IN THE SUPREME COURT OF TEXAS

No. 13-0961

OCCIDENTAL CHEMICAL CORPORATION,
Petitioner,

v.

JASON JENKINS,
Respondent.

On Petition for Review from the
First Court of Appeals, Houston, Texas
Court of Appeals No. 01-09-01140-CV

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

WENCONG FA
Tex. Bar No. 24087487
Counsel of Record
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
Email: wfa@pacificlegal.org

Attorney for Amicus Curiae Pacific Legal Foundation

IDENTITY OF PARTIES AND COUNSEL

Petitioner Occidental Chemical Corporation

Represented by:

Deborah G. Hankinson
Joseph B. Morris
Rick Thompson
HANKINSON LLP
750 North St. Paul St., Suite 1800
Dallas, Texas 75201

Ryan Clinton
HANKINSON LLP
111 Congress, Suite 2800
Austin, Texas 78701

Barry N. Beck
David W. Lauritzen
Rick G. Strange
COTTON BLEDSOE TIGHE & DAWSON, P.C.
500 West Illinois, Suite 300
Midland, Texas 79701

Respondent Jason Jenkins

Represented by:

Russell S. Post
BECK REDDEN LLP
1221 McKinney Street, Suite 4500
Houston, Texas 77010

Jason A. Itkin
Kurt B. Arnold
Cory D. Itkin
ARNOLD & ITKIN, LLC
1401 McKinney Street, Suite 2550
Houston, Texas 77010

TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Page

Cases

Page

Page

Rule

Miscellaneous

Page

Page

Page

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Pacific Legal Foundation respectfully submits this brief amicus curiae in support of Occidental Chemical Corporation, pursuant to Texas Rule of Appellate Procedure 11.

IDENTITY AND INTEREST OF AMICUS

Pacific Legal Foundation was founded in 1973 and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF engages in research and litigation over a broad spectrum of public interest issues at all levels of state and federal courts, representing the views of thousands of people nationwide who believe in limited government, individual rights, and free enterprise.

PLF's Free Enterprise Project litigates cases affecting America's economic vitality and the legal burdens imposed on small businesses. PLF has filed amicus briefs in this Court and nationwide in numerous cases involving the expansion of civil liability, including premises liability. *See, e.g.*, *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762 (Tex. 2010); *Trammel Crow Central Texas, Ltd. v. Gutierrez*, 267 S.W.3d 9 (Tex. 2008); *Western Investments, Inc. v. Urena*, 162 S.W.3d 547 (Tex. 2005); *Rodriguez v. Del Sol Shopping Center Associates, L.P.*,

326 P.3d 465 (N.M. 2014); *Bass v. Gopal, Inc.*, 395 S.C. 129 (2011); *Giggers v. Memphis Housing Authority*, 277 S.W.3d 359 (Tenn. 2009).

In addition, PLF attorneys have published law review articles on the impact of tort liability in general, and premises liability specifically. *See, e.g.*, Deborah J. La Fetra, *A Moving Target: Property Owners' Duty to Prevent Criminal Acts on the Premises*, 28 Whittier L. Rev. 409 (2006); Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645 (2003). PLF is familiar with the legal issues raised by this case and believes that its public policy perspective and litigation experience in support of free enterprise principles will provide a useful additional viewpoint on the issues presented.

INTRODUCTION

Jason Jenkins, an employee of Equistar Chemicals, was injured using a permanently installed pH-balancing system at a chemical plant owed, operated, and controlled by Equistar. The plaintiff sued Occidental Chemical, which had sold—and relinquished all control of—the plant and its fixtures eight years before the accident. The Court of Appeals held that the prior owner was liable for the plaintiff's injuries under a theory described only as "negligence," despite the fact that no

other person has ever been injured by the pH-balancing system since it was built 14 years earlier. *See Jenkins v. Occidental Chem. Corp.*, 415 S.W.3d 14, 18 (Tex. App. - Houston [1st Dist.] 2013, pet. granted).

This Court should reverse. Tort law seeks to deter, *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 425 (Tex. 1984), and that goal cannot be furthered by imposing liability on a party that has long relinquished ownership, possession, and control of the premises. Courts in Texas and elsewhere have held that the proper cause of action for industrial accidents related to permanently installed fixtures lies in the specific doctrine of premises liability, not the general tort of negligence. *See Roberts v. Friendswood Dev. Co.*, 886 S.W.2d 363, 367-68 (Tex. App.–Houston [1st Dist.] 1994, writ denied); *Gresik v. PA Partners, L.P.*, 33 A.3d 594 (Pa. 2011); *Preston v. Goldman*, 42 Cal. 3d 108, 125 (1986). And courts that have considered the issue have adopted the Restatement rule that former premises owners are not liable for improvements it made to its own property. Restatement (Second) of Torts § 352 (1965).

A rule establishing general negligence liability for previous owners of property would have adverse consequences for Texans. By injecting tort liability that is both unpredictable and unlimited, the

decision below will stifle innovation, a key component of the Texas economy. It will also harm businesses and consumers by threatening Texans with additional, never-ending tort liability every time they move.

ARGUMENT

I

COURTS NATIONWIDE DO NOT IMPOSE LIABILITY FOR PREMISE IMPROVEMENTS ON SOMEONE WHO NO LONGER OWNS, POSSESSES, OR CONTROLS THE PREMISES

A. The Tort Policy of Deterrence Cannot Be Furthered by Imposing Liability for Premise Improvements on Someone Who No Longer Owns, Possesses, or Controls the Premises

Premises liability rests on two theoretical assumptions: First, the property owner controls the premises and is therefore responsible for dangerous conditions on the property. *See Cnty. of Cameron v. Brown*, 80 S.W.3d 549, 556 (Tex. 2002) ("The relevant inquiry is whether the defendant assumed sufficient control over the part of the premises that presented the alleged danger so that the defendant had the responsibility to remedy it."). Second, the landowner is in a superior position to know of and remedy dangerous instrumentalities or conditions on his property. *See, e.g.*, *Motel 6 G.P., Inc. v. Lopez*, 929 S.W.2d 1, 3 (Tex. 1996)

("[T]hat Motel 6 had no actual or constructive knowledge of a dangerous condition in the shower precludes any premises liability claim, whether predicated upon negligent maintenance, a failure to warn, or the absence of safety devices."); *Allright San Antonio Parking, Inc. v. Kendrick*, 981 S.W.2d 250, 255 (Tex. App.–San Antonio 1998, writ denied) ("[W]e charge the party with superior knowledge with a duty to warn or safeguard its business invitees.").

The Court of Appeals decision fails to promote the deterrence theory requiring that the punishment be proportioned so that it is no greater than necessary to deter the defendant from committing similar wrongs in the future. That policy cannot be furthered in any way by imposing liability on a party that has long relinquished control over the machinery that caused the injury, and over the training of employees who use the machinery. Only the owner or possessor of the property holds the right to inspect it, and take measures to remedy dangerous conditions. One who no longer owns or possesses the property cannot do so, because that person does not have the legal status to go on the property to remedy such defects.

In the absence of an easement, Occidental had no means whatsoever to enter the premises for inspections or repairs. A property

owner has the right to exclude; it would upend Texas property law to require all sales of commercial property to include an easement creating a right for all previous owners to enter. *See Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002) (explaining that an easement relinquishes a property owner's right to exclude someone from her property) (citations omitted).

This Court should not place a duty of care on someone who can no longer satisfy that duty. If anything, such a rule would discourage current owners—who *are* able to ensure that the premises are safe—from continually inspecting the premises and maintaining a safe environment.

B. The Proper Cause of Action in This Case Lies in Premises Liability, Not Negligence

This is a case about premises liability. The defendant is a former owner of the premises that permanently installed an improvement on its own property. When people are injured by permanent improvements to real property, Texas courts have applied the Restatement, and held that the proper cause of action lies in premises liability, rather than negligence. *See Roberts*, 886 S.W.2d at 367-68; *First Fin. Dev. Corp. v. Hughston*, 797 S.W.2d 286, 290-91 (Tex. App.–Corpus Christi 1984).

Since Jenkins was injured by a condition of the property, and not by some contemporaneous negligent activity by Occidental Chemical, he would be required to sue under premises liability if Occidental retained ownership of the property. *See, e.g.*, *Keetch v. Kroger*, 845 S.W.2d 262, 264 (Tex. 1992) (holding that a negligence claim is only available when the plaintiff is injured by the contemporaneous result of the activity while a premises-defect claim is based on the property itself being unsafe). A premises owner cannot logically be subject to greater liability after he sold the property than when he owned it. That is especially so given that "[t]he modern law has developed many restrictions against interferences with the alienability of property." *Sonny Arnold, Inc. v. Sentry Savings Ass'n*, 633 S.W.2d 811, 817 (Tex. 1982) (quoting Restatement (First) of Property § 404 (1944)).

The lower court's reliance on *Strakos v. Gehring*, 360 S.W.2d 787 (Tex. 1962), was misplaced. Both that case and its progeny dealt with the acts of independent contractors and other third parties, rather than prior owners making improvements on their own land. *See id.* at 789 (independent contractor); *Allen Keller Co. v. Foreman*, 343 S.W.3d 420, 424 (Tex. 2011) (same); *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 52-55 (Tex. 1997) (former property manager); *Science Spectrum, Inc. v.*

Martinez, 941 S.W.2d 910, 912 (Tex. 1997) (duty of adjacent tenant). By limiting liability only to the negligent acts of a *third party*, the *Strakos* rule does not pose the same sort of limitless liability posed by the decision below.

Courts in other states, too, have adopted the common-sense approach that a party that no longer owns, possesses, or controls the premises cannot be made liable for premise improvements that it made years ago. State Supreme Courts from California to Pennsylvania to Montana have all held as much. *See Gresik v. PA Partners*, L.P., 33 A.3d 594, 595, 599-600 (Pa. 2011) (declining to impose liability on a former steel mill owner for a deadly explosion resulting from premise improvements ten years after the improvements and six years after sale of the property); *Papp v. Rocky Mountain Oil and Minerals, Inc.*, 769 P.2d 1249, 1256-57 (Mont. 1989) (refusing to impose liability on former owners of an oil separator facility, even though they had rebuilt components eventually causing an accidental gas release that resulted in the death of an employee); *Preston v. Goldman*, 42 Cal. 3d 108, 110-13 (1986) (rejecting liability for former premises owner even though the pond he created caused a child severe, permanent brain damage and quadriplegia). The injuries in those cases were certainly no less severe

than the injury here. Yet the cases stand for a common proposition: A former premises owner is not liable in negligence even if it created the condition at issue. And for a common reason: The former premises owner had no control of the property at the time of injury.

In *Preston*, for example, the California Supreme Court expressly adopted the Restatement rule "that liability is terminated upon termination of ownership and control except under specified exceptions." *Preston*, 42 Cal. 3d at 110. California appellate court cases citing *Preston* have held the same. *Lewis v. Chevron U.S.A.*, 119 Cal. App. 4th 690, 692 (2004) ("[A]bsent concealment, a prior owner of real property is not liable for injuries caused by a defective condition on the property long after the owner has relinquished ownership and control, even if the prior owner negligently created the condition."); *Lorenzen-Hughes v. MacElhenny, Levy & Co.*, 24 Cal. App. 4th 1684, 1688 (1994) (the fact that the former premises owner "had no possession or control at the time of the accident . . . negates an essential element of [the plaintiff's case].").

The California Supreme Court relied on sound policy grounds in deciding *Preston* that would apply as well in this case. For example, insurance for the type of liability imposed by the Court of Appeals in this

case "would likely be difficult and costly to obtain" given "the potential unlimited liability of predecessor landowners, and the difficulty for insurers and former owners to ascertain the condition of property previously sold over which the predecessor landlord has no present right of access or control." *Preston*, 42 Cal. 3d at 126. The *Preston* court recognized that since contractors must continually devote capital to business improvements, "the need to provide reserves against an uncertain liability extending indefinitely into the future could seriously impinge upon the conduct of [their] enterprise." *Id.* at 122 (quoting *Regents of University of California v. Hartford Acc. & Indem. Co.*, 21 Cal. 3d 624, 633 n.2 (1978)).

Cases citing *Preston* reject several points of distinction asserted by the Court of Appeals in this case. First, it makes no difference that the defendants in *Preston* were "private homeowners rather than professional engineers or contractors." *Jenkins,* 415 S.W.3d at 35. In *Lewis*, the California Court of Appeal refused to hold Chevron liable for premise improvements it made to a science laboratory. *Lewis v. Chevron U.S.A., Inc.*, 119 Cal. App. 4th 690, 692-93 (2004). Chevron, a sophisticated professional organization like Occidental Chemical, "sold the laboratory property . . . over eight years prior to Lewis's accident"

and did not control the premises when the incident occurred. *Id.* at 692. Second, the plaintiff in *Lewis* argued that the defendant should be liable because it "negligently soldered pieces of copper pipe," which caused the injury, and affixed it to the property, which it then sold. *Id.* at 695. The California court held it was irrelevant that the former premises owner created the condition that eventually caused injury after it relinquished control. *Id.* at 695.

Third, California courts apply the Restatement rule regardless of whether the premise defect at issue was patent. In *Lorenzen-Hughes*, the plaintiff suffered injuries at the workplace when a cabinet fell from the wall near her desk. *Lorenzen-Hughes*, 24 Cal. App. 4th at 1684. The plaintiff made the exact argument adopted by the court below: That *Preston* does not apply because "the defect was latent, not patent." *Id.* at 1686. Yet the court rejected any notion of liability, emphasizing the importance "of possession and control as a basis for tortious liability for conditions on the land, instead of whether one's negligence was active or passive." *Id.* at 1688 (internal quotation marks omitted).

The extra-jurisdictional cases that the Court of Appeals described as "more factually analogous," *Jenkins*, 415 S.W.3d at 35-36, actually present situations far removed from this case.

For example, the court below relied on *Stone v. United Engineering, a Div. Of Wean, Inc.*, 475 S.E.2d 439 (W. Va. 1996). There, the West Virginia Supreme Court endorsed the Restatement rule holding that prior premises owners cannot be liable under negligence for improvements to the land. *See id.* at 448. The court applied an established and limited exception to this general rule: A previous owner may be liable "where real property, when it is transferred, is in a condition which poses an unreasonable risk of harm to others," *and* the injury occurred within "*a reasonable time*." *Id.* at 451-52 (emphasis in the original). In *Stone*, the injury occurred less than twenty-three months after the former owner relinquished control. *Id.* at 443-44.

Thus, whatever its merits, *Stone* has little to do with this case. Here, the pH-balancing system at issue was built 14 years before the accident (the first ever attributed to the system), and the defendant had no control of the chemical plant since it sold it eight years ago. *Jenkins*, 415 S.W. at 34. "The consequences of any act can be traced indefinitely, but tort law has never made a defendant pay for all harm caused by his tortious act, however remote. . . . [I]t is generally agreed that the defendant's act cannot fairly be singled out from the multitude of other events that combine to cause loss." Harvey S. Perlman, *Interference*

with Contract and Other Economic Expectancies: A Clash of Tort and Contract Doctrine, 49 U. Chi. L. Rev. 61, 70 (1982). Remoteness in time is one of the key factors limiting liability. *IHS Cedars Treatment Center of DeSoto, Texas, Inc. v. Mason*, 143 S.W.3d 794, 801 (Tex. 2004) (mental health facility is not liable for injuries caused by patient discharged 28 hours earlier); *Peterson v. Underwood*, 264 A.2d 851, 855 (Md. 1970) ("[A]lthough an injury might not have occurred 'but for' an antecedent act of the defendant, liability may not be imposed . . . if the injury is so remote in time and space from defendant's original negligence that another's negligence intervenes."); *see also Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 866 (Tex. 2009) ("[A] statute of repose takes away the right altogether, creating a substantive right to be free of liability after a specified time."); Michael M. Martin, *A Statute of Repose for Product Liability Claims*, 50 Fordham L. Rev. 745, 747 (1982) (it is virtually impossible for manufacturers to " 'cost in' tort liability over a period of ten, twenty, thirty or more years, given the uncertainties of future economic developments with their effects on damages, to say nothing of the uncertainties of the legal standards that will be applied.").

Dorman v. Swift and Co., 782 P.2d 704 (Ariz. 1989), is similarly inapplicable to this case. In that case, the plaintiff "sold the machinery separately from the land." *Id.* at 707. Therefore, it is debatable in *Dorman* whether the machinery was an improvement of the premises at all. That situation is inapplicable here, however, because the pH-balancing system that caused the injury is permanently attached to the land, so it could never be sold separately. What is more, the pH-balancing system is plainly a premise improvement: It was made to serve Occidental's own workers, who had to climb ladders holding containers of acid before it was installed. Pet'r's Br. at 2.

For all these reasons, and consistent with the prevailing case law, this Court should treat the lawsuit in this case as presenting a claim under a premises liability theory rather than simple negligence. Under the premises liability doctrine, there can be no liability because Occidental had long relinquished ownership, possession, and control of the pH-balancing system that caused the injury in this case.

II

EXPANDING PREMISES LIABILITY TO FORMER OWNERS WOULD LEAD TO ADVERSE CONSEQUENCES FOR TEXANS

Punishment grossly excessive to that which is necessary to deter causes societal harm. *See Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 637 (1981) (observing that excessive punishment "will chill wholly legitimate business agreements"). That is exactly the effect of the Court of Appeals opinion if it is allowed to stand.

A. The Court of Appeals Decision Will Stifle Innovation

Limitations on tort liability serve an important purpose. Unpredictable, never-ending tort liability like that imposed by the court below "is likely to produce excessive caution in risk-averse managers and companies" because "unpredictable awards create both unfairness and (on reasonable assumptions) inefficiency, in a way that may overdeter desirable activity." Cass R. Sunstein, et al., *Assessing Punitive Damages (With Notes on Cognition and Valuation in Law)*, 107 Yale L.J. 2071, 2077 (1998). *See also* Lawrence J. McQuillan, et al., *Jackpot Justice: The True Cost of America's Tort System* 23 (Pacific Research

Institute) (2007)[1] ("[M]isdirected or excessive liability costs cause companies to spend resources on lawsuit settlements, damage awards, insurance, lawyers, and legal-defense costs that would have been spent on product and process improvements. It also causes companies to withdraw or withhold products from the market because of a lack of resources or a fear of lawsuits.").

As Justice O'Connor observed, "[t]he threat of such enormous awards has a detrimental effect on the research and development of new products." *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 282 (1989) (O'Connor, J., concurring in part and dissenting in part). Prescription drug manufacturers, for example, ". . . have decided that it is better to avoid uncertain liability than to introduce a new pill or vaccine into the market." *Id.* Other products have been pulled from the market, not for safety reasons, "but because product liability suits have exposed manufacturers to unacceptable financial risks." AMA Board of Trustees, *Impact of Product Liability on the Development of New Medical Technologies* 12 (June 1988). *See also* Joseph F. Petros III, *The Other War on Drugs: Federal Preemption, the*

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[1] *Available at* http://www.liberty.pacificresearch.org/docLib/20070327_Jackpot_Justice.pdf (last visited May 4, 2015).

FDA, and Prescription Drugs After Wyeth v. Levine, 25 Notre Dame J.L. Ethics & Pub. Pol'y 637, 661-62 (2011) (noting that potential tort liability has chased pharmaceutical companies away from developing products particularly for use by children and pregnant women, and impeded development of a vaccine for the AIDS virus).

Companies facing uncertain liability—such as liability for an improvement it made 14 years ago—will become increasingly likely to stick to tried and true products that have not resulted in lawsuits, even at the cost of foregoing innovations that promote employee safety. *See* Krishna Lynch, *Medical Errors, Patient Safety, and the Law: Ten Years Later*, 19 Annals Health L. 91, 94 (2010) ("the burden of the tort liability system . . . threat[ens] patient safety improvement efforts."). The pH-balancing system here, for example, made the employee's job safer so that he did not have to manually climb ladders with containers of acid. Pet'r's Br. at 2. The lower court's decision in this case will "suppress [business's] innovation across the board" because of the "substantial penalty that they suffer for new [products]." W. Kip Viscusi, *The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts*, 87 Geo. L. J. 285, 325-26 (1998).

Yet Texas-based innovation is crucial for safety. For example, Texas Instruments was a part of a team that developed infrared cameras, which now allow pilots to see through fog. E.D. Bullard Co., *History of Thermal Imaging*.[2] A refinery in El Paso recently implemented new technologies that allows central control to communicate with workers in the workspace, and continuously monitors the area for dangerous gases. Hydrocarbon Processing, *Total Safety Taps Western Refining Site in Texas for Safety Innovation Award*.[3]

To be sure, firmly bounded tort law has a part to play in ensuring product safety. *See* Gary T. Schwartz, *Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?*, 42 UCLA L. Rev. 377, 415-16 (1994) (Risk Managers sometimes use the prospect of tort liability as an essential way to sell their safety proposals to others in the organization). But tort law can have *no* impact when the defendant lacks control over the allegedly harmful product and cannot take any steps to remedy the situation.

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[2] *Available at* http://www.bullard.com/V3/products/thermal_imaging/history_of_thermal_imaging.php (last visited May 4, 2015)

[3] *Available at* http://www.hydrocarbonprocessing.com/Article/3248571/Total-Safety-taps-Western-Refining-site-in-Texas-for-safety-innovation-award.html (last visited May 4, 2015).

If the price of premise improvements is a potential lawsuit any time that a business tries to sell a property that it has improved, businesses would be reluctant both to improve the premises and to sell premises that it had improved. Texas should not adopt a rule that forces premises owners to maintain the status quo, when additions to improve workplace safety are readily available.

B. The Court of Appeals Decision Will Harm Businesses and Consumers Alike

That there has been a recent influx of people and businesses to Texas comes as no surprise to this Court. Businesses from all over the country are responding to the State's economic incentives and moving their operations to Texas. Just last year, Toyota moved its North America headquarters from California to Texas. Pamela Engel, *Toyota Is Moving Its US Headquarters From California to Texas*, Business Insider (Apr. 28, 2014).[4] Several other major companies, such as Charles Schwab, Google, Caterpillar, and TD Ameritrade are reportedly looking to move to Texas as well. Candace Carlisle, *Charles Schwab One of Many Large Companies Eyeing Dallas After Toyota Move*, Dallas

[4] *Available at* http://www.businessinsider.com/toyota-is-moving-its-us-headquarters-from-california-to-texas-2014-4 (last visited May 4, 2015).

Business Journal (May 1, 2014).[5] Mobility is a sign of a healthy economy.

Businesses move within the State as well. The Dallas-based law firm of Jackson Walker, for example, recently moved for the first time in thirty years because it wanted to have more "vibrant spaces" for "employee retention and recruiting." Steve Brown, *Dallas Law Firm Jackson Walker's First Office Move in 30 Years Will Bring Lots of Change*, Dallas Morning News (Sept. 19, 2013).[6] There are several other reasons to move. An entrepreneurial business may move to be closer to its clients. Justin Longnecker, et al., *Small Business Management* 227 (17th ed. 2013) ("The choice of a good location is much more vital to some businesses than to others. For example, the site chosen for a clothing store can make or break the business because it must be convenient for customers."). An expanding business may move to a building with more offices. Randy Myers, *Why, When and How to Move*

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[5] *Available at* http://www.bizjournals.com/dallas/news/2014/05/01/charles-schwab-one-of-many-large-companies-eyeing.html (last visited May 4, 2015).

[6] *Available at* http://www.dallasnews.com/business/columnists/steve-brown/20130919-dallas-law-firm-jackson-walkers-first-office-move-in-30-years-will-bring-lots-of-change.ece (last visited May 4, 2015).

Your Business, Entrepreneur (July 29, 2010)[7] (noting a New York public relation firm's move to a 1,000-square-foot location after its previous 400-square foot location started "bursting at the seams."). The Court of Appeals decision hampers the ability of both people and businesses to move. Texans could hardly be faulted for staying where they are if they were indefinitely adding their names to another potential lawsuit every single time they moved.

This produces bad results. Businesses seeking to avoid the lower court's implementation of tort liability may make the economically rational decision to stay put. In doing so, they may forgo opportunities to grow, costing Texans numerous new jobs in the process. Businesses may also be stifled in their ability to move closer to clients. As a result, they may pass on the additional costs in time and travel to their consumers, or they may not be able serve their customers at all.

[7] *Available at* http://www.entrepreneur.com/article/207682 (last visited May 4, 2015).

CONCLUSION

The decision of the Court of Appeals should be reversed.

DATED: May 8, 2015.

Respectfully submitted,
WENCONG FA
Counsel of Record

/s/ Wencong Fa
WENCONG FA

Attorney for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this document complies with the typeface requirement of TEX R. APP. P. 9.4(e), because it has been prepared in a conventional typeface no smaller than 14-point for text and 13-point for footnotes. This document also complies with the word-count limitations for TEX R. APP. P. 9.4(i), because it contains 4,193 words, excluding any parts exempted by TEX R. APP. P. 9.4(i).

/s/ Wencong Fa
WENCONG FA

CERTIFICATE OF SERVICE

I certify that on May 8, 2014, a true and correct copy of the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER was forwarded to all counsel of record by the ProDoc eFile (2) electronic filing service provider, if registered; a true and correct copy of this document was also forwarded to all counsel of record, by email, addressed as follows:

DEBORAH G. HANKINSON
dhankinson@hankinsonlaw.com
JOSEPH B. MORRIS
jmorris@hankinsonlaw.com
RICK THOMPSON
rthompson@hankinsonlaw.com
HANKINSON LLP
750 N. St. Paul Street, Suite 1800
Dallas, Texas 75201

BARRY N. BECK
bbeck@cbtd.com
DAVID W. LAURITZEN
dlauritzen@cbtd.com
RICK G. STRANGE
rstrange@cbtd.com
COTTON BLEDSOE TIGHE & DAWSON, P.C.
500 West Illinois, Suite 300
Midland, Texas 79701

RUSSELL S. POST
rpost@brsfirm.com
DAVID M. GUNN
dgunn@brsfirm.com
ERIN H. HUBER
ehuber@beckredden.com
CHAD FLORES
cflores@beckredden.com
BECK REDDEN LLP
1221 McKinney Street, Suite 4500
Houston, Texas 77010

KURT B. ARNOLD
karnold@arnolditkin.com
CORY D. ITKIN
citkin@arnolditkin.com
ARNOLD & ITKIN, LLC
1401 McKinney Street, Suite 2550
Houston, Texas 77010

/s/ Wencong Fa
WENCONG FA