202) 434-7300
pwkalish@mintz.com
wmcostin@mintz.com

Of Counsel

¹ The Coalition includes Century Indemnity Company; Allianz Reinsurance America, Inc.; Great American Insurance Company; Nationwide Indemnity Company; Resolute Management, Inc.; a third-party administrator for numerous insurers; and TIG Insurance Company.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel by U.S. Mail, postage prepaid and properly addressed, by fax, by mail, and/or email, this 5th day of June, 2023.



SUPREME COURT OF LOUISIANA

DOCKET NO. 2023-C-00170

HENRY PETE

PLAINTIFF-RESPONDENT

VERSUS

BOLAND MARINE AND MANUFACTURING
COMPANY, LLC, ET AL.

DEFENDANTS-APPLICANTS

*On Writ of Certiorari and/or Review;
Civil District Court, Parish of Orleans, No. 2019-10545;
Court of Appeal, Fourth Circuit, No. 2021-CA-0626*

ORDER

Considering the Motion for Leave of Court to File an *Amici Curiae* Brief by the Chamber of Commerce of the United States of America and Coalition for Litigation Justice, Inc.:

IT IS ORDERED THAT the motion be and hereby is granted; and

IT IS FURTHER ORDERED THAT the *amici curiae* brief shall be deemed filed as of the date of this order.

New Orleans, Louisiana, this ____ day of _____, 2023.

For the Court

SUPREME COURT OF LOUISIANA

DOCKET NO. 2023-C-00170

HENRY PETE

PLAINTIFF-RESPONDENT

VERSUS

BOLAND MARINE AND MANUFACTURING
COMPANY, LLC, ET AL.

DEFENDANTS-APPLICANTS

*On Writ of Certiorari and/or Review;
Civil District Court, Parish of Orleans, No. 2019-10545;
Court of Appeal, Fourth Circuit, No. 2021-CA-0626*

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA AND COALITION FOR LITIGATION JUSTICE, INC.
AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPLICANTS**

**TAYLOR, WELLONS, POLITZ,
& DUHE, LLC**

By: 

Samuel M. Rosamond, III (17122)

1555 Poydras Street, Ste. 2000

New Orleans, LA 70112

Tel: (504) 525-9888

Fax: (504) 525-9899

srosamond@twpdlaw.com

*Counsel for Amici Curiae Chamber of
Commerce of the United States of America
and The Coalition for Litigation Justice, Inc.*

Paul W. Kalish
Whitney M. Costin
Mintz Levin Cohn Ferris
Glovsky and Popeo PC
555 12th Street NW, Suite 1100
Washington, D.C. 20004
Tel: (202) 434-7300
pwkalish@mintz.com
wmcostin@mintz.com

Of Counsel

TABLE OF CONTENTS

ARGUMENT1

I. INTRODUCTION1

II. OTHER JURISDICTIONS EVALUATE POTENTIALLY EXCESSIVE DAMAGES AWARDS BY PERMITTING CONSIDERATION OF COMPARABLE AWARDS IN OTHER CASES.....3

III. PRECLUDING COURTS FROM AT LEAST BEING ALLOWED TO CONSIDER PRIOR AWARDS WHEN EVALUATING POTENTIAL EXCESS DAMAGES AWARDS CAN YIELD UNINTENDED, ADVERSE CONSEQUENCES5

IV. CONCLUSION.....7

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Adams v. City of Chicago</i> , 798 F.3d 539 (7th Cir. 2015)	3
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	5
<i>DiSorbo v. Hoy</i> , 343 F.3d 172 (2d Cir. 2003).....	3
<i>Gumbs v. Pueblo Int’l, Inc.</i> , 823 F.2d 768 (3d Cir. 1987).....	4
<i>Hetzel v. Cnty. of Prince William</i> , 89 F.3d 169 (4th Cir. 1996)	3
<i>Jacobellis v. Ohio</i> , 378 U.S. 184 (1964)	1
<i>R.J. Reynolds Tobacco Co. v. Gerald</i> , 76 V.I. 656 (2022).....	3
<i>Salinas v. O’Neill</i> , 286 F.3d 827 (5th Cir. 2002)	4
<i>Trainor v. HEI Hospitality, LLC</i> , 699 F.3d 19 (1st Cir. 2012).....	4
State Cases	
<i>Blair v. Coleman</i> , 211 A.D.3d 671 (2d Dep’t 2022).....	2, 3
<i>Castro v. Melchor</i> , 414 P.3d 53 (Haw. 2018)	3
<i>Desert Palm Surgical Grp., P.L.C. v. Petta</i> , 343 P.3d 438 (Ariz. Ct. App. 2015).....	4
<i>Diamond v. Witherspoon</i> , 696 N.W.2d 770 (Mich. App. 2005).....	4
<i>Emery v. Wal-Mart Stores</i> , 976 S.W.2d 439 (Mo. 1998)	3
<i>Pete v. Boland Marine & Mfg. Co., LLC</i> , 21-0626 (La. App. 4 Cir., 01/05/23); 356 So. 3d 1147.....	2
<i>R.J. Reynolds Tobacco Co. v. Webb</i> , 93 So. 3d 331 (Fla. Dist. Ct. App. 2012)	4
<i>Walker v. Anco Insulations</i> , 2023 La. App. LEXIS 730, 22/0763 (La. App. 4. Cir, 05/03/23).....	2
<i>Youn v. Maritime Overseas Corp.</i> , 623 So. 2d 1257 (La. 1993)	1

Other Authorities

Am. Transp. Res. Inst., *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), available at <https://truckingresearch.org/wp-content/uploads/2020/08/ATRI-Nuclear-Verdicts-One-Page-Summary-07-2020.pdf>5

Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 S.M.U. L. Rev. 163 (2004)1

Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective Review of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545 (2006)1

Paul Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401 (2004)5

U.S. Chamber Inst. for Legal Reform, *2019 Lawsuit Climate Survey: Ranking the States* (Sept. 2019)6

U.S. Chamber Inst. for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (Sept. 2022), available at <https://institutelegalreform.com/research/nuclear-verdicts-trends-causes-and-solutions/>5

SUPREME COURT OF LOUISIANA

DOCKET NO. 2023-C-00170

HENRY PETE

PLAINTIFF-RESPONDENT

VERSUS

BOLAND MARINE AND MANUFACTURING
COMPANY, LLC, ET AL.

DEFENDANTS-APPLICANTS

*On Writ of Certiorari and/or Review;
Civil District Court, Parish of Orleans, No. 2019-10545;
Court of Appeal, Fourth Circuit, No. 2021-CA-0626*

**MOTION FOR LEAVE OF COURT TO FILE AMICI CURIAE BRIEF BY THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND
COALITION FOR LITIGATION JUSTICE, INC.**

MAY IT PLEASE THE COURT:

ARGUMENT

I. INTRODUCTION

The purpose of this *amici curiae* brief is to provide the Court with a comparison of the way Louisiana courts apply the abuse of discretion standard when evaluating potentially excessive compensatory damages verdicts with the more objective and data-driven way many other jurisdictions apply the same or similar standards, and to discuss the potential adverse impacts of precluding reference to comparable awards to the general expectation in the American judicial system—an expectation that defendants be subject to liability findings and damages awards in a fair, consistent, and predictable manner.

Historically, Louisiana has applied a two-step test review process for potentially excessive damages awards, the first of which often results in precluding consideration of prior verdicts—one of the most important tools in objectively assessing if a damages award is excessive. “The initial inquiry is whether the award for the particular injuries and their effects under the particular

circumstances on the particular injured person is a clear abuse of the ‘much discretion’ of the trier of fact.” *Youn v. Maritime Overseas Corp.*, 623 So. 2d 1257, 1260 (La. 1993). The *Youn* court suggested that prior awards should be used after abuse of discretion has been determined “for the purpose of determining the highest or lowest point which is reasonably within that discretion.” *Id.* Under a strict reading of this approach, and divorced from the practical consideration that comparable prior awards are undoubtedly already before the reviewing court at all stages of analysis, courts are effectively denied a potential useful tool—an evaluation of comparable verdicts and awards—when resolving whether there has been an abuse of discretion; comparable verdicts are effectively irrelevant in assessing abuse of discretion, and may only be considered for a limited purpose once abuse has been found based on review of the case in isolation and without the benefit of meaningful verdict data.²

As a result, Louisiana courts applying a strict reading of *Youn* are essentially left to determine whether there has been an abuse of discretion based on their own subjective sense (“the court knows it when it sees it”³) and the facts of the individual case in front of it, and without any clearly-defined objective parameters to consider. This restriction ties the hands of the reviewing courts, prohibiting them from consulting relevant and reliable information to determine whether a judgment is arbitrary and capricious in comparison to those in factually similar cases.

By comparison, many other jurisdictions expressly allow—and in some instances even mandate—courts to consider comparable awards during the initial analysis of whether a compensatory damages award is excessive. A survey of frameworks applied in other jurisdictions is set forth below.

Clarity from this Court on how and when courts may evaluate comparable verdicts and awards in their damages excessiveness assessment would be particularly helpful as reviewing courts evaluate the information before them. As the dissent in the Court of Appeal noted, “[r]ecent awards for the particular type of damages suffered by plaintiffs in cases similar to the instant case

² Historically, factfinders’ inability to objectively or consistently assess compensatory damages did not raise serious concern because “personal injury lawsuits were not very numerous and verdicts were not large.” Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective Review of the Problem and the Legal Academy’s First Responses*, 34 Cap. U. L. Rev. 545, 560 (2006). That has changed. See Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 S.M.U. L. Rev. 163, 170 (2004) (noting a perceptible shift in society’s notion that someone should pay for a plaintiff’s injuries). So, while the two-step framework utilized in Louisiana made sense when it was implemented, it may make sense now to provide courts with additional tools in resolving abuse of discretion issues.

³ Cf. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)

would suggest that a general damage award should be somewhere in the neighborhood of half of what was awarded to Mr. Pete.” *Pete v. Boland Marine & Mfg. Co., LLC*, 21-0626 (La. App. 4 Cir., 01/05/23); 356 So. 3d 1147, 1164. More recently, in *Walker v. Anco Insulations*, the same circuit of the Court of Appeal noted that appellant had submitted multiple awards that deviated from the amount awarded to the plaintiff, but made no analysis of those prior awards, concluding that “general damages awards will fluctuate and increase over time given changes in economic conditions.” 2023 La. App. LEXIS 730, at *10, 22/0763 (La. App. 4. Cir., 05/03/23).

II. OTHER JURISDICTIONS EVALUATE POTENTIALLY EXCESSIVE DAMAGES AWARDS BY PERMITTING CONSIDERATION OF COMPARABLE AWARDS IN OTHER CASES

Many courts across the country either mandate, or at least permit, reviewing courts to consider comparable awards when assessing the quantum of a jury verdict. None of these jurisdictions, however, impose exacting standards requiring inflexible fealty to past awards, and *amici* do not suggest that this Court adopt such an unnecessarily rigid system. Rather, these jurisdictions require—or permit—at least some consideration of comparable awards when determining what constitutes an excessive award to ensure that the award at bar falls within the reasonable range of established judgments.

New York reviewing courts, for example, must assess the reasonableness of compensation “against relevant precedent of comparable cases.” *Blair v. Coleman*, 211 A.D.3d 671, 674 (2d Dep’t 2022). While these comparable cases are not binding, “they guide and enlighten [the courts] with respect to determining whether a verdict in a given case constitutes reasonable compensation.” *Id.* The same is true in Missouri. Reviewing courts there are required to examine certain specific factors, including “awards given and approved in comparable cases,” but retain discretion to apply whatever weight they deem appropriate to these comparable judgments, in conjunction with other qualitative and quantitative factors. *Emery v. Wal-Mart Stores*, 976 S.W.2d 439, 448 (Mo. 1998).

The United States Courts of Appeals for the Second and Seventh Circuits follow a similar approach.⁴ The Second Circuit cautions that the “determination of whether a compensatory

⁴ The Fourth Circuit has endorsed consideration of comparable cases in excessiveness determinations without clarifying whether such consideration is mandatory or permissive. *See Hetzel v. Cnty. of Prince William*, 89 F.3d 169, 173 (4th Cir. 1996) (remanding with directive that district court “closely examine” certain awards that the court “believe[s] are comparable to what would be an appropriate award in this case”).

damages award is excessive should not be conducted in a vacuum, but instead should include consideration of the amounts awarded in other, comparable cases.” *DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003) (internal citations omitted). Similarly, the Seventh Circuit reviews “past decisions to see if the awards [are] ‘out of line with other awards in similar cases.’” *Adams v. City of Chicago*, 798 F.3d 539, 545 (7th Cir. 2015). Like other courts, the Seventh Circuit uses its analysis of prior awards as one of many non-determinative factors in assessing whether a judgment is an abuse of discretion: it describes them as a “a reference point that assists the court in assessing reasonableness” in its ultimate “review of the evidence in the case at hand.” *Id.*

Other jurisdictions take a slightly different approach, allowing—but not mandating—reviewing courts to consider awards issued in comparable situations.⁵ This permissive, situation-dependent standard is likewise more assistive to reviewing courts than Louisiana’s rigid prohibition on consideration of prior awards in determining whether there has been an abuse of discretion.

Michigan and Florida are two examples. In Michigan, “whether the amount actually awarded is comparable to other awards in similar cases” is a factor that reviewing courts may consider in assessing whether an award is excessive. *Diamond v. Witherspoon*, 696 N.W.2d 770, 782 (Mich. App. 2005). Florida similarly affords reviewing courts discretion, noting:

In reviewing an award of damages for excessiveness, the court may consider the philosophy and general trend of decisions in comparable cases. The comparison of jury verdicts reached in similar cases provides one method of assessing whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered.

R.J. Reynolds Tobacco Co. v. Webb, 93 So. 3d 331, 336 (Fla. Dist. Ct. App. 2012) (internal citations omitted). Neither of these jurisdictions proscribe any sort of mandate regarding the weight afforded to comparable cases; rather, they vest their reviewing tribunals with discretion to draw appropriate comparisons to ensure the evenhanded administration of justice.⁶

⁵ Other reviewing courts have also utilized prior awards as reference points in their damage excessiveness determinations, but without a clear rubric as to how those prior decisions should be considered. *See, e.g., Castro v. Melchor*, 414 P.3d 53, 69 (Haw. 2018) (employing comparison to prior award in holding that a wrongful death award was not an abuse of discretion).

⁶ Last year, the Supreme Court of the Virgin Islands considered its own standard for assessing the excessiveness of compensatory damages awards. *R.J. Reynolds Tobacco Co. v. Gerald*, 76 V.I. 656, 697 (2022). The court looked at how other jurisdictions viewed prior awards in performing such an analysis, and ultimately determined “that comparability analysis of similar cases can be a useful tool that a court may employ in determining whether an award is excessive.” *Id.*

The United States Courts of Appeals for the First, Third, and Fifth Circuits, too, have endorsed courts turning to comparable awards for excessiveness determinations. The First Circuit has labeled awards in comparable cases “instructive,” *Trainor v. HEI Hospitality, LLC*, 699 F.3d 19, 32-33 (1st Cir. 2012), while the Third Circuit has concluded that comparable cases offer “guidelines,” *Gumbs v. Pueblo Int’l, Inc.*, 823 F.2d 768, 773 (3d Cir. 1987). The Fifth Circuit, which reviews federal civil actions tried in Louisiana, has embraced analysis of comparable awards to an even greater extent, calling them “[a] mainstay of the excessiveness determination.” *Salinas v. O’Neill*, 286 F.3d 827, 830 (5th Cir. 2002).

A recent decision of Arizona’s Court of Appeals highlights how review of prior judgments assists courts in their abuse-of-discretion inquiry. In reviewing a \$12 million verdict against a medical practice for defamation and invasion of privacy, the court considered that the verdict was about equal to the largest civil jury verdict in the state in 2013, was the 30th-largest verdict in the state in the preceding decade, and was nearly four times the size of the next-largest defamation verdict in the state in the preceding decade. *Desert Palm Surgical Grp., P.L.C. v. Petta*, 343 P.3d 438, 454 (Ariz. Ct. App. 2015). The court considered this analysis in conjunction with a “thorough[] [review of] the entire record in the instant case,” and concluded that the verdict “simply cannot be reconciled with other Arizona civil jury verdicts, especially given the record before [it].” *Id.* at 452-54.

III. PRECLUDING COURTS FROM AT LEAST BEING ALLOWED TO CONSIDER PRIOR AWARDS WHEN EVALUATING POTENTIAL EXCESS DAMAGES AWARDS CAN YIELD UNINTENDED, ADVERSE CONSEQUENCES

Prohibiting courts from considering comparable cases in the first instance when analyzing whether damages awards are potentially excessive can yield many unintended negative consequences. From the perspective of trial and appellate docket management, unchecked excessive awards hamper potential settlement in future cases, as litigants will have less ability to anticipate what their case may be worth at trial. Rigid application of *Youn* makes it more likely in Louisiana that outlier verdicts will survive review, and the prospect of attaining one of these verdicts may reduce plaintiffs’ willingness to settle, or drive them to seek outlier settlements. See U.S. Chamber Inst. for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (Sept. 2022), at 36-38 (identifying prolonged litigation and unreasonable demands as results of rise in

nuclear verdicts). Outlier settlements, in turn, may become the basis for demanding funds well beyond what judges and juries in prior cases have dictated are reasonable or warranted.

Unchecked excessive awards are also inconsistent with bedrock principles of American jurisprudence, including fairness, predictability and proportionality of the legal system. Indeed, the general expectation of the American jurisprudence system is that defendants will be subjected to liability and damages in a fair, consistent, and predictable manner. When a defendant is made to pay radically different sums for the same or substantially similar injuries, it undermines these principles with irrationality and unpredictability. Paul Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401, 1405 (2004) (“if we wish to continue to embrace a rule of law whose fabric is rationality and predictability, we should be concerned by this pocket of irrationality”—noneconomic damages); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (holding that the Due Process Clause of the Fourteenth Amendment prizes predictability in the legal system).

Excessive awards levied against the business community can also damage local and national economies. They can increase the costs of goods and services and inhibit job growth and new investment in business and industry. *See* Am. Transp. Res. Inst., *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), at 9, 13, 50 (noting large trucking-accident verdicts led to increases in insurance costs, which in turn either put carriers out of business or get passed on). In the healthcare sector, for example, inflated damages awards can make it more costly for businesses to offer medical services, causing patients to bear higher costs and increased volatility as opposed to what they reasonably expect to pay for medical services. This, in turn, can drive business from jurisdictions.

Finally, a proliferation of excessive awards, unchecked by robust review, can drive business from the state. Indeed, a state’s litigation climate is likely to impact important business decisions. This includes where to locate headquarters or do business, in turn directly affecting a state’s economy and job market. *See* U.S. Chamber Inst. for Legal Reform, *2019 Lawsuit Climate*

Survey: Ranking the States (Sept. 2019), at 3 (noting 89% of respondents agree litigation environment will impact important business decisions).

* * *

Amici respectfully submit that, at this point, it makes sense for this Court to clarify the process for resolving issues concerning potential abuse of discretion when assessing the quantum of jury awards to allow reviewing courts to at least consider comparable verdicts in that analysis. Allowing reviewing courts to consider prior comparable awards would provide courts with an important tool for determining whether there has been an abuse of discretion.

IV. CONCLUSION

For the reasons stated herein, the Chamber and Coalition respectfully request that this Court allow consideration of prior awards in the first instance, when courts are evaluating whether a damages award is an abuse of discretion.

**TAYLOR, WELLONS, POLITZ,
& DUHE, APLC**

By: 

Samuel M. Rosamond, III (17122)
1555 Poydras Street, Ste. 2000
New Orleans, LA 70112
Tel: (504) 525-9888
Fax: (504) 525-9899
srosamond@twpdlaw.com

*Counsel for Amici Curiae Chamber of Commerce of
the United States of America and Coalition for
Litigation Justice, Inc.*

Paul W. Kalish
Whitney M. Costin
Mintz Levin Cohn Ferris
Glovsky and Popeo, PC
555 12th Street NW, Suite 1100
Washington, DC 20004
Tel: (202) 434-7300
pwkalish@mintz.com
wmcostin@mintz.com

Of Counsel

VERIFICATION

STATE OF LOUISIANA

PARISH OF ORLEANS

I, SAMUEL M. ROSAMOND, III do hereby declare the following:

1. I am an attorney for The Chamber of Commerce of the United States of America and Coalition for Litigation Justice, Inc., *amicus curiae*.
2. The entire contents of this Motion for Leave to Submit Brief of *Amicus Curiae* as well as the Brief of *Amicus Curiae* are true and correct to the best of my knowledge.
3. A copy of this this Application and the briefing have been delivered via email to below counsel and by U.S. Mail to the Fourth Circuit and Judge Julien:

Clerk of Court
Fourth Circuit Court of Appeal
Justin Woods
410 Royal Street
New Orleans, LA 70130

Hon. Ethel S. Julien
Judge, Civil District Court
Division "N" – Section 8
421 Loyola Avenue
New Orleans, Louisiana 70112

Counsel for Plaintiff/Respondent, Henry Pete

Lindsey A. Cheek
THE CHEEK LAW FIRM
650 Poydras Street
Suite 2310
New Orleans, Louisiana 70130

Thomas M. Flanagan
Anders F. Holmgren
FLANAGAN PARTNERS LLP
201 St. Charles Avenue
Suite 3300
New Orleans, Louisiana 70170

Melissa Schopfer, Pro Hac Vice
Jean-Michel Lecointre, Pro Hac Vice
Michael K. Hibey, Pro Hac Vice
Gary Dimuzio, Pro Hac Vice
William A. Kohlburn, Pro Hac Vice
SIMMONS HANLY CONROY, LLC
One Court Street
Alton, Illinois 62002

Counsel for Defendant/Appellant, Ports America Gulfport, Inc.

Randell Edward Treadaway
Brett Michael Bollinger
Jeffrey E. McDonald
Darren Milton Guillot
TREADAWAY BOLLINGER, LLC
406 North Florida Street
Suite 2
Covington, Louisiana 70043



SAMUEL M. ROSAMOND, III

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 5th DAY OF
June, 2023.



NOTARY PUBLIC

Commission is for life
Noah Borer