

No. 06-0714

**In the
Supreme Court of Texas**

BARBARA ROBINSON, INDIVIDUALLY AND AS REPRESENTATIVE OF THE
ESTATE OF JOHN ROBINSON, DECEASED,
Petitioner,

v.

CROWN CORK & SEAL CO., INC., INDIVIDUALLY AND AS
SUCCESSOR TO MUNDET CORK CORP.,
Respondent.

On Petition for Review from the
Fourteenth Court of Appeals, Houston

**BRIEF OF AMICUS CURIAE THE STATE OF TEXAS
IN SUPPORT OF RESPONDENT**

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**BRIEF OF AMICUS CURIAE THE STATE OF TEXAS
IN SUPPORT OF RESPONDENT**

TO THE HONORABLE SUPREME COURT OF TEXAS:

Article I, §16 of the Texas Constitution prohibits laws that retroactively impair or destroy vested rights, not those that merely alter remedies. Robinson's article I, §16 challenge fails because her accrued cause of action is not a vested right, and the challenged statute is purely remedial. Her separate claim that the statute is an unconstitutional special law under article III, §56 of the Texas Constitution fails because she cannot show that the statute unreasonably excludes other entities similarly situated to Crown or that it will always apply to Crown alone. Accordingly, the court of appeals's judgment is correct.

STATEMENT OF INTEREST OF AMICUS CURIAE¹

The State of Texas has an interest in defending its statutes against constitutional attack.

ISSUES PRESENTED

In 1966, Mundet Cork merged with Crown. Thirty-six years later, Robinson sued Crown for asbestos-related injuries arising from contact with Mundet products beginning in the 1950s. While the case was pending, but before final judgment, the Legislature enacted Chapter 149 of the Texas Civil Practice and Remedies Code. Aimed at limiting innocent successor corporations' liability in asbestos litigation, the statute—which the Legislature made immediately applicable to pending litigation—precludes Robinson's recovery from Crown.

This brief addresses two issues: (1) whether the statute's application in this and other similar cases violates Texas Constitution article I, §16's restriction on retroactive laws; and (2) whether the statute is an unconstitutional special law under Texas Constitution article III, §56.

1. No fee has been or will be paid for the preparation of this brief.

SUMMARY OF THE ARGUMENT

Article I, §16

A statute is unconstitutionally retroactive under Texas Constitution article I, §16 only if its application impairs or destroys a vested right. Robinson's article I, §16 challenge fails because she had no vested right to recover from Crown when the statute went into effect. The weight of Texas authority establishes that, because an accrued cause of action gives rise to only an expectancy of recovery, it is not a vested right.

But even if Robinson could show that the statute deprived her of a vested right, her article I, §16 challenge would nevertheless fail because the statute affects only a remedy. Although Chapter 149 alters the statutory rule of successor liability, it leaves Robinson's common-law tort cause of action intact. Regardless, it is undisputed that, as to the numerous other defendants in the underlying litigation, the statute does not at all eliminate the many remedies Robinson has available.

Article III, §56

The ultimate test for determining whether a law is unconstitutionally local or special under article III, §56 of the Texas Constitution is whether the law's classification has a reasonable basis and whether the law operates equally on all within the class. Asserting that the statute is a special law merely because it currently applies to Crown alone, Robinson misstates the test.

Article III, §56 is violated only when the Legislature unreasonably excludes from a statutorily protected class people or entities that are similarly situated to the class members—that is, people or entities that reasonably *should have been included* in the class, but were not. Robinson cannot overcome the strong presumption of constitutionality that applies in article III, §56 analysis because the statute’s protection of the least culpable asbestos-suit defendants was reasonable, and Robinson cannot identify any entity that was improperly excluded from the statute’s scope.

ARGUMENT

I. APPLICATION OF CHAPTER 149 IN THIS AND OTHER SIMILAR CASES DOES NOT VIOLATE ARTICLE I, §16’S RETROACTIVITY CLAUSE.

Article I, §16 of the Texas Constitution provides that “[n]o bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contract, shall be made.” A plaintiff challenging a statute under this or any other constitutional provision must overcome a strong presumption of constitutionality. *Walker v. Gutierrez*, 111 S.W.3d 56, 66 (Tex. 2003); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex. 1996); *Vinson v. Burgess*, 773 S.W.2d 263, 266 (Tex. 1989). As shown below, neither Robinson nor any other similarly postured plaintiff can meet that burden.

A. A Party Challenging a Statute Under Article I, §16 Must Have Had, and Been Deprived of, a Vested Right—Not Merely Part of a Remedy.

“The prohibition against retroactive laws derives largely from the sentiment that such laws unfairly deprive people of legitimate expectations.” *Owens Corning v. Carter*, 997

S.W.2d 560, 572 (Tex. 1999). For that reason, it is well established that a statute operates retroactively in violation of article I, §16 only if it takes away or impairs vested rights. *See, e.g., Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 219 (Tex. 2002); *City of Tyler v. Likes*, 962 S.W.2d 489, 502 (Tex. 1997); *Barshop*, 925 S.W.2d at 633; *Ex parte Abell*, 613 S.W.2d 255, 260 (Tex. 1981); *McCain v. Yost*, 284 S.W.2d 898, 900 (Tex. 1955); *DeCordova v. City of Galveston*, 4 Tex. 470, 1849 WL 4050, at *7 (1849).

It is likewise settled that “no litigant has a vested right in a statute or rule which affects remedy.” *Abell*, 613 S.W.2d at 260. For this reason, article I, §16 does not forbid “laws which affect the remedy merely.” *DeCordova*, 1849 WL 4050, at *7; *accord Landgraf v. USI Film Prods., Inc.*, 511 U.S. 244, 273 (1994) (explaining that when, during the course of litigation, an “intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive”). An exception to this rule applies to statutes that retroactively deny a remedy *entirely*. *Likes*, 962 S.W.2d at 502. But as long as some remedy remains, article I, §16 is not violated. *Id.*; *see City of Fort Worth v. Morrow*, 284 S.W. 275, 276 (Tex. Civ. App.—Fort Worth 1926, writ ref’d) (noting that the Legislature “may abolish old remedies and substitute new, or may abolish even without substitution if a reasonable remedy remains.”).

B. Robinson’s Accrued Cause of Action Is Not a Vested Right.

Robinson asserts that the statute’s alteration of Crown’s statutory successor liability for Mundet’s alleged torts violates article I, §16 because her accrued cause of action against Crown was a vested right. Robinson Br. at 28-40. That assertion is incorrect.

1. An accrued cause of action gives rise, at most, to a nonvested expectation of recovery.

Even if uncertainty remains in Texas law about what the phrase “vested rights” affirmatively includes, *see Robinson v. Crown Cork & Seal Co.*, No. 14-04-00658-CV, 2006 WL 1168782, at *3 (Tex. App.—Houston [14th Dist.] May 4, 2006, pet. granted), there are some things to which that label could not apply. A cause of action that has merely accrued—but has not been reduced to final judgment—falls into the latter category.

In *Abell*, the Court explained that a vested right “is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable to the present or future enjoyment of a demand or a legal exemption from the demand made by another.” 613 S.W.2d at 261 (citing THOMAS M. COOLEY, CONSTITUTIONAL LIMITATIONS 438 (6th ed. 1890)). This definition of vested rights makes sense, given that “the anticipated continuance of existing laws . . . is subordinate to the right of the Legislature” to change or abolish those laws. *City of Dallas v. Trammell*, 101 S.W.2d 1009, 1013 (Tex. 1937).

Because there cannot be a vested right in a mere rule of law, *Middleton v. Tex. Power & Light Co.*, 185 S.W. 556, 560 (Tex. 1916), the Court has explained that “if a statute giving

a special remedy is repealed, without a saving clause in favor of pending suits, all suits must stop where the repeal finds them; and, if final relief has not been granted before the repeal goes into effect, it cannot be granted thereafter.” *Dickson v. Navarro County Levee Improvement Dist. No. 3*, 139 S.W.2d 257, 259 (Tex. 1940) (quoted in *Knight v. Int’l Harvester Credit Corp.*, 627 S.W.2d 382, 384 (Tex. 1982)). In *National Carloading Corporation v. Phoenix–El Paso Express, Inc.*, the Court reinforced this point, noting that “a right of action given by a statute may be taken away at any time, even after it has accrued and proceedings have been commenced to enforce it.” 176 S.W.2d 564, 568 (Tex. 1944).

Several courts of appeals have correctly followed this precedent. *E.g.*, *Liberty Mut. Ins. Co. v. Tex. Dep’t of Ins.*, 187 S.W.3d 808, 820 (Tex. App.—Austin 2006, pet. denied); *Walls v. First State Bank of Miami*, 900 S.W.2d 117, 121-22 (Tex. App.—Amarillo 1995, writ denied); *Aetna Ins. Co. v. Richardelle*, 528 S.W.2d 280, 284 (Tex. Civ. App.—Corpus Christi 1975, writ ref’d n.r.e.). The *Aetna* court explained that even though the plaintiff’s “right had accrued, it was not a ‘vested right’” because the plaintiff “had not acquired a ‘title . . . to the present or future enforcement of a demand,’ and ‘the courts are generally agreed that rights of action based on purely statutory grounds may be abolished by the legislature even after they have accrued.’” 528 S.W.2d at 285 (quoting *Nat’l Carloading Corp.*, 176 S.W.2d at 569-70); *see Walls*, 900 S.W.2d at 122 (adding that the same rule applies with respect to common-law causes of action).

Another court of appeals accurately summed up the law in this area, explaining that

“[a] ‘vested right’ implies an immediate right or entitlement—it is not an expectation or a contingency. . . . Engrained in the concept of vested rights is the idea of certainty. . . . The filing of a lawsuit in order to obtain relief or pursue a remedy is generally held not to create or destroy vested rights; the triggering event for the vesting of a right is the resolution of the controversy and the final determination—not the filing of the suit.”

Houston Indep. Sch. Dist. v. Houston Chronicle Publ’g Co., 798 S.W.2d 580, 589 (Tex. App.—Houston [1st Dist.] 1990, writ denied) (citations omitted); *accord, e.g., Hammond v. United States*, 786 F.2d 8, 12 (1st Cir. 1986) (explaining that a plaintiff lacks a vested right in a filed tort cause of action “until a final, unreviewable judgment is obtained”) (cited, along with other similar federal circuit decisions, in *In re TMI Litig. Cases*, 940 F.2d 832, 861 (3d Cir. 1991)); *Walls*, 900 S.W.2d at 122 (stating that “only final, nonreviewable judgments will be accorded the dignity of vested, constitutionally guarded rights”).

Viewing a pre-judgment accrued cause of action as a vested right—and thus beyond the Legislature’s reach—would improperly invade the Legislature’s province, just as allowing the Legislature to invalidate courts’ final judgments would improperly invade the judiciary’s. *See* TEX. CONST. art. II, §1. The Court has held that a cause of action accrues when the underlying facts of the plaintiff’s injury occur or are discovered. *E.g., Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 262 (Tex. 1994). Accepting Robinson’s argument that an accrued cause of action is a vested right would prevent the Legislature from

taking any action that altered the substance of that cause of action—even when no lawsuit had yet been filed. Article I, §16 does not so tightly tie the Legislature’s hands.

2. Robinson’s arguments cannot unseat the weight of Texas authority establishing that accrued causes of action are not vested rights.

Each of Robinson’s attempts to show that Chapter 149 deprived her of a vested right fails. Robinson cites *Likes* and other cases for the proposition that she was entitled to “a reasonable time or fair opportunity to preserve [her] rights under the former law.” Robinson Br. at 30 (quoting *Likes*, 962 S.W.2d at 502). But Robinson does not explain how this “fair opportunity” idea in the statute-of-limitations context translates to the Chapter 149 successor-liability context. And she omits any reference to the final portion of this sentence from *Likes*—which confirms that article I, §16 is not violated “if the [statute] does not bar all remedy.” *Likes*, 962 S.W.2d at 502; *see infra* Part I.C (noting that, because Chapter 149 does not entirely bar Robinson’s recovery, it could not violate the rule stated in *Likes* and similar cases).

But Robinson’s reliance on cases arising in the statute-of-limitations context, *see, e.g.*, Robinson Br. at 32-35, is misplaced for another reason. The Court has indeed held that, when a statute of limitations runs and no suit has been filed, a *defendant* has a vested right in its limitations defense that cannot be undone by a subsequent reopening of the period for filing suit. *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999). In this scenario, the limitations defense is equivalent to a final judgment in the defendant’s favor; once the limitations period has run, no meritorious suit can be filed, and the defendant can

safely dispose of any evidence it might need for a defense. *See id.* (noting that “permit[ing] barred claims to be revived years later would undermine society’s interest in repose”).

Just as allowing a defendant to collaterally attack a final judgment in the plaintiff’s favor after all appeals have run their course would deprive the plaintiff of a vested right in the affirmed judgment, reopening a limitations period would expose defendants to claims that have already been conclusively extinguished. By contrast, the mere accrual of a cause of action secures nothing for either a plaintiff or a defendant, and the cause of action remains subject to the Legislature’s power until a court has rendered final judgment upon it.

Even in this case, in which Robinson obtained a partial summary judgment against Crown on liability, it is by no means certain that, in the absence of Chapter 149, Robinson could have recovered anything from Crown. A jury might well have returned a take-nothing judgment in Crown’s favor, leaving Robinson with no vested right even after final judgment. Accordingly, Robinson has no “reasonable reliance” interest—and certainly no “settled expectations”—in the judgment she hoped to get against Crown (or any judgment she may still hope to get against some or all of the other defendants she sued). *See Robinson Br.* at 35 (quoting *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003); *Owens Corning*, 997 S.W.2d at 572-73).

Robinson also cites *Mellinger v. City of Houston*, 3 S.W. 249 (Tex. 1887), and *Texas Water Rights Commission v. Wright*, 464 S.W.2d 642 (Tex. 1971), for the idea that an accrued cause of action is a vested right. *Robinson Br.* at 31-32. But in addition to

conflicting with the weight of authority already cited, that proposition does not clearly follow from those cases. Citing *Mellinger, Wright* does not clearly define “vested right” to include a “well-founded claim” that has not been reduced to final judgment, 464 S.W.2d at 649, and *Mellinger*, although it describes a “well-founded claim” as a “right,” goes on to explain that a right “become[s] fixed or vested, and is beyond the reach of retroactive legislation,” *only* when “such a state of facts exists as the law declares *shall entitle a plaintiff to relief in a court of justice.*” 3 S.W. at 253 (emphasis added); *see id.* (discussing rights that one person is “entitled to enforce against another”). In light of the substantial Texas authority confirming that accrued causes of action are not vested rights, *Mellinger* should be read to state that any right associated with a cause of action vests, at the earliest, upon rendition of final judgment—the condition precedent to a plaintiff’s being “entitle[d] . . . to relief.” *Id.*; *see Hammond*, 786 F.2d at 12 (requiring a *nonreviewable* judgment—that is, one that has been exhaustively appealed).

Finally, Robinson’s reliance on *Ieropoli v. AC&S Corp.*, 842 A.2d 919 (Pa. 2004), is misplaced for a simple reason. Under Pennsylvania case law, “an accrued cause of action is a vested right.” *Id.* at 927. The State does not dispute that *Ieropoli* correctly reflects Pennsylvania law (or at least a binding determination thereof), nor does it dispute that courts in several other jurisdictions consider accrued causes of action to be vested rights. But the rule in Texas is to the contrary: a cause of action that has merely accrued—but has not been reduced to final judgment—is not a vested right. *See supra* Part I.B.1.

C. Even if an Accrued Cause of Action Were a Vested Right, the Statute Merely Altered Robinson’s Remedy—a Change That Article I, §16 Does Not Forbid.

As already noted, article I, §16 does not prohibit statutes that affect a plaintiff’s remedy, as long as some remedy remains. *See supra* Part I.A. Robinson asserts that Chapter 149 completely extinguished her common-law tort cause of action against Crown. *E.g.*, Robinson Reply Br. at 1. In truth, Chapter 149 affected nothing more than Robinson’s expectation of recovering, from one of many defendants, on a statutory successor-liability theory. *See* TEX. BUS. CORP. ACT art. 5.06; Robinson Br. at 27 (asserting successor liability under article 5.06 and two other States’ similar statutes). Application of Chapter 149 leaves Robinson’s common-law tort cause of action intact as to all defendants. It merely precludes the specific portion of the remedy that Robinson seeks against Crown on her successor-liability theory. For that reason, the Court should reject Robinson’s article I, §16 challenge even if it concludes that her accrued cause of action is a vested right.

In analogous cases, the Court has already considered and rejected the argument that Robinson presents here. For instance, in *Rose v. Doctors Hospital*, plaintiffs (the Roses) asserted that a statute limiting liability in wrongful-death actions violated the open-courts requirement of Texas Constitution article I, §13. 801 S.W.2d 841, 842-44 (Tex. 1990). In analyzing that claim, the Court distinguished the plaintiffs’ common-law cause of action from the statute authorizing their recovery. After noting that a successful article I, §13

challenge requires a showing that “the [plaintiffs’] remedy is based upon a cognizable common law cause of action,” the Court rejected the constitutional challenge, explaining that,

“[l]ike all actions based upon theories of negligence, the Roses’ *cause of action* was a common law claim. It would have died with Rex Rose had it not been preserved by the legislature in the wrongful death statute. The Roses’ *remedy*, therefore, was conferred by statute, not by the common law. Because the Roses do not seek a common law remedy, the open courts provision does not apply to their wrongful death claim.”

Id. at 845 (emphasis added) (citation omitted); *accord Diaz v. Westphal*, 941 S.W.2d 96, 101 (Tex. 1997); *Baptist Mem’l Hosp. Sys. v. Arredondo*, 922 S.W.2d 120, 121-22 (Tex. 1996).

Like the statutes at issue in *Rose*, *Diaz*, and *Baptist Memorial Hospital*, Chapter 149 affects nothing more than Robinson’s statutory remedy against Crown, leaving her common-law tort claim untouched. Moreover, Chapter 149 does not preclude Robinson from obtaining full recovery, through that very same tort claim, from one or more of Crown’s numerous co-defendants. Because Robinson could recover jointly and severally from any one of those co-defendants, Chapter 149 does not deprive her of a remedy entirely—and therefore does not violate article I, §16. *Likes*, 962 S.W.2d at 502; *Morrow*, 284 S.W. at 276.

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In sum, Robinson lacks a vested right because she did not obtain a final judgment entitling her to damages on her cause of action against Crown, and she cannot show that the statute affects anything more than the portion of her anticipated remedy dependent on the statutory successor-liability scheme that Chapter 149 altered. Because, pre-judgment, she

has no legal entitlement to relief as to the statutory remedy of successor liability, Robinson’s article I, §16 challenge to Chapter 149 cannot succeed.

II. CHAPTER 149 IS NOT AN UNCONSTITUTIONAL SPECIAL LAW UNDER ARTICLE III, §56 OF THE TEXAS CONSTITUTION.

In relevant part, article III, §56(b) of the Texas Constitution provides: “[I]n all . . . cases where a general law can be made applicable, no local or special law shall be enacted.” A local law is one that applies only in a specific geographic region of the State, and a special law is one whose application is limited to a particular class of persons distinguished by some characteristic other than geography. *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 465 (Tex. 1997). Notwithstanding article III, §56(b)’s restriction, it is settled that the Legislature retains broad authority “to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class.” *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941); *accord Maple Run at Austin Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996); *County of Cameron v. Wilson*, 326 S.W.2d 162, 165, 167 (Tex. 1959).

Indeed, Texas courts presume that the Legislature does not act arbitrarily or unreasonably, but rather that it “understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.” *Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968) (quoting *Tex. Nat’l Guard Armory Bd. v. McCraw*, 126 S.W.2d 627, 634 (1939)). Because “[t]he wisdom or expediency of the law is the Legislature’s prerogative,

not [the Court’s],” a mere difference of opinion is an insufficient basis for striking down legislation as unreasonable or arbitrary. *Id.* Accordingly, the proponent of an article III, §56 challenge bears a heavy burden, *Wilson*, 326 S.W.2d at 167—a burden that, as shown below, Robinson cannot carry.

A. A Law Violates Article III, §56 Only if It Unreasonably Excludes People or Entities Equally Deserving of Its Protection.

Although Texas courts have, over the years, drawn various distinctions between general and special laws, this Court has repeatedly stated that there is but one “ultimate test” for determining whether a law is general or special: whether there is a reasonable basis for its classification and whether it operates equally on all within the class. *E.g.*, *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 451 (Tex. 2000); *Maple Run*, 931 S.W.2d at 945; *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 745 (Tex. 1995); *Robinson v. Hill*, 507 S.W.2d 521, 525 (Tex. 1974); *Wilson*, 326 S.W.2d at 165; *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (1950).

The focus of the test is reasonableness. *Owens Corning*, 997 S.W.2d at 583 (stating that “[l]egislation does not violate Article III, Section 56 as long as there is a reasonable basis for its classifications”); *Maple Run*, 931 S.W.2d at 947 (same); *Lewellen*, 952 S.W.2d at 465 (same); *Trinity River Auth.*, 889 S.W.2d at 265 (rejecting an article III, §56 challenge because “the classifications drawn by [the challenged statute were] reasonable”); 1 GEORGE D. BRADEN, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE

ANALYSIS 277 (1977) (hereinafter “BRADEN”) (explaining that, in article III, §56 analysis, “the crucial point is whether the classification is reasonable”).

Reasonableness is the touchstone for article III, §56 analysis not because the Court has ignored the second element of the “ultimate test” that it first articulated in *Rodriguez*, 227 S.W.2d at 793, but rather because the test’s reasonable-basis and equal-operation elements are intertwined. Determining whether a law is unconstitutionally local or special requires inquiry into whether there is a reasonable basis for excluding those beyond the statute’s reach; the question is whether the class to which the statute *should* apply is unreasonably broader than the class to which the statute *actually* applies. *See, e.g., Maple Run*, 931 S.W.2d at 946 (holding that the existence of other municipal utility districts with the same problems as the one that the challenged statute favored defeated the favored district’s reasonable-basis argument); *Miller*, 150 S.W.2d at 1002 (finding no reasonable basis to restrict the benefits of an economic-improvement plan to counties with populations between 125,000 and 175,000 inhabitants, where other counties were at least as deserving of the plan’s benefits).

B. Because the Statute Reasonably Differentiates Among Asbestos-Suit Defendants Based on Their Culpability, It Does Not Violate Article III, §56.

As explained in the court of appeals’s opinion and the briefs submitted by both Crown and the other amici, the challenged statute’s classification is based on the Legislature’s desire to protect the least culpable asbestos-suit defendants from potentially crippling liability. *E.g.,*

Robinson, 2006 WL 1168782, at *6-8; Crown Br. at 2-3. This objective is reflected in the statute itself. Its protections apply only to corporations that (1) assumed or incurred successor asbestos-related liabilities before May 13, 1968, TEX. CIV. PRAC. & REM. CODE §§149.001(4), .002(a); and (2) did not continue in the asbestos business after merging with corporations from which those liabilities devolved, *id.* §149.002(b)(5).

Challenging the reasonableness of Chapter 149’s line-drawing, Robinson asserts that because asbestos’s danger was known, to some degree, before May 13, 1968, the statute offers greater protection than it should. Robinson Br. at 45-46. But the May 13, 1968, date was not chosen arbitrarily. It is the date on which the “American Conference of Governmental Industrial Hygienists (ACGIH) first adopted a change in the recommended, longstanding threshold limit for asbestos in the air of a workplace from 5 mppcf to 2 mppcf (the ACGIH 1958 Standard).” *Robinson*, 2006 WL 1168782, at *7 (quoting H.J. OF TEX., 78th Leg., R.S., 6044 (2003)).

The Legislature was well within its discretion to credit this date, rather than the earlier date to which Robinson points, as the one best suited to defining Chapter 149’s beneficiary class. *See Smith*, 426 S.W.2d at 831 (explaining that “a mere difference of opinion, where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable”). Robinson’s contrary argument essentially asks the Court to

second-guess the Legislature’s judgment—a request that this Court’s precedent forbids. *Id.* (“The wisdom or expediency of the law is the Legislature’s prerogative, not ours.”).²

C. Robinson’s “Class of One” Argument Is Unpersuasive.

Essentially conceding that a rational basis exists for the statute’s classification, Robinson asserts that article III, §56 was violated because the statute purportedly applies to Crown alone. *See* Robinson Br. at 46-47. This argument—superficially attractive though it may be—fails for two reasons. First, article III, §56 does not prohibit legislation initially applicable to classes of one. If it did, the Legislature would be barred from addressing even the most serious problems, so long as their effects were felt, at the time corrective legislation was proposed, by only one entity. Second, because Robinson cannot identify any entity other than Crown that reasonably deserves the statute’s protection, her argument necessarily fails.

1. Article III, §56 does not prohibit legislation that initially protects only one entity.

Braden explains that legislation does not qualify as a special law merely because it applies to only one entity:

“A statute expressed in open-ended general terms would rarely be considered a special law even if it were shown that only one

2. Robinson correctly observes that “the statements of a single legislator do not determine legislative intent”—a proposition that she uses to attack Representative Nixon’s statements about the statute’s reasonable basis. Robinson Br. at 48. But it is well settled that a statute’s reasonable basis need not be established in the legislative record, *Mauldin v. Tex. State Bd. of Plumbing Examiners*, 94 S.W.3d 867, 873 (Tex. App.—Austin 2002, no pet.); *accord F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993), and this general principle applies in the article III, §56 context, *see Smith*, 426 S.W.2d at 831 (deciding what the “legislature could have reasonably determined”); *Scurlock Permian Corp. v. Brazos County*, 869 S.W.2d 478, 485 (Tex. App.—Houston [1st Dist.] 1993, writ denied) (explaining that “[i]f there could exist a state of facts justifying the classification or restriction complained of, we will assume that it existed”).

person or corporation came under it. For example, . . . a law regulating manufacturers of drilling bits for oil well drilling would not be a special law just because there happened to be only one company making the bits.”

BRADEN at 277; *see also id.* (positing another permissible law “that shortened the residency period for obtaining a divorce and was “introduced for the benefit of a particular refugee . . . who had sued for divorce before fleeing to the United States”). This is so, Braden notes, because such a law is open-ended and “more likely eventually to include others” *Id.*

So is Chapter 149. As Crown points out, Crown Br. at 47 n.38, as asbestos-suit plaintiffs broaden their nets to reach more and more defendants without direct connections to plaintiffs’ claimed injuries, the number of defendants to which the statute applies can be expected to increase. The statute, by its terms, applies to non-asbestos-producing corporations that succeeded to asbestos liabilities before May 13, 1968, *and to their successors*. TEX. CIV. PRAC. & REM. CODE §149.002(a). Thus, any entities in the future that might acquire corporations that succeeded to asbestos liabilities in the relevant time frame could find themselves—through no fault of their own—drawn into the growing web of asbestos litigation. Chapter 149 would cover them as well. And because any such entities would necessarily have only a tangential link to asbestos products, *see id.* §§149.002(a), .002(b)(5), their inclusion in the statute’s classification would be just as reasonable as

Crown’s. Simply because litigation defining the class’s full membership has not yet arisen does not mean that the statute’s classification is unreasonable.³

Robinson nevertheless asserts that the class must be of a substantial *size* to avoid article III, §56’s prohibition, Robinson Br. at 46-47, and points to some courts’ admonition that “the class created by the statute ‘must be a real class, and not a “pretended” class created by the legislature to evade [article III, §56’s] restriction,’” *id.* at 42 (citations omitted). But again, the size of the class is not controlling. *See, e.g., Bexar County v. Tynan*, 97 S.W.2d 467, 469-70 (Tex. 1936) (striking down a statute for lack of a reasonable basis but finding no constitutional problem with the law’s applicability to only one county); *Juliff Gardens, L.L.C. v. Tex. Comm’n on Env’tl. Quality*, 131 S.W.3d 271, 283-85 (Tex. App.—Austin 2004, no pet.) (rejecting an article III, §56 challenge to a statute that applied to only one entity); *August A. Busch & Co. v. Tex. Alcoholic Beverage Comm’n*, 649 S.W.2d 652, 654-55 (Tex. App.—Texarkana 1982, writ ref’d n.r.e.) (same).⁴

3. Moreover, the Texas Legislature is not bound to enact only comprehensive legislation in response to the problems it identifies. *See, e.g., Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382, 389 (5th Cir. 2001) (“It is well-settled that ‘as long as a classification is rationally related to a legitimate state objective, a legislature is allowed to attack a perceived problem piecemeal.’”) (quoting *Jackson Court Condos., Inc. v. City of New Orleans*, 874 F.2d 1070, 1079 (5th Cir. 1989)).

4. Construing their own constitutions’ counterparts to article III, §56, high courts in several other States have likewise concluded that a law is not unconstitutionally “special” simply because it initially applies to a class of one. *E.g., State ex rel. Bradley v. Bd. of County Comm’rs*, 302 P.2d 542, 547 (Kan. 1956); *City of Louisville v. Klusmeyer*, 324 S.W.2d 831, 834 (Ky. 1959); *Reyes v. Prince George’s County*, 380 A.2d 12, 27 (Md. 1977); *Williams v. Rolfe*, 114 N.W.2d 671, 677-79 (Minn. 1962); *Hull v. Baumann*, 131 S.W.2d 721, 723 (Mo. 1939); *Reid v. Woofter*, 498 P.2d 361, 362 (Nev. 1972); *Jacobs Ranch, L.L.C. v. Smith*, 148 P.3d 842, 854 (Okla. 2006); *Med. Soc. of S.C. v. Med. Univ. of S.C.*, 513 S.E.2d 352, 357-58 (S.C. 1999); *Port of Seattle v. Pollution Control Hearings Bd.*, 90 P.3d 659, 689-90 (Wash. 2004); *May v. City of Laramie*, 131 P.2d 300, 306 (Wyo. 1942); *accord Long v. Napolitano*, 53 P.3d 172, 183-85 (Ariz. Ct. App. 2002); *Ocala Breeders’ Sales Co. v. Fla. Gaming Ctrs., Inc.*, 731 So. 2d 21, 25 (Fla. Dist. Ct. App. 1999);

And a “pretend” class exists only when there is no substantial *reason* for affording benefits to members of the legislatively created class. *Rodriguez*, 227 S.W.2d at 793 (stating that a law violates article III, §56 only if its “classification . . . is not based upon a reasonable and substantial *difference in kind, situation or circumstance* bearing a proper relation to the purpose of the statute”) (emphasis added) (citation and internal quotation marks omitted); *Miller*, 150 S.W.2d 1001-02 (explaining that the “substantial class” requirement means that “there must be a substantial *reason* for the classification” and striking down a law because the Legislature’s classification “b[ore] no substantial relation to the objects sought to be accomplished”) (emphasis added); *see supra* Part II.A.

Finally, although Robinson cites several cases in which the Court invalidated local laws that singled out one entity for special treatment, Robinson Br. at 42-43, the laws at issue in those cases were invalid not because they applied to a class of one, but rather because there was no reasonable basis for so limiting their application. *Maple Run*, 931 S.W.2d at 946; *Miller*, 150 S.W.2d 1002-03; *Anderson v. Wood*, 152 S.W.2d 1084, 1087 (Tex. 1941); *Bexar County*, 97 S.W.2d at 469-70; *see also FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 910-11 (Tex. 2000) (Abbott, J., dissenting) (noting that the “class of one” laws

Sapir v. Hardy, 349 So. 2d 478, 480 (La. Ct. App. 1977) (per curiam); *Clark v. Byrne*, 397 A.2d 719, 723 (N.J. Super. Ct. Law Div. 1978).

that the Court has struck down under article III, §56 were invalid only because the reasonable-basis requirement had not been met).⁵

Here, the Legislature reasonably and appropriately limited the statute's application to present and future asbestos-suit defendants that, in its judgment, have the least culpability. Simply because Crown is the first entity to have successfully availed itself of the statute's protection does not render the law unconstitutional, nor does the statute violate article III, §56 because it was written in response to the situation that Crown faced. *See Juliff Gardens*, 131 S.W.3d at 283-85.

2. Robinson's failure to identify other entities that deserve the statute's protection precludes her Article III, §56 challenge.

Robinson's argument, however, fails for a more basic reason: Robinson identifies no other asbestos-suit defendant that is arguably as innocent as—or more innocent than—Crown. Indeed, Robinson attacks the only other potential beneficiary of Chapter 149 identified in the parties' briefing as, in her view, even less deserving of the statute's protection. Robinson Reply Br. at 24.

As already noted, article III, §56 prohibits only those laws that unreasonably exclude people or entities from protection afforded to substantially similar people or entities. *See supra* Part II.A. To prevail on her special-law theory, Robinson would need to point to at

5. *City of Fort Worth v. Bobbitt*, another decision that Robinson cites, involved a statute that could never become applicable to any city other than the one to which it initially applied. 36 S.W.2d 470, 471-72 (Tex. 1931). As Braden points out, this type of statute is obviously problematic under article III, §56. BRADEN at 275-76. Because the statute at issue here is different in kind—it is not similarly closed to additional asbestos-suit defendants—*Bobbitt* does not advance Robinson's argument.

least one asbestos-suit defendant that was unreasonably excluded from the statute's protection. Because she did not do so, her article III, §56 challenge fails.

PRAYER

The Court should affirm the court of appeals's judgment.

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