CTQ-2025-00005

Court of Appeals
of the
State of New York

CITY OF BUFFALO, CITY OF ROCHESTER, CITY OF YONKERS, CITY OF NEW YORK, and TOWN OF TONAWANDA,

Plaintiffs-Respondents,

- and -

CITY OF CINCINNATI, CITY OF CLEVELAND, CITY OF SEATTLE, CITY OF GREEN BAY, CITY OF COLUMBUS, CITY OF KANSAS CITY, CITY OF INDIANAPOLIS, CITY OF MADISON, CITY OF MILWAUKEE, CITY OF PARMA, CITY OF ST. LOUIS, and CITY OF BALTIMORE,

Plaintiffs,

- against -

HYUNDAI MOTOR AMERICA INC. and KIA AMERICA, INC.,

Defendants-Appellants.

BRIEF FOR THE MANHATTAN INSTITUTE AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

ILYA SHAPIRO
JOHN KETCHAM
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 20017
(212) 599-7000
ishapiro@manhattan.institute
jketcham@manhattan.institute

SETH M. ROKOSKY
JILLIAN DREUSIKE
DUANE MORRIS LLP
335 Madison Avenue
New York, NY 10017
(212) 692-1000
SMRokosky@duanemorris.com
JDreusike@duanemorris.com

BRIAN J. SLIPAKOFF
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1000
BSlipakoff@duanemorris.com

Dated: February 20, 2026
Attorneys for Amicus Curiae

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INTEREST OF AMICUS CURIAE

The Manhattan Institute (MI) is a nonprofit public-policy research foundation whose mission is to develop and disseminate new ideas that foster economic choice and individual responsibility. MI has historically sponsored scholarship and filed briefs protecting the rule of law and supporting economic freedom against government overreach, including on issues of civil justice reform, tort litigation, and the legal system. Headquartered in Manhattan, MI has a particular interest in the prosperity of New Yorkers and, by extension, New York tort law.

QUESTION CERTIFIED TO THIS COURT

Whether the Manufacturers owe the New York Municipalities a duty to exercise reasonable care in the design, manufacture, and distribution of their vehicles.

ARGUMENT

The auto companies have already explained why they do not owe the municipalities a duty to distribute vehicles equipped with certain anti-theft technology. MI submits this amicus brief to further explain how this Court has historically placed critical limits on tort liability in furtherance of New York's unique position as a global financial capital and leader of commercial litigation, and why that requires caution in dramatically expanding tort liability as the municipalities seek here.

Under this Court's jurisprudence, a defendant can be held liable in tort only if it owed a duty *to the particular plaintiff*, not merely to the general public. That critical tort-law rule is fatal to these municipalities' claim because the auto companies owed no duty to *these municipalities*, which are five incorporated entities that had no relationship with the auto companies, except that such companies allegedly distributed a product that people foreseeably stole and transported on public streets. Holding otherwise would create a harmful precedent that subjects countless companies to potentially limitless liability in New York. That would be unnecessary because these municipalities have other ways to prevent theft as a matter of good governance and public policy.

I. THE MUNICIPALITIES' CLAIMS FAIL UNDER NEW YORK LAW

"In order to prevail on a negligence claim, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." *Pasternack v. Laboratory Corp. of Am. Hldgs.*, 27 N.Y.3d 817, 825 (2016) (quotation marks omitted). "The threshold question" is whether the defendant "owe[s] a legally recognized duty of care to plaintiff." *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232 (2001). Absent such a duty, there is no liability "'however careless the conduct or foreseeable the harm.'" *Moore Charitable Found. v. PJT Partners, Inc.*, 40 N.Y.3d 150, 160 (2023) (quoting *532 Madison Ave. Gourmet Foods v. Finlandia Ctr.*, 96 N.Y.2d 280, 289 (2001)); *see Pulka v. Edelman*, 40 N.Y.2d 781, 782 (1976).

The Court has "historically proceeded carefully and with reluctance to expand an existing duty of care." *Davis v. South Nassau Communities Hosp.*, 26 N.Y.3d 563, 572 (2015); *see, e.g.*, *Pulka*, 40 N.Y.2d at 786 ("While a court might impose a legal duty where none existed before, such an imposition must be exercised with extreme care, for legal duty imposes legal liability." (citation omitted)). As explained below, the Court places

critical limits on duties for tort liability, and those limits are fatal to the municipalities' claims.

A. This Court Places Critical Limits on Tort Liability

This Court's prudence in expanding tort-law duties of care "may at times result in the exclusion of some who might otherwise have recovered for losses or injuries if *traditional tort principles* had been applied," as they may be in other states. *Strauss v. Belle Realty Co.*, 65 N.Y.2d 399, 403 (1985) (emphasis added). For example, the certified question before the Ninth Circuit was "whether a tort duty to protect against third-party criminal conduct can be based solely on the foreseeability of harms—even in the absence of a special relationship." *City of Buffalo v. Hyundai Motor Am.*, 140 F.4th 1249, 1253 (9th Cir. 2025) (quotation marks omitted). The Ninth Circuit affirmed the denial of dismissal under *Wisconsin* and *Ohio* law because the law of those states, unlike the law of New York, recognizes a duty based on foreseeability. *See id.*, 2025 WL 1721053, at *2 (9th Cir. June 20, 2025). But that approach is inconsistent with settled principles of this Court's tort-law jurisprudence.

As this Court has explained "many times," "foreseeability of harm does not define duty" under *New York* law.[1] *532 Madison Ave.*, 96 N.Y.2d at 289; *see* Resp..Br. at 17. "The question of duty . . . is best expressed as 'whether the plaintiff's interests are entitled to legal protection against the defendant's conduct.'" *Pulka*, 40 N.Y.2d at 782 (citation omitted). Foreseeability is merely "applicable to determine the *scope* of duty—*only after it has been determined that there is a duty*" in the first place. *Id.* at 785 (emphases added); *see Hamilton*, 96 N.Y.2d at 232; *see also N.X. v. Cabrini Med. Ctr.*, 97 N.Y.2d 247, 253 (2002).

To be sure, foreseeability of risk is a necessary condition of legal liability "because the community deems a person at fault only when the injury-producing occurrence is one that could have been anticipated." *Di*

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[1] *See, e.g.*, *Matter of New York City Asbestos Litig.*, 27 N.Y.3d 765, 799 (2016) (noting "clear precedent" that the existence of a duty does not turn "on foreseeability alone"); *Hamilton*, 96 N.Y.2d at 232 ("Foreseeability, alone, does not define duty . . . ."); *id.* at 235 ("[A] duty . . . do[es] *not* rise from mere foreseeability of the harm"); *D'Amico v. Christie*, 71 N.Y.2d 76, 87 (1987) ("Foreseeability of harm is alone not enough."); *Strauss*, 65 N.Y.2d at 402 ("Duty" not defined "by foreseeability of injury"); *Albala v. City of N.Y.*, 54 N.Y.2d 269, 273 (1981) ("We determined long ago . . . that foreseeability is not the hallmark of legal duty . . . ."); *Pulka*, 40 N.Y.2d at 785 ("Foreseeability should not be confused with duty. The principle expressed in *Palsgraf* . . . is applicable to determine the scope of duty—only after it has been determined that there is a duty.").

Ponzio v. Riordan, 89 N.Y.2d 578, 583 (1997). "In words familiar to every first-year law student, '[t]he risk reasonably to be perceived *defines* the duty to be obeyed.'" *Sanchez v. State of N.Y.*, 99 N.Y.2d 247, 252 (2002) (emphasis added) (quoting *Palsgraf v. Long Is. R.R. Co.*, 248 N.Y. 339, 343 (1928)). But it is not a sufficient condition for a duty in the first place: "[a]bsent a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm." *532 Madison Ave.*, 96 N.Y.2d at 289; *see id.* at 291-92.

If the rule were otherwise, it would be "difficult to conceive of the bounds to which liability logically would flow." *Pulka*, 40 N.Y.2d at 786. A defendant would owe a duty of care to every person around the world who may be foreseeably injured by a lack of care, no matter how remote or tangential their relationship may be. Absent a direct relationship, "[t]he liability potential would be all but limitless." *Pulka*, 40 N.Y.2d at 786; *see Albala*, 54 N.Y.2d at 273 ("[I]f foreseeability were the sole test[,] we could not logically confine the extension of liability.").

This is consistent with this Court's approach to tort law generally. The Court resolves legal duty questions "by resort to common concepts of morality, logic and consideration of the social consequences of imposing

the duty." *Tenuto v. Lederle Labs., Div. of Am. Cyanamid Co.*, 90 N.Y.2d 606, 612 (1997). The Court fixes the point of a duty "by balancing factors, including the reasonable expectations of parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability." *Moore*, 40 N.Y.3d at 160-61 (quotation marks omitted).

"Despite often sympathetic facts," courts "must be mindful of the precedential, and consequential, future effects of their rulings." *Lauer v. City of N.Y.*, 95 N.Y.2d 95, 100 (2000). "A line must be drawn between the competing policy considerations of providing a remedy to everyone who is injured and of extending exposure to tort liability almost without limit." *De Angelis v. Lutheran Med. Ctr.*, 58 N.Y.2d 1053, 1055 (1983). "Time and again [this Court has] required 'that the equation be balanced; that the damaged plaintiff be able to point the finger of responsibility at a defendant owing, not a general duty to society, but a specific duty *to* [*the plaintiff*]." *Lauer*, 95 N.Y.2d at 100 (citations omitted).

In drawing that line, this Court has repeatedly sought to "limit the legal consequences of wrongs to a controllable degree" *id.* (quotation

marks omitted)), and "to protect against crushing exposure to liability" (*Strauss*, 65 N.Y.2d at 402); *see, e.g.*, *Moore*, 40 N.Y.3d at 161 (explaining that courts seek to avoid "exposing defendants to unlimited liability to an indeterminate class of persons conceivably injured by any negligence in a defendant's act"). "This judicial resistance to the expansion of duty" also "grows out of practical concerns" about "the unfairness of imposing liability for the acts of another." *Hamilton*, 96 N.Y.2d at 233.

B. The Auto Companies Do Not Owe the Municipalities Any Duty Under New York Law

In this case, the cities of New York, Buffalo, Rochester, and Yonkers, and the Town of Tonawanda, make the novel claim that the auto companies owed *them* a duty to design, manufacture, and distribute theft-proof automobiles because the companies could have paid for technology that would have foreseeably prevented theft and dangerous conduct on public roads that required a public-safety response. *See* Resp. Br. at 2-3, 17-18; *see also id.* at 17 (companies "knew or should have known" that without such technology, the vehicles would be "all-too-easy to steal; that a large number of these theft-prone vehicles would be stolen and driven recklessly . . . ; and that a wave of vehicle theft would cause substantial harm to the municipalities").

But in order to limit the persons to whom a duty is owed (*532 Madison*, 96 N.Y.2d at 289), the Court has "been cautious" in "extending liability to defendants for their failure to control the conduct of others," such as car thieves, even where "as a practical matter defendant can exercise such control."[2] *Hamilton*, 96 N.Y.2d at 232-33 (quoting *D'Amico*, 71 N.Y.2d at 76, 88). Liability for the acts of third persons arises only "when the defendant has *authority* to control the actions of such third-persons" because of a special relationship between the *defendant and third persons* who harmed the plaintiff (e.g., employer and employee) or the *defendant and the plaintiff* that was harmed (e.g., common carrier and passenger). *Purdy v. Public Adm'r of Cnty. of Westchester*, 72 N.Y.2d 1, 8 (1988) (emphasis added); *see Pulka*, 40 N.Y.2d at 783-85. Neither of those circumstances is present here.

[2] Regardless of whether the alleged duty is framed as one of nonfeasance for failure to prevent others from stealing vehicles, or one of malfeasance for distributing vehicles without technology that could do so, "the basic principles for determining duty are the same." *See* Fowler V. Harper & Posey M. Kime, *The Duty to Control the Conduct of Another*, 43 Yale L.J. 886, 886-88 (1934) (cited in *Pulka*, 40 N.Y.2d at 783-84; *D'Amico*, 71 N.Y.2d at 901; *Purdy*, 72 N.Y.2d at 8). The critical question is "the relationship of the parties," and there was none here. *Id.* at 886.

First, the auto companies did not have a special relationship with *these municipalities* that required the auto companies "to protect" them from the criminal conduct of municipal residents. *Hamilton*, 96 N.Y.2d at 233. The municipalities broadly claim that the auto companies had a "general duty to society" (*id.*) to protect the "public" (Resp. Br. at 20, 22, 31, 35, 43), "public safety" (*id.* at 19-20, 34), "public roadways" (*id.* at 20, 24-25, 34, 42-43), and "taxpayers of New York" (*id.* at 38). But the municipalities must demonstrate a "specific duty to" *them* specifically, not merely to the general public or to taxpayers. *Hamilton*, 96 N.Y.2d at 232. And the auto companies did not have a contractual or any other relationship with the municipal *Cities of New York, Buffalo, Rochester, Yonkers, or the Town of Tonawanda* to design, manufacture, or distribute vehicles that individual residents could not steal.[3] It would be entirely

[3] While the Court has recognized that "under some circumstances," a party that enters into a contract thereby assumes a duty of care to certain persons outside the contract," that duty is limited to narrow circumstances that the Cities do not argue apply here. *Espinal v. Melville Snow Contrs.,* 98 N.Y.2d 136, 139-40 (2002); *see, e.g.*, *Dibrino v. Rockefeller Ctr. N., Inc.*, 2025 WL 3670593, at *6 (N.Y. Dec. 18, 2025) (force or instrument of harm); *Stiver v. Good & Fair Carting & Moving, Inc.*, 9 N.Y.3d 253, 257 (2007) (detrimental reliance); *Church v. Callanan Indus.*, 99 N.Y.2d 104, 113-14 (2002) (displacement of another party's duty to maintain premises safely).

unfair to force auto companies pay these separately incorporated entities for distributing cars that criminals later stole and misused.

Epstein v. Mediterranean Motors is instructive. The Court affirmed the holding of the Second Department that, "[a]s a matter of law, an owner of a vehicle or vehicles has no obligation to the public at large to make its premises burglar proof so that the owner's vehicle or vehicles will not be stolen." *Epstein v. Mediterranean Motors*, 109 A.D.2d 340, 345 (2d Dep't 1985), *aff'd*, 66 N.Y.2d 1018 (1985). Like such an owner, the auto companies would be "victimized if [they] were to be made the unwilling insurer of, and joint tort-feasor with, the thief who possessed the ingenuity and brazenness to steal [their] vehicle[s]." *Id.*; *see id.* at 346 (owner cannot be made an "insurer, to the public at large, for acts of the thief" simply because the owner "did not take other more costly and extreme precautions to deter the criminal . . . .").

Nor did the auto companies have a special relationship with the *third parties* who allegedly injured these municipalities. *See, e.g.*, *Davis*, 26 N.Y.3d at 576-79. The auto companies did not employ the Kia Boyz, sell vehicles to them, or join their criminal efforts. They are merely "multinational corporations, who inject millions of vehicles into the

stream of global commerce" by turning out a competitive product, whether or not others transport their goods in New York, and whether or not such goods are later stolen by independent criminals and driven on these municipalities' roads. Resp. Br. at 26.

The municipalities argue that the auto companies "knew or should have known of the close link between their failure to exercise reasonable care and the risk of harm to the municipalities" because the case involves dangerous goods that are transported on public roads. Resp. Br. at 15, 25, 51; *see id.* at 17, 36, 50-51. But as explained above (Pt. I.A), that "confuses foreseeability with duty." *Dibrino*, 2025 WL 3670593, at *7. "Setting aside our longstanding rule that foreseeability does not establish a duty, but rather the scope of a duty once established, if foreseeability of harm were the only metric used to establish whether [Defendants] assumed a duty . . . , it would swallow the default rule of no duty to third parties to a contract." *Id.* (citation omitted); *see Hamilton*, 96 N.Y.2d at 234 (rejecting argument that manufacturer had a "special ability to detect and guard against" risks of lethal or hazardous products).

If the rule were otherwise, "[u]nlimited hypotheses accompanied by staggering implications are manifest." *Albala*, 54 N.Y.2d at 273. "Where

is the line to be drawn on the legal responsibility of" countless vehicle designers, manufacturers, and distributors around the country that these municipalities would prefer designed vehicles differently and at higher cost to help them police theft? *D'Amico*, 71 N.Y.2d at 90. Why would the rule be limited solely to foreseeable injuries arising from vehicles stolen and driven on public roads? *See Pulka*, 40 N.Y.2d at 786 (considering the burden of potential liability not only on the parties, but on "countless parking garages and lots" in New York City, including those for theater districts, around sporting stadiums and convention halls, and at hotels, office buildings, and shopping centers). "Such vexing questions, for which no reasonable solutions are suggested or indeed discernible," suggest "it would be unwise" to enlarge a company's "existing common-law duties [in New York] as plaintiffs suggest." *D'Amico*, 71 N.Y.2d at 90.

Worse, by the municipalities' own admission, their novel tort theory could be advanced by *any* "municipality" in New York—any *town*, *village*, *city*, *county*, or *special-purpose district*, or all of them, that provide a "public-safety response" to auto theft, as well as potentially the State

itself for protecting its property.[4] Resp. Br. at 30, 34; *see id.* at 29-30 (citing cases involving "counties" and other "government entities").

Although the municipalities argue that the scope of the duty alleged is limited to the facts of this case (*see id.* at 27-28, 32-35, 43, 45-46) they articulate no limiting principle to their sweeping theory of liability and indemnified public safety, and the Court must "be mindful of the consequential, and precedential, effects" of its rulings. *532 Madison Ave.*, 96 N.Y.2d at 289; *see, e.g.*, *Hamilton* , 96 N.Y.2d at 233 ("The pool of possible plaintiffs is very large . . . ."); *Strauss*, 65 N.Y.2d at 404 (noting inability to "contain liability to manageable levels").

[4] There is no apparent reason why the municipalities' expansive theory of liability would ultimately stay limited solely to governmental entities. A general duty to the public to prevent auto thefts could sweep in not only state or municipal entities providing a "public-safety response," but also any entity foreseeably damaged as the result of a theft. That could include, for example, pedestrians injured on the streets, owners of other cars on the road damaged by thieves during their escape, or businesses claiming to have been hampered by a stolen car on their premises (or even by street closures necessitated by theft).

II. THE MUNICIPALITIES' CLAIMS WOULD HAVE DETRIMENTAL EFFECTS ON BUSINESS AND COMMERCE IN NEW YORK

Sophisticated parties seeking to do business in the nation's financial capital rely on its courts to develop a sophisticated and stable body of tort law. But the municipalities' expansive tort theory would subject auto companies, manufacturers, and distributors to considerable uncertainty and risk of liability that would be harmful to New York.

A. This Court Has Been a Leader in Developing a Commercially Sophisticated Body of Tort Law

New York is one of the foremost "financial capital[s] of the world." *J. Zeevi & Sons v. Grindlays Bank (Uganda)*, 37 N.Y.2d 220, 227 (1975). The City of New York is the "nation's economic and cultural capital,"[5] with a gross domestic product that is comparable to Canada and expected to rise to $2.5 trillion by 2035.[6] "New York has long served as a seedbed of civic and ideological innovation. Policy approaches that begin in New

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[5] Manhattan Institute, *New York City: Renewed*: https://manhattan.institute/project/new-york-city-renewed.

[6] Laura McCamy, Business Insider, *11 mind-blowing facts about New York's economy* (Apr. 24, 2019), https://markets.businessinsider.com/news/stocks/11-mind-blowing-facts-about-new-yorks-economy-2019-4-1028134328.

York tend to spread to other urban centers."[7] And Plaintiffs Buffalo, Rochester, and Yonkers are among the next three largest cities in New York, a state whose GDP exceeds $1.8 trillion, accounting for 7.9% of the U.S. total and third in the U.S. behind only California and Texas.[8]

As the state's highest court, this Court has repeatedly recognized New York's paramount interest in "maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center." *Ehrlich-Bober & Co. v Univ. of Houston*, 49 N.Y.2d 574, 581 (1980). To that end, the Court has continually sought to administer "a known, stable, and commercially sophisticated body of law [that] may be considered as much an attraction to conducting business in New York as its unique financial and communications resources." *Id.*[9]

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[7] Manhattan Institute, *President's Update: Summer 2021* (July 26, 2021), https://manhattan.institute/article/presidents-update-summer-2021.

[8] New York State Comptroller, *State of New York – 2025 Financial Condition Report* at 23, https://www.osc.ny.gov/files/reports/finance/pdf/2025-financial-condition-report.pdf.

[9] *See, e.g.*, *J. Zeevi & Sons*, 37 N.Y.2d at 227 (choice of law); *Ehrlich-Bober*, 49 N.Y.2d at 575 (comity); *Bluebird Partners, L.P. v. First Fid. Bank, N.A.*, 94 N.Y.2d 726, 739 (2000) (contracts); *Justinian Capital SPC v. WestLB AG*, 28 N.Y.3d 160, 169 (2016) (market fluidity); *159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353, 359-60 (2019) (contracts).

In doing so, our state has played an "important role in the growth of law,"[10] and its "statutes and jurisprudence have, over many years, greatly enhanced New York's leadership as the center of commercial litigation." *Justinian Capital*, 28 N.Y.3d at 169. Our judges and lawyers have been "leading figures in the law's development, in the movement for greater uniformity and comprehensibility in commercial law, in great debates over legal philosophy, and the like."[11] *See, e.g.*, *IRB-Brasil Resseguros, S.A. v. Inepar Inv., S.A.*, 20 N.Y.3d 310, 314 (2012) (noting New York's "'well-developed system of commercial jurisprudence'" (citation omitted)).

That leadership has included the law of torts. "Perhaps the most celebrated of all tort cases is *Palsgraf v. Long Island Railroad Co.*" William L. Prosser, *Palsgraf Revisited*, 52 Mich. L. Rev. 1 (1953). In that case, Chief Judge Cardozo held that a railroad was not liable because it did not breach a duty in relation to *the plaintiff*. *See* 248 N.Y. 339, 344-45 (1928). "[S]ince the New Deal era, there has been a significant trend

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[10] NYCourts.gov, *History*, https://ww2.nycourts.gov/courts/1jd/supctmanh/A_Brief_history_of_the_Court.shtml.

[11] NYCourts.gov, *supra* note 10.

toward the use of legislation to address legal questions" rather than expanding the "common law through innovative judicial decision-making."[12] Thus, absent a statutory duty to the plaintiff, the Court has repeatedly sought to limit the consequences of wrongs to a controllable degree to protect against crushing exposure to liability. *See supra* Pt. I.A; *see also, e.g.*, *Davis*, 26 N.Y.3d at 572 (Court has "historically proceeded carefully and with reluctance to expand an existing duty of care."); *Purdy*, 72 N.Y.2d at 9 (relevant "statute and regulations" provided for opposite of alleged duty); *D'Amico*, 71 N.Y.2d at 87 (declining to expand duties in a manner that would effectively amend relevant statute).

Limiting such duties "may at times result in the exclusion of some who might otherwise have recovered for losses or injuries if traditional tort principles had been applied." *Strauss*, 65 N.Y.2d at 403. For example, unlike in some other states, "foreseeability of harm does not define duty" in *New York. 532 Madison Ave.*, 96 N.Y.2d at 289. Even if an alleged injury was foreseeable, "[t]he injured party must show that a defendant owed not merely a general duty to society but a specific duty *to him or her*." *Hamilton*, 96 N.Y.2d at 232 (emphasis added).

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[12] NYCourts,gov, *supra* note 10.

Moreover, the Court has repeatedly stated that it must be "mindful of the precedential, and consequential, future effects" of its rulings (*Lauer*, 95 N.Y.2d at 100), and consider the practical implications of finding a duty. *See, e.g.*, *Oddo v. Queens Vil. Comm. for Mental Health for Jamaica Comm. Adolescent Program, Inc.*, 28 N.Y.3d 731, 737 (2017) (duty could "adversely impact" willingness to participate in certain services); *Albala*, 54 N.Y.2d at 274 (duty could disincentivize physicians from advising treatment); *McCarthy v. Olin Corp.*, 119 F.3d 148, 148 (2d Cir. 1997) ("To impose a duty on ammunition manufacturers to protect against criminal misuse of its product would likely force ammunition products . . . off the market due to the threat of limitless liability.").

Even today, New York is a proud leader in commercial litigation. For example, the "central rationale" in 1995 behind the Commercial Division was to account for New York's role as "the center of world commerce." 22 N.Y.C.R.R. 202.70. The aim, despite concerns from some "[t]ort lawyers," was consistency and predictability in resolving complex commercial cases, fostering a "more favorable environment for attracting and maintaining business in New York" to "enhance the economic well-

being of the State."[13] That emphasis on stability continues to "help[] New York State to attract and retain businesses and therefore to generate tax revenues and provide jobs" for the benefit of New Yorkers.[14]

B. The Municipalities' Theory of Liability Would Be Harmful to Businesses That Are Vital to New York

The municipalities claim the auto companies should be held liable because they "put profit over public safety" in designing, manufacturing, and distributing certain vehicles. *See* Resp. Br. at 1, 4. But their proposed theory of liability would expose commercial businesses to "liability in an indeterminate amount for an indeterminate time to an indeterminate class." *Ultramares Corp. v. Touche*, 255 N.Y. 170, 179 (1931). "The hazards of a business conducted on these terms are so extreme as to enkindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences." *Id.* at 179-80.

The automotive industry is a significant driver of New York's

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[13] Robert L. Haig, *Can New York's New Commercial Division Resolve Business Disputes As Well As Anyone?*, 13 Touro L. Rev. 191, 196, 203 (1996); *see* NYCourts.gov, *supra* note 10.

[14] Commercial Division Advisory Council, *The Benefits of the Commercial Division to the State of New York*, https://www.nycourts.gov/LegacyPDFS/courts/comdiv/PDFs/TheBenefitsoftheCommercialDivisiontotheStateofNewYork.pdf.

economy. In 2024, metro-area dealers alone generated $70.6 billion in annual economic activity. New car dealers are the fourth largest retail employer in our region, following closely behind supermarkets, clothing stores, and pharmacies. Such businesses provide more than $6 billion in wages to more than 65,000 employees, in addition to collecting and paying $3 billion in state and local taxes.[15]

The municipalities seek liability from the auto companies as "distributors" (App. Br. at 4 n.2), but New York is a premier location for distribution centers. With a large, skilled labor pool, a vast network of railways, highways, and ports, and investments in infrastructure, "the distribution industry finds an efficient and cost-effective home here," with New York home to distribution centers for major companies such as Best Buy, Home Depot, Rite Aid, Target, and Wal-Mart.[16] New York also has a rich manufacturing history, including in automobiles. "Large-scale manufacturing operations shaped many Upstate New York communities—Kodak in Rochester, General Motors and the auto

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[15] Greater N.Y. Automobile Dealers Ass'n, *Economic Impact*, https://www.gnyada.com/economic-impact.

[16] Empire State Development, *Distribution*, https://esd.ny.gov/industries/distribution.

industry in Buffalo, General Electric in Schenectady."[17] Others include IBM, Lockheed Martin, Moog, GlobalFoundries, Pfizer, and Chobani.[18] New York manufacturers contribute $89 billion to the economy, comprising 3.7% of New York's gross domestic product, with nearly 15,000 manufacturers employing more than 400,000 people per year.[19]

Now is not the time for New Yorkers to "bear the cost" of subjecting such businesses to insurer-like liability of allegedly foreseeable public-safety costs. *Albala*, 54 N.Y.2d at 274; *see Bluebird Partners*, 94 N.Y.2d at 739 (noting that "uncertainties in the free market system in connection with untold numbers of sophisticated business transactions" would be "a not insignificant potentiality in the State that harbors the financial capital of the world"). Although the Southern Tier region has suffered

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[17] FuzeHub, *Statewide Manufacturing Data*, https://fuzehub.com/statewide-manufacturing-data/.

[18] IndustrySelect, *Top 10 Manufacturing Companies in New York* (Sept. 29, 2025), https://www.industryselect.com/blog/top-10-manufacturing-companies-in-new-york.

[19] National Assoc. of Man., *New York*, https://nam.org/mfgdata/regions/new-york/; Business Council of N.Y., *Made in New York: Great Products from Great New York Companies*, https://madeinny.org/.

from deindustrialization, there has been a recent shift in momentum.[20] Massive public and private investments in new technology such as batteries, energy storage, semiconductors, microelectronics, and industrial machinery are poised to create new jobs, support families, and revitalize the region for everyone's benefit.[21]

Holding that the auto companies owed a legal duty to the municipalities because they could have prevented theft of their goods on public roadways could create a damaging precedent for businesses and the state of New York. *See, e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (explaining that a company "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to consumers, or, if the risks are too great,

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[20] U.S. Econ. Dev. Adm'n, *New Energy New York*, https://www.eda.gov/funding/programs/american-rescue-plan/build-back-better/finalists/the-state-university-of-new-york-at-binghamton/.

[21] Chris Kocher, Binghamton Univ., *Binghamton University marks official launch of federally funded battery initiative* (Feb. 18, 2026), https://www.binghamton.edu/news/story/5029/binghamton-university-marks-official-launch-of-federally-funded-battery-initiative; Randy Wolken, Manhattan Assoc. of Cent. N.Y., Inc., *2026 Will Be a New Era of Manufacturing Growth in Central New York and Beyond* (Jan. 2, 2026) https://www.macny.org/2026-will-be-a-new-era-of-manufacturing-growth-in-central-new-york-and-beyond; Empire State Development, *Semiconductors*, https://esd.ny.gov/industries/semiconductors.

severing its connection with the State"); *S.E.C. v. Tambone*, 597 F.3d 436, 452 (1st Cir. 2010) (Boudin, J., concurring) ("No one sophisticated about markets believes that multiplying liability is free of cost.").

Even if that precedent could be limited in the future, it would create harmful uncertainty as to countless businesses that design, manufacture, or distribute goods that foreseeably could be misused through criminal conduct absent additional technology. "Predictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010); *see Dole v. Gold*, 7 N.Y. Leg. Obs. 247, 500 (Sup. Ct. 1849) ("Commercial business dreads nothing so much as uncertainty . . . ."); Commercial Division Advisory Counsel, *supra* note 14, at 1, 4 (noting that a specialized body of commercial law "enables businesses to predict the legal consequences of their business decisions"). "Companies that can't predict how the law might change are forced to plan for the worst. That means holding back on long-term investment, slowing innovation and raising prices to cover new risks."[22] New York's sophisticated tort law appropriately accounts for commercial realities.

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[22] Robert Bird, *The Rule of Law is Key to Capitalism—Eroding It is Bad News for American Business* (UConn Today July 8, 2025),

III. THE MUNICIPALITIES HAVE BETTER WAYS TO PREVENT THEFT

Finding new duties also would be unnecessary because auto theft can be addressed in other ways aside from expanding tort liability.

A. Auto Theft Can Be Addressed Through Legislative, Regulatory, and Judicial Means

Although this Court can define a duty "as a matter of policy," it does not have to so in this case because the Legislature "can create a duty by statute." *Lauer*, 95 N.Y.2d at 100; *see id.* at 101 (violation of statute can give rise to a tort); *see, e.g.*, *Pulka*, 40 N.Y.2d at 783, 785 (considering scope of existing statutory duties); *Martin v. Herzog*, 228 N.Y. 164, 169-70 (1920) (unexcused violation of statute constitutes negligence per se); *Durkee v. Sanchez-Rodriguez*, 229 A.D.3d 1315, 1316 (4th Dept. 2024) (violation of Vehicle and Traffic Law negligence per se).

The Legislature not only has the power to regulate motor safety, but also has "plenary power to extend . . . the right of an injured party to maintain an action" (*Noreen v. Vogel & Bros.*, 231 N.Y. 317, 321 (1921)) and "change the common-law rules of liability." *Matter of Evans v. Berry*, 262 N.Y. 61, 68-69 (1933); *see Seligman v. Friedlander*, 199

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https://today.uconn.edu/2025/07/the-rule-of-law-is-key-to-capitalism-%E2%88%92-eroding-it-is-bad-news-for-american-business/.

N.Y. 373, 376 (1910) ("The Legislature, of course, has power to change both rules of liability and rules of procedure."). The Legislature has created the Department of Motor Vehicles (*see* Vehicle and Traffic Law § 200), which can and does regulate vehicle safety (*see, e.g.*, 15 N.Y.C.R.R. § 72.1 (Auto Theft Prevention Program (Watch Your Car)).

And those branches are best placed to do so. *See Doe v. Office of Prof'l Med. Conduct of N.Y. State Dep't of Health*, 81 N.Y.2d 1050, 1053 (1993) ("[T]he Legislature is in the best position to weigh conflicting policy values" represented by various approaches). Assigning a tort-law duty is essentially "[p]olicy-driven line-drawing." *532 Madison Ave.*, 96 N.Y. at 291; *see Moore*, 40 N.Y.3d at 161 (common law of torts requires "policy-driven analysis" of how to apportion risks and burden of loss). Expansions of such liability are essentially "declaration[s] of . . . public policy" that "are best and more appropriately explored and resolved by the legislative branch" (*Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293, 302 (1983)), which can appropriately balance the "competing interests at stake" (*Hall v. United Parcel Serv. of Am., Inc.*, 76 N.Y.2d 27, 34 (1990)); *see, e.g.*, *Madden v. Creative Servs.*, 84 N.Y.2d 738, 746 (1995)

("Tort liability of course depends on balancing competing interests[.]"); *Strauss*, 65 N.Y.2d at 402 (finding no duty "on public policy grounds").

In balancing such interests, "[t]he Legislature has infinitely greater resources and procedural means to discern the public will, to examine the variety of pertinent considerations, to elicit the views of the various segments of the community that would be directly affected and in any event critically interested, and to investigate and anticipate the impact of imposition of such liability." *Murphy*, 58 N.Y.2d at 302. The Court thus typically leaves substantial expansions of liability to the legislative process. *See, e.g.*, *id.* (liability for termination of at-will employment "should be accomplished through a principled statutory scheme, adopted after opportunity for public ventilation"); *Albala*, 54 N.Y.2d at 273-74 ("The perimeters of liability although a proper legislative concern, in cases such as these, cannot [be] judicially established in a reasonable and practical manner."); *Shipley v. City of N.Y.*, 25 N.Y.3d 645, 660 (2015) ("If the legislature believes that next of kin are entitled to notification . . . , it should enact legislation delineating the medical examiner's obligations in that regard, as it is the legislature that is in the best position to examine the issue . . . .").

Indeed, legislative and executive branches have long regulated anti-theft technology in automobiles. "In the 1960s, Congress passed the National Traffic and Motor Vehicle Safety Act and authorized what is now the National Highway Traffic Safety Administration (NHTSA) to promulgate federal motor vehicle safety standards (FMVSS)." *City of Buffalo*, 140 F.4th at 1251. The NHTSA responded by enacting FMVSS 114, which "specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles." 49 C.F.R. § 571.114(S1).

Notably, the federal government considered the same conduct at issue here and opted *not* to require the technology the Cities are seeking. *See* App. Br.. at 35 (explaining that NHTSA rejected a petition by the New York Attorney General because "FMVSS No. 114 . . . does not require an engine immobilizer"). The New York Legislature is also considering the issue—currently pending in the Senate is a bill (S1407) that would implement "a statewide mandate for vehicle immobilizers" to "mitigate vehicle thefts and property damage by rendering it illegal for all motor vehicles to be sold, licensed, or registered in the State of New York without an installed immobilizer to deter thieves and prevent

property loss." Sponsor's Mem., Senate Bill 2025-S1407, *available at* https://www.nysenate.gov/legislation/bills/2025/S1407. "While common-law principles can supplement a manufacturer's statutory duties, we should be cautious in imposing novel theories of tort liability while the difficult problem" of car theft in the United States "remains the focus of a national policy debate." *Hamilton*, 96 N.Y.2d at 239-40.

Besides, plaintiffs in appropriate cases may seek relief through other means. For example, plaintiffs *other than* municipalities may potentially seek to bring a tort action for injuries from theft of their cars. *See, e.g.*, *532 Madison Ave.*, 96 N.Y.2d at 289-90 (Court typically restricts liability to "direct customers" that have a special relationship with defendant). While such a claim would still have to satisfy the standards of this Court's tort-law jurisprudence, "the possibility of tort liability arising from injury to [others] . . . provides a strong incentive" to "keep locks and other security systems in good repair" and obviates any need to expand tort liability in the manner that the municipalities seek here. *Waters v. New York City Hous. Auth.*, 69 N.Y.2d 225, 230 (1987).

Moreover, the Penal Law criminalizes theft (*see, e.g.*, Penal Law §§ 155.30-150.42, 165.05) and provides for restitution for injuries (*id.*

§ 60.27). Restitution may potentially include costs that a municipality "became legally obligated to incur" as a result of the criminal offense, such as the vehicle thefts alleged here. *People v. Cruz*, 81 N.Y.2d 996, 998 (1993); *see People v. Kim*, 91 N.Y.2d 407, 411-12 (1998) ("[T]he insurer was legally obligated . . . to pay for the victim's medical expenses for treatment of injuries caused by defendant's crimes and, as such, can properly be classified as a victim in its own right").

B. Good Governance and Effective Public Policy Would Also Address Auto Theft

More fundamentally, the municipalities can seek to prevent auto theft through their core functions in effective public policy and good governance. "A critical consideration in determining whether a duty exists" is who is "'in the best position to protect against the risk of harm.'" *Davis*, 26 N.Y.3d at 572 (quoting *Hamilton*, 96 N.Y.2d at 233). "Said another way, our calculus is such that we assign the responsibility of care to the person or entity that can most effectively fulfill that obligation at the lowest cost." *Id.* Here, the municipalities, not the auto companies, have the responsibility of preventing theft on their streets.

Amicus Manhattan Institute's (MI) policy work makes clear that municipalities have an array of policy means to do so. For example:

- **Law Enforcement:** "Americans wants a criminal-justice system that prioritizes what MI has long championed: public safety."[23] Law enforcement reduces crime, and municipalities can embrace an array of proven crime prevention measures such as improved police recruiting and morale, proactive law enforcement and prosecution, effective street lighting, restoration of vacant lots, greening of public areas, and efforts to curb substance abuse.[24]

- **Education:** Studies have shown a "statistically significant association between lower academic achievement and increased risk for subsequent youth offending."[25] Policy means are available to support educational freedom and expand high-performing schools, including increased funding and efficient spending, school choice, microschools, testing, gifted-and-talented programs, curriculum transparency, attention to parents' needs, and instructional models that better serve disadvantaged students.[26]

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[23] Manhattan Institute, *President's Update 2024* at 3, https://media4.manhattan-institute.org/wp-content/uploads/2024-presidents-update.pdf.

[24] Charles Fain Lehman, Manhattan Institute, *Policing Without the Police? A Review of the Evidence* at 8-14 (May 2021), https://media4.manhattan-institute.org/sites/default/files/policing-without-police-review-evidence-CFL.pdf; Manhattan Institute, *President's Update 2023* at 18, https://media4.manhattan-institute.org/wp-content/uploads/sites/10/PresidentsReport-2023.pdf.

[25] M. Lankester et al., *The Association Between Academic Achievement and Subsequent Youth Offending: A Systematic Review and Meta-Analysis*, National Library of Medicine (Feb. 2, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12102114/.

[26] Manhattan Institute, *President's Update 2023* at 19, https://media4.manhattan-institute.org/wp-content/uploads/sites/10/PresidentsReport-2023.pdf; Manhattan Institute, *President's Update 2022* at 17, https://media4.manhattan-institute.org/wp-content/uploads/MI2022-PresidentsUpdate.pdf; Manhattan Institute, *President's Update: Summer 2022* at 9-10, https://media4.manhattan-institute.org/sites/default/files/2022SummerUpdate.pdf.

- **<u>Economy:</u>** "[E]conomic expansion" may have a "statistically significant" effect on reducing crime.[27] Municipalities can promote prosperity and economic mobility through the advancement of economic freedom, fiscal responsibility, and innovation by way of a number of means, including expeditious construction, reduced housing shortages and prices, responsible government spending, lower taxes and regulations, and integration of skilled immigrants and their descendants into New York civic and economic life.[28]

In late 2020—when teenage criminals began posting on social media as the "Kia Boyz"—MI was making the case for a policy approach that was "grounded in an embrace of proactive policing, expanding access to high-quality educational options, increasing housing supply, and boosting the efficiency of local government."[29] Of course, policymakers around the state could take different views, and municipalities may disagree on how best to address crime.

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[27] Brittany Street, *The impact of economic opportunity on criminal behavior: Evidence from the fracking boom*, Journal of Public Economics, 48 J. Pub. Econ. (Aug. 2025), https://www.sciencedirect.com/science/article/abs/pii/S0047272725001008.

[28] Manhattan Institute, *2024 President's Update*, *supra* note 23 at 11-12; Eric Kober, Manhattan Institute, *New York City Jobs Data Shine Light on NYC's Economic Strengths and Weaknesses* (Apr. 25, 2024), https://manhattan.institute/article/nyc-jobs-data-shine-light-on-nyc-economic-strengths-and-weaknesses.

[29] Manhattan Institute, *2021 President's Update*, https://manhattan.institute/article/presidents-update-year-end-2021.

The point is that such debates are paradigmatic issues to be sorted out through robust research and debate and the political process. MI engages in that undertaking every day, and municipalities have every ability to solve such problems in an appropriately calibrated manner when they choose sound policy, as well as the resources to do the hard work of governing efficiently and effectively. The answer is not to bring a lawsuit seeking to have businesses indemnify cities for public safety through an unwarranted expansion of this Court's tort-law jurisprudence.

CONCLUSION

The Court should answer the certified question in the negative.

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Respectfully submitted,

Ilya Shapiro
John Ketcham
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 20017
(212) 599-7000
ishapiro@manhattan.institute
jketcham@manhattan.institute

Seth M. Rokosky
Jillian Dreusike
DUANE MORRIS LLP
335 Madison Avenue
New York, NY 10017
(212) 692-1000
SMRokosky@duanemorris.com
JDreusike@duanemorris.com

Brian J. Slipakoff
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1000
BSlipakoff@duanemorris.com

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to 22 N.Y.C.R.R. § 500.13(c)(1), Seth M. Rokosky, a partner at Duane Morris LLP, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,649 words, which complies with the limitations stated in § 500.13(c)(1).