IN THE
INDIANA SUPREME COURT

Cause No. _____

Camoplast Crocker, LLC, Seats, Inc., and the Kelch Corporation,

Petitioners-Appellants
(Defendants below),

and Magic Circle Corporation d/b/a Dixie Chopper,

(Defendant below),

v.

Kris Schoolcraft, as Personal Representative of the Wrongful Death Estate of Rickie D. Schoolcraft, deceased,

Respondent-Appellee
(Plaintiff below).

Court of Appeals Cause No. 29A02-1303-CT-273

Appeal from the Hamilton Superior Court No. 3

Trial Court Cause No. 29D03-1201-CT-446

The Honorable William J. Hughes, Judge

Brief of *Amicus Curiae*, Indiana Trial Lawyers Association

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STATEMENT OF THE INTEREST OF THE *AMICUS CURIAE*

The mission of the Indiana Trial Lawyers Association (ITLA) is to preserve the constitutional rights of open access to courts and equal protection under the law for all persons in Indiana. ITLA is an association of Indiana lawyers who regularly represent clients who have been injured as a result of others' negligence. As such, ITLA's members' clients are typically the initiators of litigation and have a vested interest in knowing with certainty when their claims expire under a statute of limitations—the precise issue presented in this appeal.

If the arguments presented by the Petitioners (the "Parts Manufacturers") are adopted by this Court, injured parties will no longer have exclusive control over the commencement of a lawsuit, losing the ability to protect with certainty their claims from being time-barred. Instead, these injured parties will be faced with an ever-moving statute of limitations, subject to variance day-to-day, county-to-county, and even judge-to-judge.

The Court of Appeals rightly rejected the Parts Manufacturers' position and, siding with a majority of jurisdictions that have confronted this issue, held that "an action against new defendants is commenced when the plaintiff files the motion to amend and the proposed complaint, irrespective of when the court grants the motion to amend ... ." *Magic Circle Corp., et al v. Schoolcraft*, 4 N.E.3d 768, Slip Op. 6 n.2, (Ind. Ct. App. 2014). ITLA respectfully requests that

this Court deny transfer and allow the Court of Appeals' decision below to remain intact.

SUMMARY OF THE ARGUMENT

While litigation is rife with uncertainty, there is one thing that an injured person can control — the date a lawsuit is commenced. Given the strict time limits within which a lawsuit must be commenced, this control effectuates our citizens' right to open courts. Providing citizens with the ability to control when a lawsuit is commenced places the power of ensuring the timeliness of a complaint with the party bringing that complaint—not with a third party over whom the complaining party has no control.

More than 20 years ago, this Court gave life to this concept by holding that it is the **plaintiff** who has exclusive power to commence litigation. *See Boostrom v. Bach*, 622 N.E.2d 175, 177 n.2 (Ind. 1993). The Parts Manufacturers, however, now ask this Court to abandon this rule and adopt a procedure that takes control away from the initiating party, creates uncertainty, and champions inefficiency. Both the trial court and the Court of Appeals below rejected this position and reaffirmed that it is the plaintiff—not the trial court or some other third party—who determines when an action is commenced.

The prior holding of this Court and fundamental fairness dictate that a plaintiff should maintain exclusive control over the com-

mencement of her lawsuit. The Court of Appeals' decision reinforcing this rule should be left undisturbed.

ARGUMENT

1. This Court has already recognized that it is the plaintiff—not the trial court—who controls when a lawsuit is commenced for statute of limitations purposes.

In *Boostrom v. Bach*, 622 N.E.2d 175 (Ind. 1993), this Court recognized that it is the plaintiff—and the plaintiff alone—who controls when a lawsuit is commenced:

> The plaintiff, of course, controls the presentation of all the documents necessary to commencement of a suit: the complaint, the summons, and the fee.

622 N.E.2d at 177 n.2. This Court further explained that it is not actions of the trial court (e.g., issuance of summons) that control commencement, it is the plaintiff herself: "Payment of the filing fee, unlike issuance of summons by the clerk, is wholly in the hands of the plaintiff." *Id.* at 177.

The Court of Appeals properly extended this reasoning by holding here that lawsuit commencement is controlled by the plaintiff (i.e., filing of the motion to amend) and not by some action of the trial court (i.e., granting the motion to amend). *Magic Circle Corp., et al v. Schoolcraft*, 4 N.E.3d 768, Slip Op. 6 n.2. This decision adheres to this Court's precedent, gives citizens control over their own actions, and should be left undisturbed.

The Parts Manufacturers' alternative would strip many citizens of their ability to ensure a timely filed complaint by placing that ability within the sole control of the trial court. Under the Parts Manufacturers' argument, a plaintiff could tender a proposed amended complaint, a motion for leave to file that complaint, summonses, filing fees, and service envelopes (all documents necessary to commence an action) more than a year before a two-year statute of limitations expires, and that complaint may still be time-barred if it takes that long for the trial court to rule upon the motion.

While this scenario may seem hyperbolic, it is a possible consequence of the Parts Manufacturers' position.[1] Indeed, this was precisely the rationale adopted by the Supreme Court of Massachusetts when it held that a motion to amend satisfies the commencement requirement for purposes of limitation periods:

> Plaintiff would have to file the motion to amend some considerable period in advance of the expiration of the [limitation] period and simply hope that the court's ruling would be sufficiently prompt. It is only the first step, the filing of the motion, that the plaintiff can control.

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[1] To be sure, in this hypothetical the plaintiff may be able to have the case withdrawn from the trial judge after thirty (30) days pursuant to Trial Rule 53.1(E), but there is no guarantee that the withdrawal process will be completed immediately, and there is no guarantee that the new trial court will be able to assume jurisdiction of the case, get up to speed on all pending matters, and issue a ruling before the expiration of the statute of limitations. This absurd result is not possible under the trial court and Court of Appeals' decisions here.

Nett v. Bellucci, 774 N.E.2d 130, 136 (Mass. 2002).

Indeed, the filing of a motion to amend is comparable to the original filing of the complaint, insofar as each is the first step that a plaintiff takes and the first document that a plaintiff files with the court with regard to a specific defendant; it is also comparable in the sense that both the filing of the original complaint and the filing of the motion to amend are steps that remain exclusively in the plaintiff's control. If we are to give any weight to this Court's language in *Boostrom*—that the plaintiff is in sole control of when a lawsuit is commenced—then the Court of Appeals' decision here should be left undisturbed. [2]

2. The Parts Manufacturers' position would create an absurd result where statutes of limitation will vary from day-to-day, county-to-county, and even judge-to-judge.

In holding that the plaintiff controls the commencement of her lawsuit with the filing of a motion for leave to amend the complaint, the Court of Appeals correctly recognized the inequity that would result from the alternative: "we 'would punish plaintiff and other similarly situated plaintiffs for the court's unavoidable delay in issuing

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[2] Throughout its petition, the Parts Manufacturers repeatedly claim the Court of Appeals found that the filing of a motion for leave to amend a complaint "tolled" the statute of limitations. [*See, e.g.*, Pet. 4, 5.] To the contrary, the Court of Appeals held only that "an action against new defendants is **commenced** when the plaintiff files the motion to amend and the proposed complaint, irrespective of when the court grants the motion to amend ... ." *Magic Circle*, Slip Op. 6 n.2. Indeed, the Court of Appeals was clear that it was not addressing whether Schoolcraft's motion "had the effect of tolling the statute of limitations." *Id.*

an order granting leave to amend a complaint.'" *Magic Circle*, Slip Op. 6 (quoting *Wallace v. Sherwin Williams Co., Inc.*, 720 F. Supp. 158, 159 (D. Kan. 1988). Yet, this inequity is precisely what the Parts Manufacturers now counsel this Court to adopt.

Indeed, the Parts Manufacturers' alternative would create an absurd result where statutes of limitation were ever-changing. Specifically, they ask this Court to find that an action is not commenced until the trial court grants a motion to amend. [*E.g.*, Trans. Pet. 3-4.] In other words, a statute of limitations would be indeterminable as it would rely upon some contingent future event—i.e., the trial court's ruling, which in turn is also affected by any number of unknown contingencies (court's caseload, trial calendar, etc.). The practical result of this proposal is that the statute of limitations would vary from day-to-day, from county-to-county, and even judge-to-judge.

The absurdity of the Parts Manufacturers' position is most clearly demonstrated in the following scenario:

1. Two different citizens were both injured on the same date by the same product, but in different counties.
2. Each citizen brings a lawsuit against the manufacturer of the product on the same date, but in different counties.
3. Each citizen moves to amend her complaint to add component part manufacturers on the same date and within the statute of limitations.

4. Citizen A's motion is granted before the statute of limitations expires; Citizen B's motion is granted after the statute of limitations expires.

Under the Parts Manufacturers' proposal, Citizen A could move forward with her lawsuit against the component part manufacturers while Citizen B could not. Two citizens in identical situations and engaging in identical behavior; yet, one citizen's suit is time-barred while the other's is not. The statute of limitations would no longer be a known concept—it would vary on how quickly (or not) the trial court can rule on a motion for leave to amend.[3]

When an interpretation of a rule or statute leads to absurdity, this Court will reject that interpretation. *See Superior Constr. Co. v. Carr*, 564 N.E.2d 281, 284 (Ind. 1990). Respectfully, a rule of law that would impose different statutes of limitation upon two identically situated citizens is patently absurd. The only approach that yields a consistent, knowable, result is that adopted by the Court of Appeals: a suit is commenced when the plaintiff files her motion for

[3] While ITLA's members most often represent clients who have suffered personal injuries, this case has far reaching consequences beyond the personal injury context. Indeed, should the Parts Manufacturers' position be adopted, all plaintiffs (whether those plaintiffs are businesses suing other businesses or individuals bringing claims for fraud or tortious interference) will be stripped of the ability to ensure that their respective claims are timely filed.

leave to amend the complaint, regardless of when the trial court grants the motion.[4]

CONCLUSION

The Court of Appeals' decision is correct, follows the overwhelming majority of jurisdictions that have addressed this issue, and adheres to this Court's precedent in *Boostrom*, 622 N.E.2d at 177 n.2. For these and the foregoing reasons, this Court should deny transfer allowing the Court of Appeals' decision to remain undisturbed.

Respectfully submitted,

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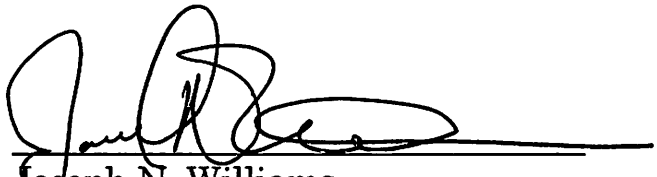
[4] In addition, the Parts Manufacturers' contention that the Court of Appeals' holding would "nullify statutes of limitation under Indiana law, as any plaintiff could argue that 'fairness and equity' require that they be permitted to litigate their claims," is incorrect. First, the holding would do nothing to "nullify" statutes of limitation as any motion to add new defendants by amendment would still have to be filed prior to the statute of limitations. Furthermore, our courts have routinely held that statutes of limitation can be extended for equitable reasons. *See, e.g., Doe v. Shults-Lewis Child & Family Servs., Inc.*, 718 N.E.2d 738, 744-45 (Ind. 1999) (discussing doctrine of fraudulent concealment)

WORD COUNT CERTIFICATE

Pursuant to Rule 44(E) of the Indiana Rules of Appellate Procedure, the undersigned counsel verifies that the foregoing *Amicus Curiae* Brief (excluding cover page, table of contents, table of authorities, word count certificate, certificate of service, and signature block) contains less than 4,200 words, as counted by Microsoft Word 2007.



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CERTIFICATE OF SERVICE

Pursuant to Ind. Appellate Rule 24(D), I hereby certify that on the 16th day of April, 2014, a true and complete copy of the foregoing document was served upon:

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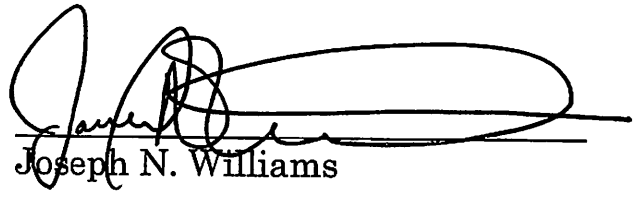

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