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IN THE SUPREME COURT OF PENNSYLVANIA

Docket Nos. 18 EAP 2024 to 32 EAP 2024

MICHAEL TRANTER, as the Administrator of the Estate of J.V., a minor, and Administrator Ad Prosequendum of the Estate, ET AL.,
v.
Z & D TOUR, INC., ET AL.

TAYLOR TEETS,
v.
UNITED PARCEL SERVICE, INC. c/o Corporation Service Company, ET AL.

LUCERO VAZQUEZ, ET AL.,
v.
Z & D TOURS, INC., ET AL.

XUE-ZHEN CHEN, ET AL.,
v.
FEDEX GROUND PACKAGE SYSTEM, INC., ET AL.

BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY, PENNSYLVANIA MEDICAL SOCIETY, PENNSYLVANIA CHAPTER OF THE AMERICAN COLLEGE OF PHYSICIANS, PENNSYLVANIA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS, UNIVERSITY OF PITTSBURGH MEDICAL CENTER, TRUCKING INDUSTRY DEFENSE ASSOCIATION, AMERICAN TRUCKING ASSOCIATIONS, PENNSYLVANIA MOTOR TRUCK ASSOCIATION, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, PENNSYLVANIA ASSOCIATION OF MUTUAL INSURANCE COMPANIES, CURI, AND PHILADELPHIA ASSOCIATION OF DEFENSE COUNSEL IN SUPPORT OF APPELLANTS

Appeal from an Opinion and Order of the Superior Court of Pennsylvania entered on October 11, 2023 at No. 1746 EDA 2022, No. 2343 EDA 2022, No. 2421 EDA 2022, No. 2426 EDA 2022, and No. 2427 EDA 2022, vacating the Orders granting Motions to Transfer Venue Based on *Forum Non Conveniens* Under Pa.R.C.P. 1006(d)(1) entered June 2, 2022, August 3, 2022, and August 4, 2022, in the

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STATEMENT OF INTEREST OF *AMICI CURIAE*

A broad coalition of 13 *amici curiae* have signed onto this brief, underscoring the significance of this appeal. Collectively, and as explained below, *amici* and their members represent the business, healthcare, trucking, insurance, and legal industries in Pennsylvania, and in some cases, nationwide.

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, bipartisan organization representing businesses, healthcare, and other perspectives. PCCJR is dedicated to improving the Commonwealth's civil justice system by increasing awareness of problems, advocating for legal reform in the legislature, and promoting fairness in the courts. PCCJR often participates as an *amicus* in appeals of statewide importance.

The Pennsylvania Chamber of Business and Industry (the "Pennsylvania Chamber") is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its members range from small companies to mid-size and large business enterprises across all industry sectors in the Commonwealth. The Pennsylvania Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for the benefit of all Pennsylvania citizens. The Pennsylvania Chamber works to

create a fair, balanced, and common-sense civil litigation system that gives predictability and certainty and achieves greater efficiencies and unbiased justice.

The Pennsylvania Medical Society ("Medical Society"), a Pennsylvania non-profit corporation, represents physicians of all medical specialties and advocates on behalf of the Commonwealth's physicians and their patients. As Pennsylvania's largest physician organization, the Medical Society regularly participates as *amicus curiae* in cases addressing important healthcare issues, including issues that have the potential to adversely impact the quality of medical care in the Commonwealth.

The Pennsylvania Chapter of the American College of Physicians ("PA-ACP") is a not-for-profit organization with 7,800 members and the Commonwealth of Pennsylvania's largest medical specialty society. The Chapter is affiliated with the American College of Physicians, founded in 1915, with 159,000 members worldwide. The PA-ACP membership includes internal medicine practitioners and medical students. These physicians practice internal medicine and its subspecialties, including cardiology, gastroenterology, nephrology, endocrinology, hematology, rheumatology, neurology, pulmonary disease, oncology, infectious diseases, allergy and immunology, palliative care, and geriatrics. The organization's mission is to enhance the quality and effectiveness of healthcare by fostering excellence and professionalism in the practice of medicine. PA-ACP's vision is to be the recognized

leader in quality patient care, advocacy, education and enhancing career satisfaction for internal medicine and its subspecialties.

The Pennsylvania Chapter of the American Academy of Pediatrics ("PA-AAP") is a not-for-profit organization affiliated with the American Academy of Pediatrics. Founded in 1930, the AAP is comprised of over 67,000 pediatricians. The PA-AAP has 2,400 member pediatricians and pediatric specialists practicing in Pennsylvania. The organization's mission is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents and young adults.

The University of Pittsburgh Medical Center ("UPMC") is a world-renowned healthcare provider and insurer, inventing new models of patient-centered, cost-effective, accountable care. UPMC provides more than $1 billion in annual benefits to its communities. UPMC is the largest nongovernmental employer in the Commonwealth with approximately 87,000 employees, 40 hospitals, 700 doctors' offices and outpatient sites, and a 3.5-million-member Insurance Services Division.

The Trucking Industry Defense Association ("TIDA") is an international organization that includes over 1,900 members comprised of motor carriers, transportation logistics companies, insurers of motor carriers, third party claims administrators, and legal counsel. The motor carrier members of TIDA include common carriers, private carriers, and private fleets. The insurance company members provide transportation liability insurance for the trucking industry. One of

TIDA's missions is to provide training and assistance to the trucking industry on various issues regarding risk management, personal injury, property damage, cargo damage and loss, and insurance coverage. TIDA participates as an *amicus curiae* in cases that raise issues of vital concern to its membership. TIDA's members have a significant interest in ensuring that all litigants are treated fairly.

The American Trucking Associations ("ATA") is a united federation of motor carriers, state trucking associations (including the Pennsylvania Motor Truck Association), and national trucking conferences created to promote and protect the interests of the trucking industry. Its direct membership includes over 3,000 trucking companies and industry suppliers, and in conjunction with its federation of affiliated organizations, it represents over 30,000 motor carriers and suppliers of every type and class of operation in the United States. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States, and virtually all operate in interstate commerce among the states, including Pennsylvania. ATA regularly files briefs as *amicus curiae* in courts throughout the nation, to represent the common interests of motor carriers in cases, like this one, involving issues of great importance for the trucking industry.

The Pennsylvania Motor Truck Association ("PMTA") is a non-profit entity formed in 1928 with over 1,200 members. PMTA represents the interests of almost 69,000 trucking companies employing over 34,000 individuals in the

Commonwealth of Pennsylvania, ranging from large multinational corporations to small businesses and single owner-operators. PMTA's mission is to promote the professional and economic growth of the trucking industry and the businesses that support it. Roadway safety, which PMTA promotes through education, advocacy, collaboration, and recognition programs, is among its highest priorities.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 65% of both the nationwide and Pennsylvania property-casualty insurance markets. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus* briefs in significant cases before federal and state courts.

The Pennsylvania Association of Mutual Insurance Companies ("PAMIC") is a trade association formed in 1907 that represents the Pennsylvania mutual insurance industry. PAMIC's members comprise some of the most historic companies in the industry, new companies who are thriving under the same model, and over 130 market members who are crucial in upholding the value and operations of its member groups. While based in Pennsylvania, PAMIC membership represents the majority

of the Mid-Atlantic region, with companies hailing from Maryland, Michigan, New Jersey, New York, Ohio, Virginia, and West Virginia. PAMIC's mission is to continue the illustrious history of the mutual insurance industry through advocacy, education, and networking.

Curi, a mutual company dedicated to helping physicians in medicine, business, and life, covers through its Insurance business unit, more than 2,000 Pennsylvania healthcare providers with medical professional liability insurance.

Philadelphia Association of Defense Counsel ("PADC") is a nonprofit association of around 300 lawyers from the five-county Philadelphia area. Organized in 1947, PADC is the oldest continuously operating local defense organization in the United States. PADC protects and advances the interests of civil defendants and their counsel, shares knowledge within the defense trial bar, speaks for civil defendants and their interests in the administration of justice, and encourages the highest standards of professional conduct.

This appeal involves the standard of proof required to establish *forum non conveniens* for a case involving an in-state plaintiff. *Forum non conveniens* has long been an essential part of Pennsylvania jurisprudence. *Fairchild Engine & Airplane Corp. v. Bellanca Corp.*, 137 A.3d 248 (Pa. 1958). Indeed, the doctrine is memorialized in both the Pennsylvania Rules of Civil Procedure and the Pennsylvania Uniform Interstate and International Procedure Act. Pa.R.Civ.P.

1006(d)(1) (applying to in-state plaintiffs; "[f]or the convenience of parties and witnesses, the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought"); 42 Pa.C.S. §5322(e) (applying to out-of-state plaintiffs; "[w]hen a tribunal finds that in the interest of substantial justice the matter should be heard in another forum, the tribunal may stay or dismiss the whole matter in whole or in part on any conditions that may be just").

Forum non conveniens serves a vital purpose. The doctrine acts as a "necessary counterbalance to insure fairness and practicality," *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989), *overruled on other grounds by Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997), empowering trial courts to transfer cases to more appropriate forums when litigating in the in-state plaintiff's chosen forum would be oppressive or vexatious. Indeed, after *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), allowing any nonresident to sue any Pennsylvania registered corporation, and *Hangey v. Husqvarna Professional Products*, 304 A.3d 1120 (Pa. 2023), allowing venue against defendants doing only *de minimis* business in a particular county, the doctrine of *forum non conveniens* plays an especially important role in balancing plaintiffs' broadened ability to hale defendants into Pennsylvania courts against defendants' and the judicial system's interests in fairness, practicality, and judicial economy.

This Court has emphasized since at least *Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997), that the *forum non conveniens* doctrine is flexible: *Cheeseman*—and thus Rule 1006(d)—does not require any particular form of proof. The moving party need only "present a sufficient factual basis for the petition [, and t]he trial court retains the discretion to determine whether the particular form of proof is sufficient." *Bratic v. Rubendall*, 99 A.3d 1, 9-10 (Pa. 2014) (cleaned up).

However, a recent series of inconsistent Superior Court decisions, culminating with the panel's decision below here, has sown uncertainty in this once-settled doctrine, subjecting some litigants to new, more rigid requirements for *forum non conveniens*, but others to the traditional, flexible standard that has existed for over a quarter century under this Court's jurisprudence. Worse, the panel below did not even attempt to reconcile its conflicting ruling with this Court's precedent.

Because *Amici* and their members wish to avoid being forced to litigate in oppressive or vexatious forums—and the resultant adverse impact on their respective industries and the economy as a whole—*Amici* have a compelling interest in this appeal. Pursuant to Pa.R.A.P. 531(b)(2), *Amici* each file this brief in their own right and, where applicable, on behalf of their respective members. *Amici* state that no person, other than their respective members and their respective counsel, paid for or authored this brief, in whole or in part.

SUMMARY OF ARGUMENT

The essential protections embodied in Rule 1006 enable courts to transfer cases to alternate forums within Pennsylvania "[f]or the convenience of parties and witnesses." Pa.R.C.P. 1006(d)(1). Under this Court's precedent, to establish *forum non conveniens,* the movant must show the plaintiff's chosen forum is either oppressive or vexatious, "without any particular form of proof." *Bratic,* 99 A.3d at 9 (cleaned up). This Court consistently has emphasized the necessity of a fact-specific assessment for *forum non conveniens*, focusing on the totality of the circumstances and granting considerable discretion to trial courts. *Id.* at 8 (disapproving of "stringent examination" of each isolated fact mentioned by the trial court); *Cheeseman*, 701 A.2d at 162.

The Superior Court panel below should have, under *stare decisis*, followed this jurisprudence. Yet, the panel's opinion is in direct conflict with this Court's holdings in *Bratic* and *Cheeseman* and countless other Superior Court decisions. This is because the panel improperly imposed a new standard for *forum non conveniens* with a specific level of proof requirement. *Tranter v. Z&D Tour, Inc.*, 303 A.3d 1070 (Pa. Super. Ct. 2023), *appeal granted*, 367 EAL 2023, 2024 WL 1401320 (Pa. Apr. 2, 2024). This decision, coupled with the Superior Court's prior

ruling in *Ehmer v. Maxin Crane Works, L.P.*, 296 A.3d 1202 (Pa. Super. Ct. 2023),[1] limits *forum non conveniens* only to situations where the potential witnesses claiming burden or hardship are "key witnesses" possessing testimony "relevant and necessary" to the defense. *Ehmer*, 296 A.3d at 1208-09; *Tranter*, 2023 WL 6613731, at *3. This new requirement has not been adopted by this Court, nor should it be—not even Plaintiffs/Appellees advocated for such a heightened standard before the Superior Court.

Moreover, while purporting to apply an abuse-of-discretion standard, the panel effectively reviewed the issue *de novo*, substituted its judgment for that of the trial court, and searched the record to make new factual findings about the affiants and potential witnesses despite overwhelming evidence of oppression. In doing so, the panel contradicted decades of caselaw, which makes clear that the *forum non conveniens* analysis is a fact-specific inquiry based on the totality of the circumstances—with no specific manner-of-proof requirement. *Bratic*, 99 A.3d at 8; *Cheeseman*, 701 A.2d at 158. This Court should thus reverse the panel and reaffirm its commitment to the flexible inquiry set forth in *Cheeseman* and *Bratic*.

However, if this Court elects to revisit its precedent, the Court should reject the new *Ehmer-Tranter* standard because it is practically impossible to meet and

[1] The defendant in *Ehmer* filed a Petition for Allowance of Appeal on September 12, 2023, docketed at 291 EAL 2023. Pursuant to this Court's May 14, 2024 *per curiam* Order, that Petition is being held in abeyance pending this Court's resolution of the instant appeal.

renders the doctrine of *forum non conveniens* devoid of any practical impact or meaning. In this case, the Appellants/Defendants collectively supported their Motions to Transfer with 11 affidavits and 32 statements from potential witnesses who work or reside 240 or more miles from Philadelphia County. Such proof should have been more than sufficient to establish *forum non conveniens* under existing caselaw, particularly since "as between Philadelphia and counties 100 miles away, simple inconvenience fades in the mirror and we near oppressiveness with every milepost of the turnpike." *Bratic*, 99 A.3d at 10.

But the Superior Court panel invented a new standard and held otherwise. If the proof offered in this case cannot satisfy *forum non conveniens*, it is difficult to imagine *any* set of facts that could, making plaintiff's chosen forum effectively unassailable. That would mean that *forum non conveniens* would exist in name only—essentially eliminating Rule 1006(d)(1) and creating *de facto* statewide jurisdiction in Philadelphia County (and, by extension, destroying venue altogether).

Therefore, if this Court is going to jettison the *Cheeseman-Bratic* standard, then it should adopt the standard that already governs *forum non conveniens* in cases involving out-of-state plaintiffs. Only then will this Court restore fairness in the law and correct the flawed belief that an in-state plaintiff's choice of forum should be afforded "great" or "heightened" deference—which is the root cause of the forum-shopping problem plaguing Pennsylvania. *See Mallory*, 600 U.S. at 153-54 (Alito,

J., concurring in part and concurring in the judgment) (acknowledging forum shopping by Philadelphia plaintiffs to "venue [] reputed to be especially favorable to tort plaintiffs").

ARGUMENT

I. This Court Should Reaffirm Long-Standing Precedent That There is No Specific Manner-of-Proof Requirement for *Forum Non Conveniens*

A. This Court has Long Held That the Doctrine of *Forum Non Conveniens* Does Not Require any Particular Form of Proof

A plaintiff's choice of forum is "not absolute or unassailable." *Powers v. Verizon Pa., LLC*, 230 A.3d 492, 496-97 (Pa. Super. Ct. 2020) (cleaned up). Rule 1006(d)(1) and the *forum non conveniens* doctrine provide defendants "a necessary counterbalance to a plaintiff's choice of forum to insure [sic] fairness and practicality." *Bratic*, 99 A.3d at 6 (cleaned up). Trial courts addressing Rule 1006(d)(1) petitions to transfer thus "are vested with considerable discretion . . . to balance the arguments of the parties, consider the level of prior court involvement, and consider whether the forum was designed to harass the defendant." *Bratic*, 99 A.3d at 7 (cleaned up). A trial court's transfer decision under *forum non conveniens* should not be disturbed absent an abuse of discretion. *Cheeseman*, 701 A.2d at 159. "If there exists a proper basis for the trial court's decision to transfer venue, the decision must stand." *Bratic*, 99 A.3d at 7.

In *Bratic*, this Court clarified the standard for *forum non conveniens* as expressed in *Cheeseman* and cautioned against overemphasizing public and private interests at the expense of the ultimate issue—whether the chosen forum is oppressive or vexatious. *Id.* at 6-8. In reaffirming *Cheeseman*, *Bratic* made clear

that *Cheeseman* and Rule 1006(d) do not require any particular form of proof. *Id.* at 9. Rather, trial courts must consider the totality of the circumstances supporting the petition, as rarely will one factor alone suffice to warrant transfer. *Id.* at 8-10. A defendant must show more than mere inconvenience but need not show "near-draconian consequences" resulting from the plaintiff's chosen forum. *Bratic*, 99 A.3d at 10; *Cheeseman*, 701 A.2d at 162.

For instance, a defendant may demonstrate trial elsewhere "would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute." *Cheeseman*, 701 A.2d at 162. Long-recognized considerations are also relevant, such as a 100-plus mile distance from the chosen forum to the site where the cause of action arose, and the location of sources of proof, evidence, and material witnesses. *Bratic*, 99 A.3d at 10. So long as a petition is supported by detailed information of record, whether a particular form of proof suffices to support transfer is within the trial court's sound discretion.

Consistent with *Bratic*, the Superior Court repeatedly has held that "*Cheeseman* and Rule 1006(d) do not require any form of proof. Rather, the moving party must present a sufficient factual basis for the petition, and the trial court retains the discretion to determine whether the particular form of proof is sufficient." *Lee v. Thrower*, 102 A.3d 1018, 1022 (Pa. Super. Ct. 2014) (cleaned up); *accord Wood v. E.I. du Pont de Nemours & Co.*, 829 A.2d 707, 714 (Pa. Super. Ct. 2003); *see also*

McGuinness v. Elite-Crete Sys., Inc., No. 1176 EDA 2021, 2022 WL 4321028, at *4 (Pa. Super. Ct. Sept. 14, 2022); *Duty v. Toyota Advanced Logistics*, 1453 EDA 2020, 2021 WL 4026871, at *7 (Pa. Super. Ct. Sept. 3, 2021).[2]

B. The Panel's New, Restrictive Standard to Establish *Forum Non Conveniens* is a Departure From This Court's Precedent, as Well as Prior Decisions From the Superior Court, Necessitating Reversal

Despite the foregoing precedent, the panel below held that the trial court erred in granting the Motions to Transfer based on *forum non conveniens* because it "did not find that Defendants had demonstrated that this 'relevant evidence' was critical to their defenses" and "none of the [Defendants] asserted in their motions to transfer that the witnesses who signed the affidavits were 'key witnesses' for the defense." *Tranter*, 303 A.3d at 1076. This marked the second time in the past year that the Superior Court disregarded precedent and imposed a specific-manner-of-proof standard for potential witnesses in *forum non conveniens* cases.

Beginning with its decision in *Ehmer*, the Superior Court looked to *Ritchey v. Rutter's, Inc.*, 286 A.3d 248 (Pa. Super. Ct. 2022), for the proposition that "the party seeking a change of venue bears a heavy burden in justifying the request, and it has been consistently held that this burden includes the demonstration on the record of the claimed hardships." *Ehmer*, 296 A.3d at 1207-08 (quoting *Ritchey*, 286 A.3d at

[2] Super. Ct. IOP § 65.37 ("[n]on-precedential decisions filed after May 1, 2019, may be cited for their persuasive value").

254). The Superior Court took this even further, finding an abuse of discretion where the trial court determined hardship to affiants and potential witnesses warranted a transfer without first determining the testimony is "relevant and necessary" to the defense. *Ehmer*, 296 A.3d at 1207-08.

Citing a decision grounded in pre-*Cheeseman* and pre-*Bratic* caselaw, the Superior Court proclaimed: "[w]hen the transfer request is based on an allegation of witness hardship, the defendant must (1) identify the allegedly encumbered witness, and (2) make a general statement of what testimony that witness will provide." *Ehmer*, 296 A.3d at 1207-08 (citing *Bochetto v. Diemling, Schreiber & Park*, 151 A.3d 1072, 1083 (Pa. Super. Ct. 2016) (citing *Petty v. Suburban Gen. Hosp.*, 525 A.3d 1230, 1234 (Pa. Super. Ct. 1987)). Based solely on this antiquated jurisprudence, *Ehmer* demoted witness hardship to secondary status, holding: "Only after the defendant has placed detailed information on the record establishing that the witness possesses information relevant to its defense should the trial court proceed to consider the alleged hardship posed to the witness." *Id.* at 1208.

The Superior Court augmented the novel standard further in *Tranter*. Invoking the same pre-*Cheeseman* and pre-*Bratic* decisional law, the panel required that the general statement also "establish that the potential witness is 'key' to the defense." 303 A.3d at 1075 (citing *Perry*, 525 A.3d at 1234). Rather than affording the required deference to the trial court, the Superior Court applied a *de novo*

standard of review and probed the facts relied upon by the trial court. *Id.* at 1076-77. The result was the Superior Court discounting 11 affidavits and 32 statements from potential witnesses who worked and resided 240 or more miles from Philadelphia County, on the basis that the movants failed to establish these witnesses were "key" witnesses whose testimony is "relevant and necessary" to the case. *Id.*

Even more recently, the Superior Court again defied precedent and doubled down on this onerous standard in *James v. Wal-Mart Distribution Ctr.*, 310 A.3d 316 (Pa. Super. Ct. 2024). There, the Superior Court held that it was "constrained to reverse" a trial court order transferring a slip-and-fall case from Philadelphia County to Lehigh County, because the affidavits in support of the motion to transfer did not identify the defendant's defenses or the evidence that the affiants would provide that was key to the defense as required by the applicable standard of review. *Id.* at 321. Continuing to cite *Perry* as the authoritative standard, the Superior Court found that the trial court erred when it made its hardship decision without knowing defendant's defense and whether the identified witnesses would testify at trial, *id.*—an impossible standard to satisfy at the outset of a case. Since defendants "failed to provide a general statement identifying their defense and thus, establishing either witness possesses testimony that is relevant and necessary to the defense," the Superior Court concluded the record did not provide any information about the

witnesses' testimony which the trial court could weigh against the hardship factors. *Id.*

But despite what the Superior Court said in *Tranter*, *Ehmer*, and *James*, *Bratic* makes clear no particular form of proof is required to establish that a forum is oppressive under *forum non conveniens*. 99 A.3d at 9. "All that is required is that the moving party present sufficient factual basis for the petition." *Id*. Thus, the new, restrictive standard endorsed by some Superior Court panels departs from this Court's precedent.

Tranter, *Ehmer*, and *James* also diverge from prior Superior Court decisions affirming transfer absent any hardship affidavits or witness statements. For instance, in *Duty*, the Superior Court affirmed a venue transfer without witness affidavits or statements, holding "a reasonable evidentiary basis supported the conclusion that the selection of a distant Philadelphia venue to litigate this purely York County matter was manifestly oppressive," where all 17 potential fact witnesses resided no less than 80 miles away in York County. 2021 WL 4026871 at *5.

Similarly in *Powers v. Verizon Pennsylvania, LLC,* 230 A.3d 492 (Pa. Super. Ct. 2020), the Superior Court affirmed the trial court's *forum non conveniens* transfer from Philadelphia to Bucks County despite a lack of supporting affidavits. *Id.* at 495-96. The Court held that the totality of the circumstances, including the difference in travel time from the accident scene to the respective venues, as well as

reduced travel time for medical professionals who treated the plaintiff in Bucks County, sufficiently justified the trial court's exercise of discretion. *Id.* at 500.

In yet another example, in *Smith v. CMS W., Inc.*, 1002 EDA 2022, 2023 WL 7119812 (Pa. Super. Ct. Oct. 30, 2023), the Superior Court affirmed a transfer from Philadelphia County to Butler County, holding that the burden on defense witnesses justified transferring the suit. The movants produced just four inconvenience affidavits in a case plaintiffs argued was "certain to have dozens of witnesses." *Id.* at *2. Writing for the Court, Judge Stabile explained:

> If inconvenience fades in the mirror and oppressiveness nears in that 100-mile stretch between Philadelphia and Harrisburg, oppressiveness is certainly reached before someone embarks on a 300-mile journey leaving from Bu[tl]er, traveling past Bedford, Breezewood, and through the turnpike's tunnels, before reaching Harrisburg, with another 100 miles still to go before arriving in Philadelphia.

2023 WL 7119812, at *2.

Moreover, and perhaps most important, none of the parties in *Tranter* even argued that the panel should disregard controlling precedent, or that a new, heightened standard should apply. Instead, Plaintiffs acknowledged before the Superior Court that "the standard of review is limited and not *de novo*," and cited *Bratic* and *Cheeseman* as the law in Pennsylvania. (Br. of Appellants, *Tranter v. Z&D Tour, Inc.*, 2023 WL 4828605, at *6 (Pa. Super. Ct. Jan. 30, 2023)). Plaintiffs specifically distilled certain common "core" principles based upon this Court's jurisprudence and advocated that the panel should apply those principles to the facts

in this case. *Id.* at *14-16 ("*Cheeseman* remains the seminal case in which the Supreme Court of Pennsylvania set forth a defendant's burden to successfully change venue of a case based on the doctrine of forum non conveniens.").

Notably absent from Plaintiffs' briefing below is *any argument* that the panel should create a new standard for *forum non conveniens*. Plaintiffs instead maintained that "*Cheeseman* and Rule 1006(d) do not require any particular form of proof. All that is required is that the moving party present a sufficient factual basis for the petition. The trial court retains the discretion to determine whether the particular form of proof presented in support of the petition is sufficient." *Id.* at n.20. Plaintiffs even criticized the notion of a "rigid formula," contending for the case-by-case evaluation of the totality of the circumstances provided for in *Cheeseman*. *Id.* at *6.

Plaintiffs' briefing thus makes clear that the Superior Court panel invented the new *Ehmer-Tranter* standard out of thin air, in violation of a central tenet of appellate law. *See, e.g., Knarr v. Erie Ins. Exch.*, 723 A.2d 664, 666 (Pa. 1999) ("We have held on numerous occasions that where the parties fail to preserve an issue for appeal, the Superior Court may not address the issue[.]"); *see also Danville Area Sch. Dist. v. Danville Area Educ. Ass'n, PSEA/NEA*, 754 A.2d 1255, 1259 (Pa. 2000) (explaining the problems that arise when courts engage in *sua-sponte*

decisionmaking). In any event, because the panel's decision below conflicts with this Court's precedent,[3] it must be reversed.

II. Alternatively, This Court Should Harmonize its Caselaw on *Forum Non Conveniens* and Adopt the Standard that Applies to a Motion to Dismiss on *Forum Non Conveniens* Grounds for an Out-of-State Plaintiff for Intrastate *Forum Non Conveniens* Transfers

However, if this Court decides to revisit its precedent (which, of course, it should not because this case does not implicate an exception to *stare decisis*), the Court should reject the novel standard invented by the Superior Court panel, because it is practically impossible to meet; would render the doctrine of *forum non conveniens* devoid of any practical effect; would effectively abolish venue; would exacerbate the forum-shopping problem troubling Pennsylvania; and would even further overburden the busiest trial court in the Commonwealth—the Philadelphia County Court of Common Pleas—at a time when it is still coping with the influx of cases brought on by the repeal of the medical malpractice venue rule and other factors. Instead, this Court should adopt the standard that applies to a motion to dismiss on *forum non conveniens* grounds for an out-of-state plaintiff for in-state *forum non conveniens* transfers.

As a threshold matter, *forum non conveniens* is raised on a petition to transfer at the preliminary stages of litigation—*before* discovery and *before* the parties have

[3] To the extent Plaintiffs now advocate for a new standard inconsistent with this Court's precedent, they waived any such argument. Pa.R.A.P. 302(a).

fully developed their claims and defenses for trial. Under the *Ehmer-Tranter* standard, motions to transfer and affidavits are now required to make a statement as to the content of the anticipated trial testimony of the burdened witness to show its relevance to the defense, based on whatever facts are alleged in the pleadings. It is unreasonable, unworkable, and inefficient to mandate at this early stage that defendants establish certain witnesses, including third-party witnesses, as key witnesses and identify with precision the relevance and necessity of each witness's testimony for purposes of *forum non conveniens*.

Indeed, in response to a *forum non conveniens* petition, a trial court often orders discovery that is limited to venue, which is what occurred here. *See*, *e.g.*, R. 534a (1/28/22 Order ("[A]ll parties are permitted to conduct discovery limited to the issue of venue and *forum non conveniens*, to include both affidavits and depositions as the parties deem necessary.")) Consistent with this limitation, subsequent depositions address venue only, and defense counsel is precluded from inquiring into the merits, which handicaps defendants' ability to determine whether the deponents and others might be "key witnesses."

Even if defendants disregard the venue-only discovery limitation, the Superior Court's new form-of-proof requirement puts defendants between a rock and a hard place—reveal their defense in detail to opposing parties and prematurely subject it to trial court scrutiny or be forced to litigate in an oppressive or vexatious forum.

Ehmer and *Tranter* both illustrate this problem. In *Ehmer*, the site of the accident, the fact witnesses expected to be called at trial, all records related to the plaintiff's medical treatment, and plaintiff himself are all located in or near Columbia County, more than 100 miles and several hours from Philadelphia. The Superior Court nevertheless vacated the transfer order because, *inter alia*, the trial court found that trial in Philadelphia would pose a hardship to the defendant's three witness-affiants without first making a finding that they possessed testimony relevant to the defense. 296 A.3d at 1208.

The circumstances in *Tranter* are even more compelling: the accident giving rise to the claims occurred *over 250 miles* from Philadelphia County; *none* of the Plaintiffs reside in or received medical care in Philadelphia County; *none* of the Defendants reside or maintain a principal place of business in Philadelphia County; and of the dozens of potential witnesses, including emergency, medical, police, and investigating officers, *none* work or reside in Philadelphia County and many reside no closer than 240 miles from there. That county shares no connection to a single party, witness, or claim with respect to these cases. The only arguable connection with Philadelphia County is the fact that some of the Defendants conduct business there, which is irrelevant to the *forum non conveniens* analysis. The quantum of proof in support of transfer is compelling here, and if ever there is a case that should satisfy *forum non conveniens*, it is this one.

Nevertheless, *Ehmer*, *Tranter*, and *James* effectively eliminate *forum non conveniens* as a defendant's last line of defense against forum shopping. *But see Bratic*, 99 A.3d at 6 (noting the doctrine acts as a "necessary counterbalance" against a plaintiff's "desire to pursue verdicts in counties perceived to be more plaintiff-friendly," among other things). This level of proof requirement is improper at the motion to transfer stage of the litigation, and the Superior Court's rigid directives and expansion of the "detailed information in the record" standard should be rejected. This is especially troublesome given the convergence of recent venue and jurisdiction decisions that have eroded the doctrine's practical impact under Pennsylvania law, which previously would have protected defendants from oppressive forum shopping by plaintiffs.

In *Mallory*, the U.S. Supreme Court rejected a due-process challenge to Pennsylvania's consent-by-registration statute, which requires out-of-state corporations to consent to general jurisdiction in the Commonwealth as a condition of doing business here. The Court held the statute broadly confers personal jurisdiction in Pennsylvania for out-of-state corporations for conduct that occurred outside the Commonwealth against an out-of-state plaintiff, creating an additional, consent-based theory of personal jurisdiction. *Mallory*, 600 U.S. at 125; *see id.* at 150 (Alito, J., concurring in part and concurring in the judgment). Although other potential challenges to that statute remain pending, as it presently stands, corporate

defendants who are not "at home" in Pennsylvania now face the real prospect of suit in the Commonwealth for claims arising in *any* jurisdiction by a plaintiff *with no ties to Pennsylvania*.[4] *Mallory* therefore "could make Philadelphia an even more popular site for personal injury plaintiffs to file suit." Aleeza Furman, *US High Court's 'Mallory' Ruling Could Mean Busier Courts in Pa., but the Fight's Not Over*, THE LEGAL INTELLIGENCER (June 29, 2023).

Meanwhile, in *Hangey*, this Court held that a defendant's *de minimis* sales in Philadelphia were sufficiently continuous for the "quantity prong" of a venue analysis under Pennsylvania Rule of Civil Procedure 2179(a)(2). 304 A.3d at 1148. Thus, a corporation may be sued in a venue even if it conducts an extremely small amount of business there,[5] which "will likely only exacerbate the forum-shopping problem already plaguing corporate defendants sued in Pennsylvania." Stefanie Pitcavage Mekilo & Joseph Schaeffer, *Pa. Court's Venue Ruling Is Likely To Worsen Forum Shopping*, LAW360 (Dec. 4, 2023).

[4] No other state has a comparable consent-by-registration statute, making Pennsylvania a proverbial island unto itself when it comes to consent jurisdiction. *See, e.g.*, U.S. Chamber of Commerce Institute for Legal Reform, *Personal Jurisdiction After Mallory*, ILR BRIEFLY (Nov. 2023), *available at*: https://instituteforlegalreform.com/wp-content/uploads/2023/11/ILR-Briefly-Mallory-Personal-Jurisdiction-FINAL.pdf.

[5] *But see Hausmann v. Bernd*, 271 A.3d 486 (Pa. Super. 2022) (distinguishing *Hangey* and affirming transfer by trial court where corporation had 0.27% of total revenue in Philadelphia County).

At the same time, the longstanding medical malpractice venue rule (former Rule 1006(a.1))—which provided that plaintiffs could only file lawsuits against healthcare providers in the county where medical treatment occurred—is no longer in effect. *In re*: Order Amending Rules 1006, 2130, 2156, and 2179 of the Pennsylvania Rules of Civil Procedure, No. 736 (Aug. 25, 2022). With this change, medical malpractice suits may now be filed in any county in which care occurred, where a defendant could be served, or where any transaction or occurrence giving rise to the suit took place. Curt Schroder, *Transparency, Open Process Needed for Review of 2022 Amendments to Med Mal Venue Rule*, THE LEGAL INTELLIGENCER (Sept. 14, 2023). The repeal has led to a sharp increase in medical malpractice actions filed in Philadelphia County, with 544 such cases filed in 2023, according to statistics provided by the Philadelphia County Court of Common Pleas—*a 197% increase from the prior year*.

This perfect storm of recent changes in the law stacks the deck against Pennsylvania defendants and makes *forum non conveniens* more important than ever. Carla Castello & Casey Coyle, *Forum Non Conveniens – Pennsylvania's Jurisdiction Jigsaw Puzzle*, THE LEGAL INTELLIGENCER (Jan. 27, 2024).[6] Indeed, Philadelphia has become the epicenter of the recent trend of nuclear verdicts ($10

[6] These changes also burden parties with purely Philadelphia-based disputes. Plaintiffs and defendants with legitimate judicial business in Philadelphia now must wait longer for their cases to be resolved because the judges are overburdened with an influx of forum-shopped cases.

million+) and thermonuclear verdicts ($100 million+) in Pennsylvania, as shown in the chart below:[7]

Case	Date	Venue	Verdict
Axial Corp. v. AllTranstek LLC, et al., GD 18-010944	10/21	Allegheny	$12.8M
Fraser v. O'Black, 15-CI-03034	3/22	Westmoreland	$19M
Downes v. Carpenter, 2019-12863-PL	7/22	Chester	$18M
Feldman v. SEPTA, et al., Case ID 200500942	10/22	Philadelphia	$15.5M
Melendez v. Mo, et al., Case ID 180801939	9/22	Philadelphia	$19.7M
Daciw v. Honeywell International, Inc., et al., Case ID 190404766	12/22	Philadelphia	$25M
Newlin, et al. v. Vita Healthcare Group, et al., CV-2020-008216	1/23	Delaware	$19M
Maragos v. Bradley, Case ID 191100972	2/23	Philadelphia	$43.5M
Latham v. Heritage Valley Health, CV-11050-2018	3/23	Beaver	$16M
Hagans v. Hosp. of the Univ. of Pa., Case ID 190607280	4/23	Philadelphia	$182M
Parks v. Temple Univ. Hosp., Inc., Case ID 190605457	5/23	Philadelphia	$25.9M
Rosenberg v. United Financial Casualty Company, et al., Case ID 210101684	6/23	Philadelphia	$10.4M
Clemmons v. Lehr, Case ID 200600478	9/23	Philadelphia	$26.2M

[7] *See, e.g., Lycoming Cnty. v. PLRB*, 43 A.2d 333, 335 n.8 (Pa. Commw. Ct. 2003) ("It is well settled that this Court may take judicial notice of pleadings and judgments in other proceedings where appropriate.").

Tomascik v. Terex Corp., Case ID 210200788	10/23	Philadelphia	$10M
Caranci v. Monsanto, Case ID 210602213	10/23	Philadelphia	$175M
Amagasu v. Mitsubishi Motors N. Am., Inc., Case ID 181102406	10/23	Philadelphia	$976M
Munoz v. The Children's Hosp. of Phila., Case ID 170403453	12/23	Philadelphia	$14M
McKivison v. Nouryon Chemicals, LLC, Case ID 220100337	1/24	Philadelphia	$2.25B
Estate of Breen v. Albert Einstein Med. Ctr., Case ID 210400860	2/24	Philadelphia	$10M
Heffelfinger v. Shen, CV-8443-2020	2/24	Luzerne	$11M
Torres v. Penske Trucking Leasing Co., Case ID 220801974	4/24	Philadelphia	$12M
Gill v. ExxonMobil, Case ID 200501803	5/24	Philadelphia	$725.5M

See also Spencer Brewer, *What's Behind 'Nuclear' Verdicts? Skeptical Juries, Attys Say*, LAW360 (May 14, 2024) (stating that Pennsylvania had $1.2 billion worth of nuclear verdicts in 2023).

But where *forum non conveniens* once operated as a safety net to protect defendants from oppressive or vexatious forum shopping, the new, heightened standard imposed by the panel below makes it even more likely that Pennsylvania disputes will be adjudicated wherever they are filed (which will most likely be Philadelphia), *regardless of the burden on the parties and witnesses*.

While this sea change will affect all industries, the impact will be particularly acute within Pennsylvania's healthcare sector, where doctors, nurses, and first responders will be dragged into distant courtrooms for days or weeks at a time—impeding their ability to provide vital (and at times, lifesaving) care—all so that "plaintiffs may bring suit in an inconvenient forum in the hope that they will secure easier or larger recoveries or so add to the costs of the defense that the defendant will take a default judgment or compromise for a larger sum." *Hovatter v. CSX Transp., Inc.*, 193 A.3d 420, 424 (Pa. Super. Ct. 2018) (cleaned up).

Put simply, the *Ehmer-Tranter* standard will exacerbate the Commonwealth's burgeoning forum-shopping problem, stranding defendants with no other connection to Philadelphia County in a court with notoriously plaintiff-friendly juries. *See Mallory*, 600 U.S. at 153-54 (Alito, J., concurring in part and concurring in the judgment).

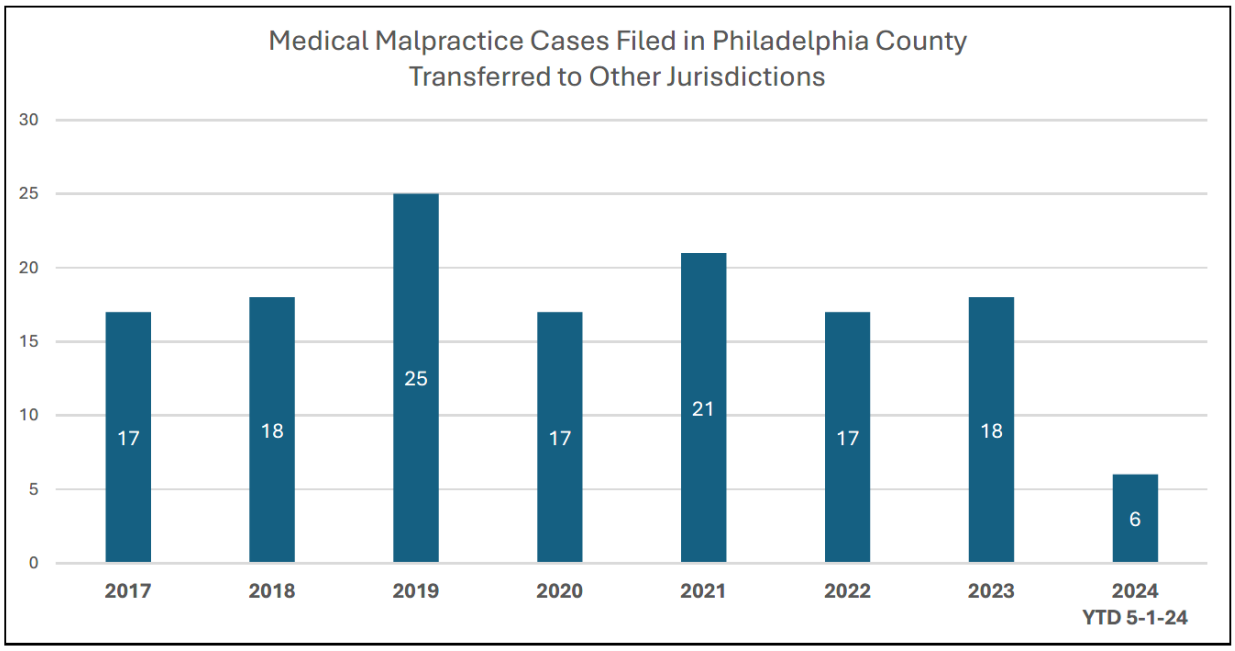
In lieu of the onerous (and plaintiff-friendly) *Ehmer-Tranter* standard, this Court should adopt the standard that applies to a motion to dismiss on *forum non conveniens* grounds for an out-of-state plaintiff for intrastate *forum non conveniens* transfers, *i.e.*, whether "weighty reasons" exist to overcome the plaintiff's chosen of forum. *See, e.g., Ficarra v. Consol. Rail Corp.*, 242 A.3d 323, 330 (Pa. Super. Ct. 2020). There are several benefits of such an approach.

The first is uniformity because, instead of there being two different tests for evaluating *forum non conveniens* challenges, *see, e.g.*, *Wright v. Consol. Rail Corp.*, 215 A.3d 982, 992 (Pa. Super. Ct. 2019), there will be one standard that applies in all circumstances. Courts and litigants alike will benefit from such standardization. Another benefit is fairness. Not only will adopting the standard that applies to a motion to dismiss on *forum non conveniens* for intrastate *forum non conveniens* transfers eliminate the disparate treatment between in-state and out-of-state plaintiffs, but it will also remove the heavy burden currently placed on defendants to demonstrate that an in-state plaintiff's chosen forum is "oppressive and vexatious." Rather, defendants seeking intrastate transfers on *forum non conveniens* grounds would have to show that "there is a more convenient forum where the litigation could be conducted more easily, expeditiously, and inexpensively," *Hovatter*, 193 A.3d at 427, which will put all defendants on equal footing. The doctrine of *forum non conveniens* should not favor one group of defendants over another. *Cf.* Civil Procedural Committee Adoption Report, Amendment of Pa.R.Civ.P. 1006, 2130, 2156, and 2179 ("[T]he current venue rule should be changed because it provides special treatment for a particular class of defendants; procedural rules should provide fairness of process and be agnostic to outcome.").[8]

[8] *Available at*: https://www.pacourts.us/Storage/media/pdfs/20220825/163004-aug.25,2022-civilproceduralrulescommitteeadoptionreport.pdf.

The other benefit is that the multi-factor, "weighty reasons" test addresses the root cause of the forum-shopping problem afflicting Pennsylvania by removing the "heightened" or "great" deference afforded to the plaintiff's chosen forum in instances of intrastate transfers. *See*, *e.g.*, *Ehmer*, 296 A.3d at 1206 ("A plaintiff's choice of forum is entitled to great weight, and must be given deference by the trial court. As a result of that deference, the plaintiff's choice of forum should rarely be disturbed[.]") (cleaned up; alteration in original). Rather, the focus will be on balancing the in-state plaintiff's private interests against those of the defendant and the public writ large, *see*, *e.g.*, *Hovatter*, 193 A.3d at 425, which will restore fairness in the law.

And by lowering the standard by which trial courts can transfer cases filed by in-state plaintiffs on *forum non conveniens* grounds, it will provide much needed assistance to the Philadelphia County Court of Common Pleas. Otherwise, the busiest trial court in the Commonwealth will lose a valuable tool that it has used regularly in recent years to alleviate its swelling dockets, especially in medical malpractice cases:



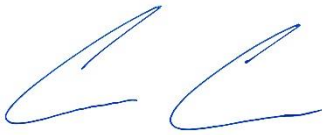
Source: Philadelphia County Court of Common Pleas

CONCLUSION

For the foregoing reasons and those additional reasons set forth in Appellants/Defendants' briefs, *Amici* respectfully request that this Court reaffirm the flexible standard set forth in *Cheeseman* and *Bratic*, reverse the Superior Court, and vacate its Order. Alternatively, *Amici* ask that this Court adopt the standard that applies to a motion to dismiss on *forum non conveniens* grounds for an out-of-state plaintiff for intrastate *forum non conveniens* transfers—*i.e.*, whether "weighty reasons" exist to overcome the plaintiff's chosen of forum—reverse the Superior Court, and vacate its Order.

Respectfully submitted,

BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C.

By: 

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Dated: June 12, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, ET AL. complies with the word-count limit set forth in Pa.R.A.P. 531(b)(3). Based on the word-count function of the word processing system used to prepare the Brief, the substantive portions of the Brief (as required by Pa.R.A.P. 2135(b) and (d)), contain 6,986 words.

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: June 12, 2024

Casey Alan Coyle, Esquire

PROOF OF SERVICE

I hereby certify that, on this 12th day of June, 2024, I am causing to be served the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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