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June 11, 2025

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: No. 24-0846; *JMI Contractors, LLC v. Jose Manuel Medellin*

To the Honorable Members of the Supreme Court of Texas:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae* Texas Civil Justice League files this letter in the above-referenced cause in support of the El Paso Court of Appeals' decision.

Statement of Interest

The Texas Civil Justice League ("TCJL") is a non-profit association of Texas businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair, stable, and predictable civil justice system. TCJL has long participated as *amicus curiae* in matters that have a significant and pervasive impact on our membership and the Texas business climate.

TCJL has a particular interest in this matter because it implicates, among other things, the duties of a general contractor to an independent contractor of *another*

independent contractor. The court of appeals' majority opinion significantly expands those duties, despite the absence of controlling authority from this Court. If that opinion becomes the law, it will have a substantial adverse impact on property owners and general contractors in terms of liability exposure and the cost and availability of commercial general liability insurance. That this case features what we consider to be a "nuclear verdict" that includes substantial awards of both noneconomic damages and punitive damages heightens the importance of getting the duty analysis right. We also have grave concerns that the defendant did not receive a fair trial for at least two reasons: evidence relevant to its proportionate liability was kept from the jury and plaintiff's counsel made an improper jury anchoring argument at closing.

This brief has been prepared in the ordinary course of TCJL's operations. No one has paid for the preparation of this brief.

Argument

In our view, the court of appeals erred in so many significant ways that we find it difficult to focus our comments. Clearly, the court's duty analysis, if upheld, will have the broadest impact on the owners and general contractors that make up the great majority of TCJL's members. The Petitioner has thoroughly covered this ground, so we see no need to go over it again, except to emphasize this statement in

the majority opinion: "Although we recognize the Texas Supreme Court 'has expressed doubt that the necessary-use exception applies to independent contractors,' it has not held as much" (citation omitted). Op. at 9. Instead of stopping at this point to consider *whether* the exception should or should not apply to an independent contractor, the majority struck out on its own, assuming that it did and concluding that "the evidence here shows that the exception has been squarely met." Op. at 10.

Perhaps it would be better to *know* that Texas law recognizes an exception to a long-established duty rule than to beg the question, *not answer it*, and impose liability anyway. The effect of this type of analysis has precisely the opposite effect that this Court has long sought in deciding questions of duty. That effect is certainty. Whatever the answer might be, TCJL members would like to know what the law is from the highest authority so that they can properly arrange their affairs. If owners and independent contractors are indeed subject to a new duty of this scope, they will likely have to alter, perhaps significantly, aspects of their current operations, their risk management procedures, and their insurance coverage. This will be a costly affair, but responsible owners and contractors will implement the necessary changes if this Court tells them what duties they owe and under what circumstances they owe them.

That being said, the Court could leave that decision for another day because the trial court erred in ways that deprived Petitioner of a fair trial. First, as Chief Justice Martinez's dissent emphasizes, the majority, which has previously held that "the trial court erred in sustaining [plaintiff's] objection to [defendant's] offer of evidence relating to [plaintiff's] consumption of alcohol before the incident. We also held that the trial court's error was harmful, and therefore, we remanded for new trial." Diss. Op. at 1. Somewhere along the road to rehearing, the majority forgot about that problem and instead "assume[d] error, but [] conclude[d] that the error was harmless." She also pointed out that plaintiff raised a new issue on rehearing, that is, that the evidence of his alcohol and marijuana consumption was "cumulative," thus justifying the trial court's exclusion, in Chief Justice Martinez's view, of clearly relevant evidence pertinent to a proper allocation of fault. In doing its own "about-face," to use the Chief Justice's term with respect to plaintiff's new argument on rehearing, the majority simply ignored the law in order to reach a result it apparently wanted to get to, just like it did in its backward analysis of the necessary-use exception.

But that is not all. Another independent ground for sending this back for new trial is the trial court's error, and the court of appeals' strange blindness to it, in allowing plaintiff's counsel to tell the jury, when considering punitive damages, "just to write a big number." Op. at 33. That is exactly what Chief Justice Blacklock was

talking about when he wrote in *Gregory v. Chohan*: "We must insist that every aspect of our legal system . . . yields rational and non-arbitrary results based on evidence and reason to the extent possible. Any system that countenances the arbitrary 'picking numbers of of a hat' approach to compensatory damages is not providing the rational process of law that we are obligated to provide, or at least strive for." 670 S.W.3d at 557. Although Chief Justice Blacklock made this statement in regard to compensatory, noneconomic damages, the same rational process should apply equally to punitive damages. He went on to give exampes of how *not to* establish "the required connection between an emotional injury and an amount of damages," specifically the *Gregory* plaintiffs' argument urging the jury to award plaintiffs "six cents a mile for the six hundred and fifty [million] miles … [New Prime's trucks] traveled in the year that they took these people's lives."

The Chief Justice continued, "[t]he unmistakable purpose of this argument is to suggest that New Prime can afford a large award and that it should be punished for denying Chohan and her family justice for Deol's death." 670 S.W.3d at 558. Plaintiff's counsel's argument that the jury should "just write a big number" may not go so far as to value plaintiff's injuries in terms of the cost of "expensive paintings and military aircraft," but it amounts to the same thing: "picking numbers out of a hat." We think this case needs a new trial on a number of fronts, but at the very least

lawyers should be held to the "rational process of law" test the plurality in *Gregory* set forth in the punitive damages context as well.

Conclusion and Prayer

TCJL respectfully requests that this Court reverse the decision of the court of appeals and remand this case to the trial court for a new trial.

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CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,086 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ George S. Christian

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on the 11th day of June, 2025.

/s/ George S. Christian