No. 20-0881

IN THE SUPREME COURT OF TEXAS

HELENA CHEMICAL COMPANY,

Petitioner,

v.

ROBERT COX, ET AL.,

Respondents.

On Petition for Review from the Eleventh Court of Appeals at Eastland

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation. It directly represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every 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. *See, e.g.*, Brief for Amicus Curiae the Chamber of Commerce of the United States of America, *Gregory v. Chohan*, No. 21-0017 (Tex. 2022); Amicus Curiae Brief of the Chamber of Commerce of the United States of America et al., *Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P.*, 593 S.W.3d 732 (Tex. 2020).

[1] No party's counsel authored this brief in whole or in part, and no party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No entity or person, other than amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* TEX. R. APP. P. 11.

SUMMARY OF THE ARGUMENT

Plaintiffs' crop damage is deeply unfortunate, but their claims fail because they have not met this Court's rigorous evidentiary standard for proving causation. Plaintiffs must show that it is probable, not merely possible, that *the defendant* is responsible for the harm they suffered. And while plaintiffs may rely on expert opinion testimony to help prove causation, that testimony must be reliable and competent. Proving causation with reliable expert testimony requires ruling out possible alternative causes of damage—especially in toxic-tort litigation like this involving complex weather patterns over a large area of land. The plaintiffs in this case failed to carry that burden. They have not ruled out possible alternative causes of the herbicide damage, nor proven that each cotton field was damaged, nor demonstrated the presence of enough Sendero to harm cotton plants. In short, the plaintiffs failed to prove that Helena Chemical Company harmed *any* of their 111 cotton fields, much less all of them. The trial court thus correctly concluded that Helena was entitled to summary judgment because of these missing but essential links in the causal chain.

The court of appeals' decision to the contrary makes it an outlier among the other courts of appeals and contradicts well-established principles of Texas causation and evidence law. If the court of appeals' lax approach wins widespread acceptance, it will threaten defendants with arbitrary and inflated liability in every

area of tort law—especially in toxic-tort and products-liability cases implicating multifaceted and often-interrelated chemical, physiological, and meteorological systems. Tort claims relying on complex scientific theories are hard to prove, but such difficulty "does not provide a plaintiff with an excuse to avoid introducing some evidence of causation." *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 937 (Tex. 1998) (quoting *Schaefer v. Tex. Employers' Ins. Ass'n*, 612 S.W.2d 199, 205 (Tex. 1980)). Nor does it justify abrogating the essential gatekeeping rule excluding unreliable expert testimony with serious analytical gaps.

The court of appeals' approach would not just deliver a one-two punch to causation and evidentiary principles that form the foundation of Texas tort jurisprudence. It would also deliver a serious blow to Texas's economy. If plaintiffs are not consistently held to their burden of proving causation with reliable expert testimony, businesses will face arbitrary and unpredictable liability merely as the cost of doing business—costs that will inevitably be passed onto Texans generally in the form of higher prices and lower wages. The Court should clarify that defendant-specific and injury-specific evidence of harm are required in all toxic-tort cases, reverse the judgment of the court of appeals, and reinstate the trial court's order granting summary judgment to Helena.

ARGUMENT

I. The Plaintiffs Failed to Prove Causation

The court of appeals' decision abandoned the fundamental tort principle that plaintiffs must prove the defendant caused their injury. *See Bostic v. Ga.-Pac. Corp.*, 439 S.W.3d 332, 337 (Tex. 2014) (citing RESTATEMENT (SECOND) OF TORTS § 431 (Am. L. Inst. 1981)). Plaintiffs must prove that the defendant's conduct "was a substantial factor in bringing about the [harm.]" *Id.* at 343 n.40 (quoting *Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 775 (Tex. 1995)). Substantial-factor causation is different from but-for causation, "which includes every one of the great number of events without which any happening would not have occurred." *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 770 (Tex. 2007) (quoting *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 472 (Tex. 1991)). Rather, in toxic-tort cases,[2] substantial-factor causation requires "[(1) d]efendant-specific evidence [(2)] relating to the approximate dose to which the plaintiff was exposed." *Id.* at 773. The court

[2] An amicus brief filed by the Texas Wine and Grape Grower Association suggests that this is not a toxic-tort case at all because in *Merrell Dow Pharmaceuticals, Inc. v. Havner*, it was disputed whether Bendectin caused harm, whereas in this case everyone acknowledges that Sendero can harm plants. 953 S.W.2d 706, 720 (Tex. 1997). That is a poor definition of a toxic tort. Everyone also agreed in *Flores* and *Bostic* that asbestos could cause harm. But it was still a toxic-tort case, and the Court still required proof of the dose required to cause the complained-of harm. More importantly, carving out a different rule for spray-drift cases would needlessly balkanize this Court's causation jurisprudence. The same rules should apply in all cases involving alleged injury from a potentially harmful substance. It should not matter whether the "toxic-tort" label is used, or whether the case involves harm to a person, non-human life, or property.

of appeals devoted only cursory attention to the first requirement, and none to the second. That was reversible error.

A. The Plaintiffs Did Not Produce Defendant-Specific Evidence

As this Court said in *Flores*, "[i]t is not adequate to simply establish that 'some' exposure occurred." 232 S.W.3d at 773 (alteration in original) (quoting David L. Eaton, *Scientific Judgment and Toxic Torts—A Primer in Toxicology for Judges and Lawyers*, 12 J.L. & POL'Y 5, 39 (2003)). Plaintiffs must produce "[d]efendant-specific evidence" of causation. *Id.* This includes evidence excluding plausible alternative sources of exposure. "To raise a fact issue on causation," this Court has explained, "the plaintiff must offer evidence excluding . . . other plausible causes of the injury . . . with reasonable certainty." *Havner*, 953 S.W.2d at 720 (citing *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 559 (Tex. 1995)). In other words, a plaintiff must show that the defendant—not someone or something else—harmed the plaintiff. An expert's failure to "carefully consider alternative causes" thus renders his opinion "little more than speculation," *Robinson*, 923 S.W.2d at 559, and incompetent to prove causation, *see Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 353 (Tex. 2015) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005)).

The court of appeals did not discuss *Flores*'s defendant-specific evidence requirement (or indeed cite *Flores* at all). But that rule is well established in both

this Court and in the courts of appeals. For example, in *Bostic* the plaintiff provided no evidence about his level of asbestos exposure from the defendant's products. 439 S.W.3d. at 353–55. While the amount of harm attributable to a defendant "need not be established with mathematical precision," the plaintiffs "did not establish even an approximate dose." *Id.* at 353, 355. As a result, the evidence was insufficient to sustain the verdict. *Id.*

The plaintiffs in this case offered even less defendant-specific evidence of causation than what this Court found insufficient in *Bostic*. In *Bostic*, the defendant proved that he was exposed to some asbestos from the defendant's products. *See id.* at 341. By contrast, the plaintiffs here failed to show *any* contamination from the defendant's product Sendero, much less produce evidence of the approximate volume of Sendero that was blown off course from its intended Spade Ranch target to the plaintiffs' fields (a requirement discussed in more detail below). Plaintiffs took cotton tissue samples from only 6 of the 111 fields that they claim were harmed by the defendant's conduct. Only two samples showed measurable amounts of clopyralid, and the remaining four samples showed only trace amounts. Those limited test results were not sufficient to carry the plaintiffs' burden of proof, because the mere existence of clopyralid contamination is not "defendant-specific" proof. Indeed, plaintiffs' expert readily conceded that clopyralid is used in many herbicides, not just in Sendero. What is unique to Sendero is the combination of

clopyralid and aminopyralid. But no sample had any trace of aminopyralid. This evidentiary gap is critical because, if anything, the absence of aminopyralid in the test results tends to *exclude* Helena's aerial Sendero application as a cause.

The plaintiffs might have been able to overcome the lack of competent laboratory evidence through other means, such as by demonstrating an identifiable pattern of drift damage originating at Spade Ranch. But they offered no such evidence. While plaintiffs' expert Halfmann testified in his report that the plaintiffs' crops displayed uniform symptoms of herbicide damage, he later backtracked, admitting that the damage was actually "patchy" and "inconsistent." Petitioner's Br. at 40. This testimony contradicted plaintiffs' claim of drift from a single source. *Id.* Instead of providing an explanation for the "patchiness of the damage," which he characterized as "mysterious" and "unexplainable," Halfmann responded: "scientifically, I don't know that that can be explained by anyone."

That analytical gap rendered Halfmann's testimony unreliable and incompetent to prove causation. "Expert testimony is unreliable 'if there is too great an analytical gap between the data on which the expert relies and the opinion offered.'" *Gharda*, 464 S.W.3d at 349 (quoting *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 904–05 (Tex. 2004)). This Court's opinion in *Robinson* is instructive, for the facts of that case bear an uncanny resemblance to this one. In *Robinson*, an expert sought to testify that the defendant's fungicide damaged the

plaintiff's orchard. 923 S.W.2d at 551. This Court held that the causation testimony was unreliable because the expert failed to conduct adequate soil and tissue testing and could not explain the fact "that there was no consistent pattern of damage to the trees." *Id.* With those analytical gaps unbridged, the expert's testimony was too speculative to be admissible. *Id.* at 559. The very same flaws doom the plaintiffs' claims here.

Not only did the plaintiffs fail to produce laboratory or drift-pattern evidence that would "rule in" Helena as a likely source of the damage, they also critically failed to "rule out" other possible sources. The plaintiffs' experts simply assumed that the Spade Ranch application was the only relevant herbicide application—an assumption that the court of appeals improperly accepted without question. But Helena provided evidence that there was at least one other aerial application of Sendero by a non-defendant around that time and place—not to mention the possibility that different herbicides could have been the source of the clopyralid. *See* Petitioner's Br. at 9 n.7, 41 n.20.

The plaintiffs rely on the testimony of Cory Pence, an inspector dispatched by the Texas Department of Agriculture to investigate their herbicide-contamination complaint. Inspector Pence's "extensive" search for alternative sources of clopyralid consisted of nothing more than driving around a few country roads near the Spade Ranch looking for visual symptoms of herbicide damage. Neither

Inspector Pence nor any of the plaintiffs' other experts bothered to examine the readily available Texas Department of Agriculture database that catalogues all large-scale applications of herbicide. Halfmann candidly defended his choice to not collect evidence that could have contradicted his theory, noting that if more information is gathered, "you're taking a chance of taking a sample that's going to show no residue found." Far from "excluding . . . other plausible causes of the injury . . . with reasonable certainty," *Havner*, 953 S.W.2d at 720, plaintiffs' experts failed to consult—and in at least one instance actively *avoided*—evidence of other possible sources of clopyralid. The trial court's decision to exclude Pence's and Halfmann's testimony was, at the very least, not an "abuse of discretion." *See Gharda*, 464 S.W.3d at 347–48 (rulings on reliability of expert testimony are reviewed for abuse of discretion). The court of appeals improperly interfered with the district court's role as evidentiary gatekeeper and abdicated its own responsibility to ensure that unreliable expert evidence is not admitted. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998) (noting that "[i]n ruling on admissibility, trial judges are the gatekeepers").

Even if the experts' testimony were admissible, it cannot prove causation. A plaintiff cannot bear her burden of proof merely by declaring that she is "not aware" of possible alternative causes—she must *prove* with reasonable certainty that there are none. For example, in *Cerny v. Marathon Oil Corp.*, multiple oil and gas

operations were active near the plaintiffs' home, any one of which could have been the source of the toxic emissions the plaintiffs experienced. 480 S.W.3d 612, 621 (Tex. App.—San Antonio 2015, pet. denied). Because the plaintiffs did not "negate other possible sources of the chemicals," they had "no evidence of causation." *Id.* at 621–22. Similarly, in *Martinez v. City of San Antonio*, an expert testified that lead dust on the plaintiffs' properties matched lead dust at the defendant's construction site. 40 S.W.3d 587, 594–95 (Tex. App.—San Antonio 2001, pet. denied). But because the expert failed to investigate other nearby construction sites for lead dust, his opinion was unreliable and "constitute[d] no evidence" of causation. *Id.* at 595.

The court of appeals' approach would encourage abusive litigation against even the most responsible businesses merely because they operated in a plaintiff's general vicinity and theoretically "might" have been responsible for an injury. This danger is by no means limited to herbicide-damage cases. The cause of an injury often implicates complex chemical, physiological, and meteorological systems. *See, e.g.*, *Atkinson v. U.S. Fid. & Guar. Co.*, 235 S.W.2d 509, 510 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.) (plaintiff alleged that inhalation of ammonia gas from a freezer caused fatal Addison's disease); *Merck & Co. v. Garza*, 347 S.W.3d 256, 260 (Tex. 2011) (plaintiff alleged that pain killer medication caused a fatal heart attack); *In re TMI Litig.*, 193 F.3d 613, 716 (3d Cir. 1999) (plaintiffs alleged that radiation from the Three Mile Island accident was dispersed through the atmosphere,

causing plaintiffs to develop abnormal growths). The court of appeals' approach would effectively flip the burden to defendants to prove that they *did not* cause the harm—precisely the opposite of what the law requires. The Court should prevent that outcome by reaffirming the defendant-specific causation requirement and enforcing the standards for reliable expert testimony about such causation.

B. The Court of Appeals Ignored the Sufficient-Dose Requirement

"One of toxicology's central tenets is that the dose makes the poison." *Bostic*, 439 S.W.3d at 338, 352 (quoting *Flores*, 232 S.W.3d at 773). "Even water, in sufficient doses, can be toxic." *Flores*, 232 S.W.3d at 770. Thus, it is not enough for plaintiffs to simply show that they were exposed to a potentially harmful substance; they must provide evidence of the dose to which they were exposed. *Id.* at 773. This "dose specific" evidence requirement itself comprises two separate showings: specific and general causation. That is, plaintiffs must provide "[d]efendant-specific evidence relating to the approximate dose to which [they were] exposed, coupled with evidence that the dose was a substantial factor in causing the [injury.]'" *Bostic*, 439 S.W.3d at 338, 352 (quoting *Flores*, 232 S.W.3d at 773).[3]

[3] This requirement is not unique to Texas. *See, e.g.*, *Wright v. Willamette Indus., Inc.*, 91 F.3d 1105, 1107 (8th Cir. 1996) ("At a minimum . . . there must be evidence from which the factfinder can conclude that the plaintiff was exposed to levels of that agent that are known to cause the kind of harm that the plaintiff claims to have suffered.") (applying Arkansas law); *In re TMI Litig.*, 193 F.3d at 716 (affirming summary judgment for the defendant in litigation related to the Three Mile Island accident, because plaintiffs failed to show they had experienced the quantum of radiation exposure necessary to cause injury) (applying Pennsylvania law).

The plaintiffs showed neither of these things. They did not produce evidence of the amount of Sendero necessary to cause harm to cotton plants, nor did their experts estimate how much Sendero drifted onto their fields. Plaintiffs' "generalist" expert witness conceded he had no idea how much Sendero was needed to cause harm to cotton plants. He also agreed that low levels of exposure do not always cause crop yield loss even if they result in physical symptoms.

The court of appeals did not hold that the sufficient-dose requirement had been met—it failed to discuss this requirement at all. The court of appeals decision would effectively resurrect the "any exposure theory" that *Flores* and *Bostic* rejected. *See Bostic*, 439 S.W.3d at 338; *Flores*, 232 S.W.3d at 771. "[T]he result essentially would be not just strict liability, but absolute liability against any company whose [] product crossed paths with the plaintiff throughout [their] entire lifetime." *Bostic*, 439 S.W.3d at 339. That is not the law.

II. Texas Law Requires Injury-Specific Evidence of Causation

The plaintiffs admit that they did not provide evidence that each field was harmed by Sendero, but they argue that Texas law does not require such evidence. They are mistaken. Specific causation entails proof that the "substance caused a *particular* individual's injury." *Havner*, 953 S.W.2d at 714 (emphasis added). For example, each plaintiff in a toxic-tort personal-injury case must provide individualized proof of harm. *See Gaulding v. Celotex Corp.*, 772 S.W.2d 66, 68

(Tex. 1989) (noting that each plaintiff must "prove that the defendants . . . caused the injury"). It is not enough to prove that some people in a group to which the plaintiff belongs were harmed. *See In re Fibreboard Corp.*, 893 F.2d 706, 711–12 (5th Cir. 1990) (noting that the causation requirement under Texas law "focus[es] upon individuals, not groups" (citing *Gaulding*, 772 S.W.2d at 77)).

The court of appeals stated that the plaintiffs did not have to produce injury-specific causation evidence because "each field does not comprise a separate plaintiff." *Cox v. Helena Chem. Co.*, 630 S.W.3d 234, 244 (Tex. App.—Eastland 2020, pet. granted). That a field is not a plaintiff is true, but irrelevant. Courts still apply the injury-specific causation requirement in property-damage cases involving multiple properties. A single plaintiff may not recover for alleged harm to 100 fields merely by proving that the defendant caused injuries to one of them.

Precedent confirms this common-sense notion. In *Southwestern Refining Co. v. Bernal*, the plaintiffs sought class certification after a refinery explosion covered their homes in soot, ashes, and toxic residue, sickening some plaintiffs, killing some of their pets, and damaging their homes, lawns, and foliage. 22 S.W.3d 425, 429, 436 (Tex. 2000). Because the "proximity of the explosion to the residents' homes varied from less than one-half of a mile to almost nine miles," the damage ran the gamut from "less severe cases[to] medium cases [to] really good cases." *Id.* This Court ruled class certification improper as to both property-damage and personal-

injury claims, reasoning that the "causation and damages issues [were] uniquely individual to each class member." *Id.* But if the Eastland court of appeals were correct that injury-specific evidence is not required when the thing injured is not a "separate plaintiff," *Bernal* would have certified the class as to the plaintiffs' property-damage claims (but not their personal-injury claims).

The courts of appeals have not suspended the injury-specific proof of causation requirement in property-damage cases either. In *Plunkett v. Connecticut General Life Insurance Co.*, multiple residents of an apartment complex claimed that they were harmed by toxic mold. 285 S.W.3d 106, 110 (Tex. App.—Dallas 2009, pet. denied). The complex featured 241 units in 31 different buildings. *Id.* The plaintiffs claimed that mold had damaged each unit, but their expert conducted air-quality and furniture testing in only one. *Id.* at 115. The court of appeals accordingly held that the expert's testimony was unreliable and affirmed the district court's grant of summary judgment for the defendant. *Id.* at 114–22. Similarly, in *Purina Mills, Inc. v. Odell*, the plaintiff claimed that his herd of 200 cows was injured by consuming metal-contaminated feed, but his expert witness could show only that two or three cows had been injured in this way. 948 S.W.2d 927, 937 (Tex. App.—Texarkana 1997, pet. denied). The court of appeals reversed the jury verdict because the plaintiff had not provided injury-specific—*i.e.*, cow-specific—evidence of harm. *Id.* at 937–41. It did not matter that each cow did not "comprise a separate plaintiff."

The court of appeals' decision is not only inconsistent with this Court's precedents, but would also lead to serious line-drawing problems. The court of appeals held that proof of harm to each field was not required even though the distance between them and the Spade Ranch application area ranged from 1.8 to 25 miles. But what if a field was 50 miles away? Or 500? Should a court require injury-specific evidence then? Furthermore, the court of appeals' novel rule that causation must be proved "plaintiff-by-plaintiff" rather than "injury-by-injury" would lead to strange results. Under that rule, tissue samples would have to be taken from each field if they were owned by different plaintiffs, but not if they were owned by the same plaintiff. That makes little sense. What should matter is the reliability of the causation evidence, not the identity of the person who owns the property.

The court of appeals' approach would throw open the floodgates to litigation supported by tenuous proof of causation. Plaintiffs in toxic-tort or products-liability cases often suffer multiple, distinct injuries. Would a plaintiff who suffered from cancer and coronary artery disease need to produce evidence that a defendant's drug caused both, or would the court of appeals' plaintiff-by-plaintiff rule require proof of causation as to only one injury? Or take the facts of *Cerny*, where the plaintiffs alleged that toxic emissions caused headaches, rashes, breathing problems, depression, and nosebleeds, forced them to close their fledgling BBQ business, and devalued their property by creating sinkholes, spreading noxious odors, and killing

trees and animals on the property. 480 S.W. at 616, 620–23. Under the court of appeals' approach, the plaintiffs could have recovered in full if they proved causation as to only one of these alleged injuries. The Court should affirm that injury-specific evidence is necessary to prove causation. Otherwise, defendants will be subjected to arbitrary, unpredictable, and inflated liability.

CONCLUSION

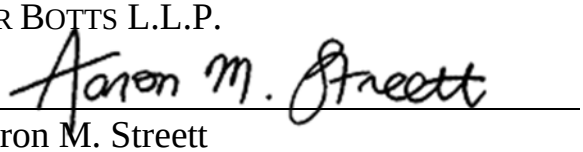
This decision will have broad implications for tort law generally, sending ripple effects throughout Texas's economy. If plaintiffs are not required to produce defendant-specific and injury-specific evidence of harm, the "result essentially would be not just strict liability but absolute liability against any company whose [] product crossed paths with the plaintiff throughout [their] entire lifetime." *Bostic*, 439 S.W.3d at 339. That offends basic principles of fairness and due process. *See, e.g.*, *In re Fibreboard Corp.*, 893 F.2d at 709, 711 (noting that it offends "defendants' right to due process" as well as "fundamental principle[s] of [Texas] products liability law" to exempt plaintiffs from needing to prove causation on a "one-to-one" basis); *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992) ("At bottom, the notion of proximate cause reflects 'ideas of what justice demands'" (quoting W. KEETON, D. DOBBS, R. KEETON, & D. OWEN, PROSSER AND KEETON ON LAW OF TORTS § 41, p. 264 (5th ed. 1984))).

Absolute liability not only raises due process concerns, but also harms consumers. "When litigation gets ahead of science, beneficial products may be pulled from the market." U.S. CHAMBER INSTITUTE FOR LEGAL REFORM, FACT OR FICTION: ENSURING THE INTEGRITY OF EXPERT TESTIMONY 5 (2021), https://instituteforlegalreform.com/wp-content/uploads/2021/02/Expert-Testimony-Paper-FINAL.pdf. Even the most conscientious and careful businesses will have no choice but to increase the price of their products to make up for the expense of unpredictable and expensive liability. This is not merely a hypothetical risk. Bendectin, the only FDA-approved medication blunting symptoms of morning sickness, was driven from the market by courts admitting dubious "expert" testimony that went against overwhelming scientific consensus. *See* Victor E. Schwartz & Cary Silverman, *The Draining of* Daubert *and the Recidivism of Junk Science in Federal and State Courts*, 35 HOFSTRA L. REV. 217, 224–25 (2006). Unless courts remain vigilant against junk science disguised as evidence, Texans will inevitably have to pay more for a broad range of goods and services or forgo them entirely. The Court can avoid that outcome by clarifying its causation jurisprudence and reaffirming that defendant-specific and injury-specific evidence of harm are required in toxic-tort cases generally. The judgment of the court of appeals should be reversed to the extent that it reversed the judgment of the trial court.

Dated: October 10, 2022

Respectfully submitted,

BAKER BOTTS L.L.P.

By: 

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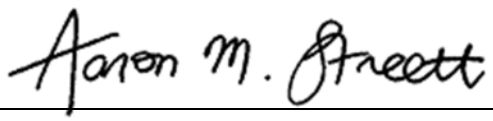
CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 9.4(i)(3), I certify that, according to the word count of the computer program used to prepare this document, the document contains 4,196 words.



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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2022, a true and correct copy of the foregoing document was served on all known counsel of record by the Court's electronic filing system, as follows:

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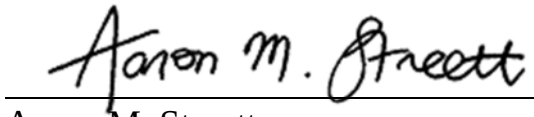

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