SUPREME COURT, STATE OF COLORADO
Address of Court:
2 East 14th Avenue
Denver, CO 80203

District Court, Weld County, Colorado
Case No. 2011CV222
The Honorable Elizabeth Strobel

IN RE:

Petitioners-Defendants:

ANADARKO PETROLEUM CORPORATION, a Delaware corporation, KERR-MCGEE OIL & GAS ONSHORE LP, a Delaware limited partnership, and KERR-MCGEE GATHERING LLC, a Delaware limited liability company,

v.

Respondent-Plaintiff:

DCP MIDSTREAM LP, a Delaware limited partnership.

Amicus Curiae: PRODUCT LIABILITY ADVISORY COUNCIL

Attorneys for Amicus Curiae Product Liability Advisory Council:

Mary A. Wells, #8522
L. Michael Brooks, #25975
Marilyn S. Chappell, #14083
WELLS, ANDERSON & RACE, LLC
1700 Broadway, Suite 1020
Denver, CO 80290
Telephone: (303) 830-1212
E-mail: mwells@warllc.com
mbrooks@warllc.com
mchappell@warllc.com

▲COURT USE ONLY▲

Case No. 12SA307

BRIEF OF AMICUS CURIAE PRODUCT LIABILITY ADVISORY COUNCIL IN SUPPORT OF PETITION FOR A RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of the Colorado Appellate Rules, including all formatting requirements set forth in these rules.

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of the Colorado Appellate Rules.

Marilyn S. Chappell

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

RULES:

OTHER AUTHORITIES:

I. STATEMENT OF INTEREST OF AMICUS CURIAE

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit association with 102 corporate members representing a broad cross-section of American and international product manufacturers.[1] These companies seek to contribute to the improvement and reform of the law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product liability defense attorneys in the country, including several Colorado attorneys, are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed over 900 briefs as amicus curiae in both state and federal courts, including the U.S. Supreme Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability.

Discovery issues in litigation are of utmost importance to PLAC members. While discovery is essential for trial preparation, the significant cost of discovery –

[1] The PLAC membership list is appended as Exhibit A.

especially in complex disputes involving discovery of electronically stored information – is a particular concern. That cost must be held to a reasonable amount, given the circumstances of each case, through effective judicial management of discovery. The trial court must be the "gatekeeper" of the discovery process – analogously to its role as gatekeeper of admission of expert opinion testimony.[2]

This Court has recognized the importance of the trial court's discovery management role in two significant directives in recent years: initiation of the Colorado Civil Access Pilot Project (CAPP), aimed at addressing litigation costs and delays in business cases; and adoption of amendments to C.R.C.P. 26, addressing the permissible scope of discovery. While the present action is not subject to the CAPP, it is of course governed by Rule 26.

This Court's directives recognize that a critical issue in the exercise of the trial court's gatekeeper role is ensuring that discovery is confined to its proper scope: information on the parties' claims and defenses, absent a showing of good cause for a wider inquiry. The claims as pleaded are key to the trial court's discovery gatekeeper role. The pleaded claims, not those that a party is contemplating for later prosecution, are the proper subject of discovery.

---

[2] *See People v. Shreck,* 22 P.3d 68, 77-79 (Colo. 2001).

Here, the trial court's rulings direct the defendants to produce a significant volume of electronically stored information, based on the broad allegations of the complaint which suggest the possibility of future claims beyond those pleaded in the complaint. The trial court did not require a showing of "good cause" prior to entering its broad discovery orders, nor did it limit the scope of discovery to the claims actually pleaded. The court's discovery rulings are silent on the issue of the cost of the ordered discovery.

PLAC asks that this Court, in ruling on the defendants' Petition for a Rule to Show Cause Pursuant to C.A.R. 21 in the present action, direct Colorado's trial courts to exercise their gatekeeper role in discovery by carefully considering the enormous costs of broad discovery, particularly electronic discovery, and by ensuring that discovery is confined to its proper scope based on matters actually addressed in the pleadings, disallowing "fishing expeditions." Trial courts should make specific findings on the nature of discovery sought, how it relates to the parties' claims or defenses, how it can be accomplished, its economic effect on the parties, and how it will aid in the efficient adjudication of the case.

II. ISSUE PRESENTED

Whether trial courts have the duty to exercise a gatekeeper role in the management of discovery, confining the scope of discovery to those claims and

defenses pleaded by the parties so that litigation is conducted in an efficient and economical manner.

III. ARGUMENT

A. The Rules of Procedure Recognize that Trial Courts Have a Gatekeeper Role to Ensure that Discovery is Confined to Proper Bounds

1. Introduction: The Rules are designed to procure an economic adjudication

Under the Colorado Rules of Civil Procedure, Colorado's trial courts have the duty to manage all facets of litigation, including discovery, under the fundamental directive in Rule 1 that the Rules be interpreted "to secure the just, speedy, and *inexpensive* determination of every action." C.R.C.P. 1 (emphasis added). The Rule 1 mandate informs the CAPP system and recent amendments to C.R.C.P. 26.[3]

2. CAPP

The CAPP was initiated via Chief Justice Directive, in recognition of the "growing concern that the civil pretrial process is unnecessarily complex, lengthy, and expensive." *See A History and Overview of the Colorado Civil Access Pilot*

[3] The Institute for the Improvement of the American Legal System (IAALS), discussed further *infra*, has undertaken a "Rule One Initiative," designed to increase "access, efficiency, and accountability" in the legal system. *See* http://iaals.du.edu/initiatives/rule-one-initiative/why-rule-one-matters/.

Project Applicable To Business Actions In District Court, at 1;[4] Chief Justice Directive 11-02, Amended October, 2011.[5] In particular, discovery costs are an "important factor[ ] in driving cases to settle," rather than proceeding to adjudication. *History and Overview*, at 1.

The CAPP system comprises a focused approach to discovery, based on active judicial management – and based on the parties' claims and defenses as they are actually pleaded; the goal is to narrow, not expand, the issues so that they can be litigated efficiently:

> The basic idea is that through new pleading and disclosure procedures, all known information comes to light at the earliest possible point. With the disputed facts and issues thus narrowed and framed, the parties and the court work together to determine the extent of additional discovery necessary . . . .
>
> A single judge provides close case management on an expedited time frame, leading up to a firm trial date. . . .

History and Overview, at 3.

The CAPP's Pilot Project Rules (PPRs) manifest the need for judicial management of discovery to control its scope and costs, through provisions including the following:

---

[4] *See* http://www.courts.state.co.us/userfiles/file/Court_Probation/Educational_Resources/Final%20CAPP%20Overview%208-31-11.pdf.

[5] *See* http://www.courts.state.co.us/Courts/Supreme_Court/ Directives/CJD%2011-02amendedappendixes12-12-11.pdf.

PPR 2.1: the intent of the rules is "to utilize the pleadings to identify and narrow the disputed issues at the earliest stages of litigation and thereby focus the discovery";

PPR 2.2: the pleadings should contain "all material facts that are known to that party that support that claim or affirmative defense and each remedy sought, including any known monetary damages";

PPR 6.2: the court "may shift any or all costs associated with the preservation, collection and production of electronically stored information as the interests of justice and proportionality so require";

PPR 9.1: "Discovery shall be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness";

PPR 9.2: discovery is limited to matters in the initial case management order, absent further court order "based on a showing of good cause and proportionality."

Thus, the CAPP implements a system based on judicial management of discovery scope and cost. While the CAPP rules are not specifically applicable to the present dispute, the CAPP reflects Colorado judicial policy concerning the need to avoid undue litigation expense and delay by confining discovery to its proper limits – a concern also reflected in the procedural rules for all Colorado actions.

3. Rule 26 Amendment on Scope of Discovery

This Court, by 2002 amendment, limited discovery under the Colorado Rules of Civil Procedure to matters "relevant to the claim or defense of any party";

only "[f]or good cause" may discovery be extended to matters "relevant to the subject matter involved in the action." C.R.C.P. 26(b)(1). Before the 2002 amendment, the Rules permitted discovery of information "relevant to the subject matter involved in the pending action." The Rule 26 amendment, effective January 1, 2002, was patterned after the 2000 change to the corresponding federal rule. C.R.C.P. 26, Committee Comment, 2001 Colorado Changes.

The 2000 amendment to F.R.C.P. 26(b)(1) evinced the need for judicial oversight of the scope of discovery. The amended rule limits discovery to matters pleaded – those claims and defenses actually involved in the action. The Advisory Committee commented as follows:

> The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings. . . .

F.R.C.P. 26, Advisory Committee Notes, 2000 Amendment, 26(b)(1). Discovery may extend beyond those matters actually pleaded only if the Court finds good cause for additional discovery that is relevant to the subject matter of the litigation. *Id.*

While no reported Colorado appellate decision construes the effect of the 2002 amendment to Rule 26(b)(1), this Court has long recognized the need for

affirmative judicial management of discovery, through balancing the parties' interests with the need for the information sought in discovery. *See, e.g., Williams v. District Court*, 866 P.2d 908, 912 (Colo. 1993) (absent judicial intervention, broad discovery "may lead to discovery abuses"); *Bond v. District Court*, 682 P.2d 33, 40 (Colo. 1984) (courts have "broad discretion to manage the discovery process in a fashion that will implement the philosophy of full disclosure of relevant information and at the same time afford the participants the maximum protection against harmful side effects," *quoting* 4 J. Moore & J. Lucas, MOORE'S FEDERAL PRACTICE ¶ 26.67 (1983)); *Leidholt v. District Court*, 619 P.2d 768, 770 (Colo. 1980) ("disproportionate discovery may increase the cost of litigation, harass the opponent, and tend to delay a fair and just determination of the legal issues").

Furthermore, the Rules now contain requirements for what must be demonstrated to make a "good cause" showing to alter the presumptive limitations on discovery contained in the Rules. *See* Rule 26(b)(2)(F). The requisite balancing of the parties' interests, along with other provisions of the Rules of Procedure, define the parameters for the "good cause" showing required to allow discovery into the "subject matter" of the action under Rule 26(b)(1), as amended. *See, e.g.*, Rule 26(b)(2)(F)(i) (relevant considerations for allowing discovery

beyond the rule's presumptive numeric limits include whether the discovery is "unreasonably cumulative or duplicative" or is "obtainable from some other source that is more convenient, less burdensome, or less expensive"); *see also* Rule 26(b)(2)(F)(iii) ("proportionality" factors); PPR 1.3 (same). Indeed, Rule 26(b)(2)(F)(iii) directs the court to consider whether the burden or expense of the proposed discovery is outweighed by its anticipated benefit. In so doing, the court must consider the economics of the discovery, including the parties' resources. *Id.*

The Tenth Circuit has weighed in on the import of the 2000 amendment to the federal counterpart to Rule 26(b)(1). *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1188-90, 1193 (10th Cir. 2009) (observing that changes to Rule 26 were intended to "encourage[e] more judicial involvement in discovery," in "regulating the breadth of sweeping or contentious discovery," and that a plaintiff's "broad theory of the case" "does not justify more expansive discovery, unless the discovery is relevant to the plaintiff's actual claims or defenses, or the plaintiff makes a showing of good cause"). The Rule 26(b)(1) "good cause" requirement must be met by the party seeking discovery. *See id.* at 1193.

Notably, the Tenth Circuit had previously upheld trial court limitations on the scope of discovery, recognizing that fishing expeditions are an abuse of the judicial process; *see Koch v. Koch Industries, Inc.*, 203 F.3d 1202, 1238 (10th Cir.

2000) (if a plaintiff "pleads its allegations in entirely indefinite terms," and "bases massive discovery requests upon those nebulous allegations," the plaintiff "abuses the judicial process"; the trial court "appropriately recognized that the likely benefit of this attempted fishing expedition was speculative at best").

In short, as this Court's directives attest, trial courts have the obligation to ensure that discovery is confined within reasonable bounds. The trial court's rulings in the present action, including its initial one–word ruling granting plaintiff's motion to compel (Ex. 5 to Petition), and its failure to require plaintiff to show "good cause" for its broad discovery requests, demonstrate a need for instruction from this Court on the critical nature of the trial court discovery gatekeeper function.[6]

B. Lack of Judicial Discovery Management Can Result in Costly "Fishing Expeditions" Which Impair the Effective Functioning of the Judicial System and Enable Discovery to be Used as an Economic Tool to Force Settlements

Judicial gatekeeping of discovery is necessary to avoid expensive and

---

[6] Indeed, the trial judge balked at a discovery gatekeeper role, observing: "I don't want to keep doing this. . . . I want to manage the case. I don't want to manage [d]iscovery," and suggested that a discovery master might need to be appointed. (Ex. 4 to Petition, October 15, 2012 hearing, 21:5-11.)

To the extent trial courts are concerned about their ability to marshal resources to manage discovery, the Rules of Procedure enable the appointment of discovery masters, as alluded to by the trial judge. *See* C.R.C.P. 53.

unwarranted "fishing expeditions." This need is especially acute in cases involving large quantities of electronically stored information, as in the present action. Often, extensive discovery is a one-sided affair, where plaintiff submits broad discovery requests that impose significant financial and resource burdens on a defendant. The costs of discovery can run into the millions of dollars, and can divert parties from essential business functions. Invoking this state's judicial processes to require such expenditures of money and time should not be undertaken lightly, and should not be permitted without specific findings explaining the reasons that such discovery is necessary.

The CAPP system, described above, grew out of efforts by the American College of Trial Lawyers (College) and the nonprofit, nonpartisan Institute for the Advancement of the American Legal System (IAALS) to address concerns with the civil pretrial process, including its costs. *See History and Overview*, *supra*, at 1. Notably, the CAPP system includes a provision for shifting the cost of discovery to the requesting party, under certain circumstances. *See* PPR 6.2, *supra*.

Concern about the cost of discovery is reflected in a number of reports and studies involving IAALS, in cooperation with other organizations involved in the civil justice system. The *Report from the Task Force on Discovery and Civil*

Justice of the [College] and [IAALS] concludes that discovery processes are not being used for case development, but rather to compel settlements. The majority of respondents from the College stated that "discovery was being used as a tool to force settlement"; "e-discovery increase[d] expenses"; and "e-discovery was being abused."[7]

Indeed, concerns regarding the cost of discovery has "pervaded for decades." *See* Rebecca Love Kourlis (former Colorado Supreme Court Justice and executive director of IAALS) and Jordan M. Singer, *Managing Toward the Goals of Rule 1*, 4 FED. CTS. LAW REV. 1, 12 (2009).[8] To that end, "judicial involvement in the management of civil cases is both desired and desirable," as such involvement results in "lower costs," "a narrower range of issues in dispute," and "greater client satisfaction." *Id.* at 7. In particular, initial conferences with the court are beneficial as, to the extent that such conferences "narrow the issues in dispute, the parties are less likely to engage in extraneous or unnecessary discovery." *Id.* at 13.

In a further report issued by IAALS – reflecting participation by the College

[7] *See* http://iaals.du.edu/images/wygwam/documents/publications/Civil_Litigation_Conference2010.pdf, at 2-3.

[8] *See* http://iaals.du.edu/images/wygwam/documents/publications/Managing_Toward_the_Goals_of_Rule_1,_2009.pdf.

as well as the American Bar Association Section of Litigation, the National Employment Lawyers Association, and a database of judicial officers maintained by the Searle Center of the Northwestern University School of Law – the majority of respondents "associated the discovery process with excess cost and delay," and believe that "discovery is too expensive." *See Excess & Access – Consensus on the American Civil Justice Landscape.*[9] Further, the respondents noted that e-discovery increases the costs of litigation. *Id.* at 14. A majority of respondents also agreed that judicial management "helps to narrow the issues" and "helps to limit discovery." *Id. See also* Rebecca Love Kourlis, *Keynote Address: Civil Justice at a Crossroads*, XI PEPPERDINE DISPUTE RESOLUTION L. J. 3, 4, 14 (2010), attributing a "national focus on the civil litigation system" to factors including "the advent of electronic discovery and the associated costs," and describing the cost of discovery as "a potentially dangerous tool influencing settlement decisions."[10]

Moreover, a report from a survey of Fortune 200 companies, submitted to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, at the 2010 Conference on Civil Litigation, Duke Law School,

---

[9] *See* http://iaals.du.edu/images/wygwam/documents/publications/Excess_Access2011-2.pdf, at 11.

[10] *See* http://iaals.du.edu/images/wygwam/documents/publications/Civil_Justice_at_the_Crossroads.pdf.

noted:

- based on the respondents' litigation experience, the ratio of the number of document pages produced in discovery to the document pages introduced as exhibits at trial was as high as ***1000:1***;

- the average cost of providing electronic discovery in a ***mid-sized case*** was ***$3.5 million***;

- litigation costs of multinational companies were ***four to nine times higher*** in the U.S. than in other countries.[11]

In addition, at the Hearing before the Subcommittee on the Constitution, Committee of the Judiciary, U.S. House of Representatives, *Costs and Burdens of Civil Discovery*, Serial No. 112-72 (Dec. 13, 2011), 19, 27-28, Justice Kourlis testified that if an action involves "$2 to $3 million in legal fees, electronic discovery can easily add another 2 to 3 million" and that based on surveys of discovery costs, approximately two-thirds of litigation costs relate to discovery.[12] At the same hearing, Thomas H. Hill, Associate General Counsel, Environmental Litigation and Legal Policy, General Electric Company, testified regarding discovery costs of $6 million in a case in which $4 million was at issue. *Id.* at 319.

---

[11] *See Litigation Cost Survey of Major Companies*, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Duke%20Materials/Library/Litigation%20Cost%20Survey%20of%20Major%20Companies.pdf, at 3, 5.

[12] *See* http://judiciary.house.gov/hearings/printers/112th/112-72_71623.PDF.

Consideration of discovery costs has also influenced the work of the Sedona Conference, a nonprofit, 501(c)(3) research and educational institute "dedicated to the advanced study of law and policy."[13] *See The Sedona Principles: Second Edition – Best Practices Recommendations & Principles for Addressing Electronic Document Production* (The Sedona Conference® Working Group Series, 2007), second principle:

> When balancing the cost, burden, and need for electronically stored information, courts and parties should apply the proportionality standard embodied in Fed. R. Civ. P. 26(b)(2)(C) and its state equivalents, which require consideration of the technological feasibility and realistic costs of preserving, retrieving, reviewing, and producing electronically stored information, as well as the nature of the litigation and the amount in controversy.

The Sedona Conference noted that "the rule of reasonableness" embodied in F.R.C.P. 1 guided the drafting of the principles. That is, "litigants should seek – and the courts should permit – discovery that is reasonable and appropriate to the dispute at hand while not imposing excessive burdens and costs on litigants and the court." *Id.*, Preface, at v. Moreover, in its commentary on the principles, the Conference observed: "Electronic discovery is a tool to help resolve a dispute and should not be viewed as a strategic weapon to coerce unjust, delayed, or expensive results." *Id.* Further, the costs of discovery "cannot be calculated solely in terms

[13] *See* https://thesedonaconference.org/.

of the expense of computer technicians to retrieve the data but must factor in other litigation costs, including the interruption and disruption of routine business processes and the costs of reviewing the information." *Id.*, Principles and Commentaries, at 17.

Thus, effective judicial management of the cost of discovery is critical to the effective operation of our judicial system. Our judicial system necessarily impacts our state's economy and its business climate, in a competitive global economy.

However, in this action, the court's discovery rulings are silent on the cost of the discovery that was directed to occur, although the defendants informed the court of the enormity of the time and money spent in trying to gather electronically stored documents that were pertinent to the issues pleaded. (Ex. 4 to Petition, October 15, 2012 hearing, 11:22-24.) Consideration of the economics of discovery should be part and parcel of every court decision about the scope of discovery.

C. The Pleadings Provide the Touchstone for the Proper Scope of Discovery

A recurrent theme underlying the CAPP system, and the 2002 Rule 26 amendment, is that the pleadings provide the boundaries for the scope of discovery. In other words, the parties' actual allegations – not those which could be made, but were not – form the proper basis for discovery.

The scope of discovery must be limited by what is pleaded. The advantages – indeed, the necessities – of fact-based pleading were recognized by the United States Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). While pleading specificity is not precisely before this Court now, the federal system and professional organizations have recognized the advantages of fact-based pleading, in part to restrain the costly abuses of excessive discovery. For example, the *Report from the Task Force on Discovery and Civil Justice of the [College] and [IAALS]*, referenced *supra*, noted that a fact-based pleading requirement would "inform and shape discovery obligations, especially in the digital age." *Id.* at 5-6. *See also* Rebecca Love Kourlis, *Keynote Address: Civil Justice at a Crossroads*, *supra*, alluding to the use of "fact-based pleading" to "narrow the issues early in the case" and "narrow the scope of discovery." *Id.* at 12-13.

However, in this action, the trial court essentially gave the plaintiff a "hunting" license, when it observed, in one hearing on discovery issues: "[T]he rule on discovery up here is[:] turn it over . . . . You don't get to say: [']You're on a fishing expedition['] . . . . They already told you in the complaint that they're hunting." (*See* Ex. 1 to Petition, September 28, 2012 hearing, 19:5-16.) The court

thus ordered discovery of matters as to which the plaintiff asserted it "anticipates it will add" claims, but had not done so. (*See* Ex. 6 to Petition, Complaint, ¶ 20.)

This Court should make use of the present opportunity to direct Colorado's trial courts to circumscribe the scope of discovery to those issues which actually form the basis of the dispute – not those which someday might be in dispute.[14]

IV. CONCLUSION

This Court has the opportunity in this action to define the discovery gatekeeping responsibilities of trial court judges. Amicus Curiae Product Liability Advisory Council, Inc. respectfully requests that this Court take the opportunity presented, and that it consider the views expressed herein and direct the trial courts to engage in gatekeeping to limit discovery to matters actually pleaded by the parties, and in so doing, to consider the economic impact of the discovery on the parties. The trial courts should be directed to make specific findings concerning

[14] The trial court also stated with regard to defendants' contention on the broad scope of requested discovery: "Anadarko did not seek a protective order. Anadarko's complaints concerning the quantity and the scope of documents sought was [sic] not raised until it responded to the Motion to Compel." (Ex. 3 to Petition, Order Regarding Plaintiff's Motion to Compel Discovery, at 1.)

The parties here agree that a litigant is not required to file a motion for protective order to assert objections to discovery requests, but disagree as to the import of the above statements by the court. *See* Petition at 26-32; DCP Midstream, LLP's Response to Order and Rule to Show Cause at 18-19, 26. However, to the extent the trial court's observation can be read to indicate to the contrary, this Court should correct the court on this point.

the nature of discovery sought, how it relates to the parties' claims or defenses, how the discovery can be reasonably accomplished, the economic impact of the discovery, and how it will aid in the efficient adjudication of the case.

Dated this 10th day of January, 2013.

Respectfully submitted,

WELLS, ANDERSON & RACE, LLC

By: Mary A. Wells

Mary A. Wells, #8522
L. Michael Brooks, #25975
Marilyn S. Chappell, #14083
1700 Broadway, Suite 1020
Denver, CO 80290
Telephone (303) 830-1212

Attorneys for Amicus Curiae Product Liability Advisory Council

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE PRODUCT LIABILITY ADVISORY COUNCIL IN SUPPORT OF PETITION FOR A RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21** was filed with the Colorado Supreme Court and mailed via U.S. Mail, postage prepaid, to the following on January 10, 2013:

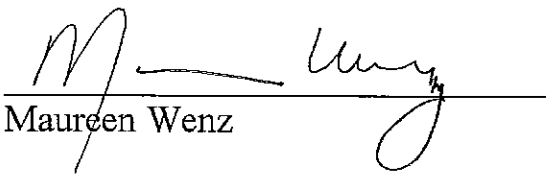
Ezekiel J. Williams, Esq.
Steven K. Imig, Esq.
Christopher S. Mills, Esq.
Lee F. Fanyo, Esq.
Ducker, Montgomery, Lewis & Bess, P.C.
1560 Broadway, Suite 1400
Denver, CO 80202
Attorneys for Petitioners-Defendants

Mary Kathryn Sammons, Esq.
Mark L. D. Wawro, Esq.
Karen A. Oshman, Esq.
David M. Peterson, Esq.
Susman Godfrey LLP
1000 Louisiana, Suite 5100
Houston, TX 77002-5096
Attorneys for Petitioners-Defendants

LeElle Krompass, Esq.
Susman Godfrey LLP
901 Main Street, Suite 5100
Dallas, TX 75202-3775
Attorneys for Petitioners-Defendants

Robert N. Miller, Esq.
Michael A. Sink, Esq.
Elizabeth Manno Banzhoff, Esq.
Perkins Coie LLP
1900 Sixteenth Street, Suite 1400
Denver, CO 80202-5255
Attorneys for Respondent-Plaintiff

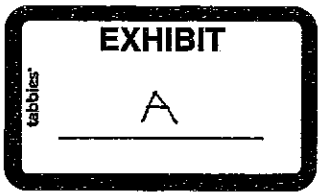
Robert N. Barnes, Esq.
Barnes & Lewis, LLP
720 N. W. 50th Street, Suite 200B
Oklahoma City, OK 73118
Attorneys for Respondent-Plaintiff



Maureen Wenz

Corporate Members of the Product Liability Advisory Council

3M
Altec, Inc.
Altria Client Services Inc.
Ansell Healthcare Products LLC
Astec Industries
Bayer Corporation
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
Boehringer Ingelheim Corporation
The Boeing Company
Bombardier Recreational Products, Inc.
BP America Inc.
Bridgestone Americas, Inc.
Brown-Forman Corporation
Caterpillar Inc.
CC Industries, Inc.
Chrysler Group LLC
Cirrus Design Corporation
CLAAS of America Inc.
Continental Tire the Americas LLC
Cooper Tire & Rubber Company
Crown Cork & Seal Company, Inc.
Crown Equipment Corporation
Daimler Trucks North America LLC
Deere & Company
The Dow Chemical Company
E.I. duPont de Nemours and Company
Eli Lilly and Company
Emerson Electric Co.
Engineered Controls International, LLC
Exxon Mobil Corporation
FMC Corporation
Ford Motor Company
General Electric Company
General Motors LLC
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
Honda North America, Inc.



Corporate Members of the Product Liability Advisory Council

Hyundai Motor America
Illinois Tool Works Inc.
Isuzu North America Corporation
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Johnson Controls, Inc.
Kawasaki Motors Corp., U.S.A.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Lincoln Electric Company
Lorillard Tobacco Co.
Magna International Inc.
Marucci Sports, L.L.C.
Mazak Corporation
Mazda Motor of America, Inc.
Medtronic, Inc.
Merck & Co., Inc.
Meritor WABCO
Michelin North America, Inc.
Microsoft Corporation
Mine Safety Appliances Company
Mitsubishi Motors North America, Inc.
Mueller Water Products
Mutual Pharmaceutical Company, Inc.
Navistar, Inc.
Niro Inc.
Nissan North America, Inc.
Novartis Pharmaceuticals Corporation
PACCAR Inc.
Panasonic Corporation of North America
Pella Corporation
Pfizer Inc.
Pirelli Tire, LLC
Polaris Industries, Inc.
Porsche Cars North America, Inc.
Purdue Pharma L.P.
RJ Reynolds Tobacco Company
Schindler Elevator Corporation
SCM Group USA Inc.
Shell Oil Company

Corporate Members of the Product Liability Advisory Council

The Sherwin-Williams Company
Smith & Nephew, Inc.
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Techtronic Industries North America, Inc.
Teva Pharmaceuticals USA, Inc.
Thor Industries, Inc.
TK Holdings Inc.
The Toro Company
Toyota Motor Sales, USA, Inc.
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen Group of America, Inc.
Volvo Cars of North America, Inc.
Wal-Mart Stores, Inc.
Whirlpool Corporation
Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.