

IN THE
SUPREME COURT OF INDIANA
NO. _____

KOLBY O'BANION; TAYLOR) Appeal from the
O'BANION, ET AL.,) Indiana Court of Appeals
Appellants) Case No. 27A04-1411-PL-531
(Plaintiffs Below),)
) Appeal from the Grant Superior Court
v.) Hon. Jeffrey D. Todd, Judge
)
FORD MOTOR COMPANY,) Case No. 27D01-1010-PL-946
Appellee) formerly 27D01-1107-CT-774
(Defendant Below).) formerly 27D01-1107-CT-779

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE INDIANA CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER FORD MOTOR COMPANY'S PETITION TO TRANSFER

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INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 members as well as the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. To protect these interests, the Chamber regularly files amicus curiae briefs in cases throughout the nation that raise issues of concern to the business community.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually. The NAM likewise regularly participates in court proceedings via amicus curiae briefs to voice the interests of American manufacturers and foster a legal environment that encourages economic growth.

The Indiana Chamber of Commerce has served Indiana's business community since 1922, now serving over 26,000 members and customers annually. The Indiana Chamber advocates on behalf of its members in matters affecting Indiana's business climate, including in the areas of employee relations, human resources, good government, state taxes, economic development, commercial liability, and the concerns of small business owners.

Given the significant legal and business considerations at stake in this matter, these business amici have a particular interest in this Court granting transfer.

SUMMARY OF THE ARGUMENT

In holding that engineering expert testimony is not subject to reliability review under Rule 702(b), the Court of Appeals set Indiana at odds with the great weight of state court

authority. The vast majority of state courts subject expert engineering testimony to judicial “gatekeeping” before it can reach the jury, ensuring that the expert’s testimony is based on reliable principles.

There is good reason for this majority approach. Scrutinizing experts for basic reliability is critical to ensuring fair trial procedures. Expert testimony—particularly in scientific, highly technical areas—often has a significant impact at trial. Given their own lack of expertise, jurors understandably afford expert witness testimony significant weight, yet frequently lack the skills to properly evaluate it. “[J]urors assume that judges review scientific evidence before it is presented to them, and that any evidence used in a trial must be above some threshold of quality.” N.J. Schweitzer & Michael J. Saks, The Gatekeeper Effect: The Impact of Judges’ Admissibility Decisions on the Persuasiveness of Expert Testimony, 15 PSYCHOL. PUB. POL’Y & L. 1, 12 (2009).

Critically, that is true for all highly technical expert testimony, whether the testimony is considered “scientific” or “engineering” (which is itself an applied science). As the Supreme Court has emphasized, it is “difficult, if not impossible, for judges to administer evidentiary rules under which a gatekeeping obligation depended upon a distinction between ‘scientific’ knowledge” and engineering or other highly technical knowledge. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 148 (1999). “Disciplines such as engineering rest upon scientific knowledge” and “conceptual efforts to distinguish the two are unlikely to produce clear legal lines capable of application in particular cases.” Id. Thus, just as scientific expert testimony may not reach the jury unless the court has found that the testimony is based on a reliable foundation, so too for engineering expert testimony. Any other result is unfair to jurors, who are tasked with analyzing and weighing such testimony.

Because jurors tend to “assign[] talismanic significance” to expert testimony, United States v. Frazier, 387 F.3d 1244, 1263 (11th Cir. 2005), failing to scrutinize the admissibility of such testimony undermines the fairness and accuracy of jury verdicts, the cornerstone of the American legal system. It likewise harms the litigants, most notably, business defendants. After all, because experts are often the linchpin in tort cases, businesses subjected to speculative, so-called expert engineering testimony face the risk of protracted litigation, massive judgments, and even product discontinuation, all because junk science was allowed to pass through the judicial gates with minimal scrutiny. This outlier legal rule, if left to stand, will place Indiana businesses at a disadvantage relative to their competitors operating in other states. It also undermines confidence in the state’s “lawsuit climate,” which the overwhelming majority of general counsel, senior litigators, and senior business executives consider important when deciding where to locate or do business. *See* Institute for Legal Reform, 2015 Lawsuit Climate Survey: Ranking the States 8 (Sept. 10, 2015) (“ILR”), http://www.instituteforlegalreform.com/uploads/sites/1/Full_Report_Final_9.9.15.pdf (accessed Oct. 9, 2015). In the end, it is not just individual business litigants who lose out when they are forced to settle or are held liable based on unreliable engineering expert testimony—it is the state as a whole.

For these reasons, the business amici urge that the transfer petition be granted, and that the Court affirm the decision of the trial court.

ARGUMENT

I. The Court Of Appeals’ Decision To Subject Engineering Experts To Less Scrutiny Than “Scientific” Experts Departs From The Well-Reasoned Practice Of The Vast Majority Of States Across The Country.

Contrary to the Court of Appeals’ decision here, states from Alabama to Wyoming have concluded that trial court judges must perform a “gatekeeping” role to ensure that engineering expert testimony, before it is presented to a jury, is based on reliable principles. *See* cases cited

infra, at 4-6. As these courts have concluded, there is no principled basis for distinguishing between engineering and other scientific evidence subjected to this gatekeeping function. Engineering opinion “constitute[s] scientific evidence that require[s] a validity assessment” to ensure reliability. Prentice v. Dalco Elec., Inc., 280 Conn. 336, 349-51 (2006). Thus, appellate courts routinely hold that engineering expert testimony, in particular, “[m]echanical engineering,” the expert field at issue here, “is science,” and require that such testimony be rejected if it is deemed unreliable. Gammill v. Jack Williams Chevrolet, Inc., 972 S.W.2d 713, 721, 728 (Tex. 1998). Where there is “no evidence in the record to show that the substance of [the expert engineer’s] testimony was reliable,” it is inadmissible. Watson v. Ford Motor Co., 699 S.E.2d 169, 178 (S.C. 2010).

Virtually all state courts to have addressed the issue require that expert engineering testimony be subjected to a reliability analysis. *E.g.*, Slay v. Keller Indus., Inc., 823 So.2d 623, 626 (Ala. 2001) (testimony of mechanical engineer inadmissible because not based on generally accepted scientific support); Glazer v. State, 234 Ariz. 305, 317 (Ct. App. 2014), opinion vacated in part on other grounds, 237 Ariz. 160 (2015) (no abuse of discretion in admitting testimony of expert transportation engineer); Korsak v. Atlas Hotels, Inc., 2 Cal. App. 4th 1516, 1525 (1992) (expert testimony of mechanical engineer was inadmissible where “[t]here was no showing the information utilized by [the expert] was reliable, or that it was of the type normally used by mechanical engineers such as himself in forming expert opinions”); Farmland Mut. Ins. Companies v. Chief Indus., Inc., 170 P.3d 832, 837 (Colo. Ct. App. 2007) (“the scientific methodology employed by [the forensic mechanical engineer] was sufficiently reliable to permit his testimony to be admitted”); Bell Sports, Inc. v. Yarusso, 759 A.2d 582, 588 (Del. 2000) (subjecting expert testimony from a biomechanical engineer to a reliability determination);

Hansen v. Roberts, 154 Idaho 469, 474-75 (2013) (affirming trial court's admission of biomechanical engineer's expert testimony on finding of scientific reliability); Volpe v. IKO Indus., Ltd., 763 N.E.2d 870, 877 (Ill. Ct. App. 2002) (basis of chemical engineer's expert opinion must be reliable in order to be admissible); Miller v. Eldridge, 146 S.W.3d 909, 920 (Ky. 2004) (basis of biomedical engineer's expert opinions is the appropriate focus of a reliability analysis to determine admissibility); Hicks v. Brox Indus., Inc., 711 N.E.2d 179, 182 (Mass. Ct. App. 1999) (reliability analysis applies to "opinions of an engineering type"); Bacon v. DBI/SALA, No. A-08-130, 2009 WL 1875248, at *8 (Neb. Ct. App. June 30, 2009) (finding mechanical engineer's expert testimony was admissible based on determination that his methods were reliable); Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 813 A.2d 409, 414 (N.H. 2002) (expert engineering testimony "must rise to a threshold level of reliability to be admissible"); Hisenaj v. Kuehner, 942 A.2d 769, 780 (N.J. 2008) (affirming trial court's admission of biomechanical engineer's expert testimony where there was "an adequately reliable scientific foundation" for his opinion); Miller v. Bike Athletic Co., 687 N.E.2d 735, 740 (Ohio 1998) (expert engineering testimony sufficiently reliable to be considered by the trier of fact); Raimbeault v. Takeuchi Mfg. (U.S.), Ltd., 772 A.2d 1056, 1061 (R.I. 2001) (trial court must ensure that engineering expert's testimony is reliable); Brown v. Crown Equip. Corp., 181 S.W.3d 268, 275 (Tenn. 2005) (evaluating reliability of expert mechanical engineer's testimony); Paget v. State, Dep't of Transp., 2013 UT App 161, ¶ 12, superseded in part, 2014 UT App 62 (affirming exclusion of civil and traffic engineer's expert testimony where the expert's "methodology is not based on a generally accepted standard" and "appears almost completely devoid of any [] indicia of reliability"); 985 Associates, Ltd. v. Daewoo Electronics Am., Inc., 945 A.2d 381, 386 (Vt. 2008) (evaluating reliability of expert testimony from "electrical

engineer with many years of experience in fire investigation”); Martini v. Washington State Dep’t of Transp., 149 Wash. App. 1035, 2009 WL 807519, at *6 (2009) (trial court did not abuse its discretion in striking geotechnical engineer’s expert testimony where the basis of the testimony was not “sufficiently trustworthy and reliable”); Hoy v. DRM, Inc., 114 P.3d 1268, 1283 (Wyo. 2005) (trial court did not abuse its discretion when it excluded expert testimony from professional engineers where “there is little in the record that could be described as a reliable foundation or basis for the experts’ opinions”). Even states that do not adhere to Daubert standards still subject expert engineers to some scrutiny to determine whether their testimony is based on reliable principles. See Howerton v. Arai Helmet, Ltd., 597 S.E.2d 674, 690 (N.C. 2004)); see also Davis v. City of Mebane, 512 S.E.2d 450, 452-53 (N.C. Ct. App. 1999) (affirming, without relying on Daubert standard, trial court’s finding that expert testimony of professional engineer was not reliable and was therefore inadmissible).

Should the decision below be left to stand, Indiana would join just two other states, to amici’s knowledge, that allow engineering expert testimony to reach the jury untested. One is West Virginia, widely considered the state with the worse lawsuit climate. See Watson v. Inco Alloys Int’l, Inc., 545 S.E.2d 294, 301 (W. Va. 2001) (holding “that unless an engineer’s opinion is derived from the methods and procedures of science, his or her testimony is generally considered technical in nature, and not scientific [and] a court considering the admissibility of such evidence should not apply the gatekeeper analysis.”); ILR, supra, at 12, 18. The other is Wisconsin, which allows *all* expert testimony—even the most intricate scientific testimony—to reach the jury without any reliability analysis. See State v. Peters, 534 N.W.2d 867, 872 (Wisc. Ct. App. 1995) (“[T]he rule remains in Wisconsin that the admissibility of scientific evidence is not conditioned upon its reliability.”). But Indiana has already rejected that approach, see IND.

R. EVID. 702, instead aligning itself more closely with those states that recognize that engineering testimony, like all other scientific testimony, should be tested for reliability before reaching the jury.

For these reasons, Indiana should follow the great weight of authority and grant transfer to affirm the trial court.

II. As “Gatekeepers,” Courts Must Scrutinize Expert Engineering Testimony To Ensure It Is Valid, Well Founded Testimony That May Be Fairly Relied Upon By Lay Jurors In Reaching A Verdict.

As reflected by the heavy weight of authority just cited, most states require their judges to act as “gatekeepers” to ensure that purported expert engineering testimony does not unduly sway a jury. This gatekeeping function is critical to the trial process, as “[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.” Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 595 (1993). “[J]urors assume that judges review scientific evidence before it is presented to them, and that any evidence used in a trial must be above some threshold of quality.” N.J. Schweitzer & Michael J. Saks, The Gatekeeper Effect: The Impact of Judges’ Admissibility Decisions on the Persuasiveness of Expert Testimony, 15 PSYCHOL. PUB. POL’Y & L. 1, 12 (2009). Jurors thus “more readily accept[] the opinion of an expert witness as true simply because of his or her designation as an expert.” E.I du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 553 (Tex. 1995). As a result, jurors can be “overly impressed by the credentials presented and the terminology used by this individual, hindering the jury’s ability to fully understand and evaluate the evidence presented by the expert.” M. Neil Browne & Ronda R. Harrison-Spoerl, Putting Expert Testimony in Its Epistemological Place: What Predictions of Dangerousness in Court Can Teach Us, 91 MARQ. L. REV. 1119, 1132-33 (2008). For these reasons, expert testimony is often “assigned talismanic significance in the eyes of lay jurors.” Frazier, 387 F.3d at 1263.

Not only is expert testimony afforded greater weight than other testimony, but experts likewise have greater latitude in testifying than other witnesses. As demonstrated by this case, experts are allowed to offer opinions that are not based on firsthand knowledge or observation. They are often allowed to offer opinions on the “ultimate issue” in a case. And they are granted this authority even though their “testimony often will rest upon an experience confessedly foreign in kind to the jury’s own,” and hence, the jury may have difficulty evaluating its veracity. Kumho Tire Co., 526 U.S. at 149. It is thus no surprise that case outcomes can and often do turn on expert evidence. *E.g.*, Learned Hand, Historical and Practical Considerations Regarding Expert Testimony, 15 HARV. L. REV. 40, 50-52 (1901); Gen. Elec. Co. v. Joiner, 522 U.S. 136, 143 (1997).

The “talismanic” deference jurors give experts coupled with an expert’s latitude to testify makes expert testimony extremely influential, and thus prejudicial to the opposing party. Accordingly, there is a vital need to ensure that such evidence is based on reliable principles. “The jury [should] not be permitted to be misled by the glitter of an expert’s accomplishments outside the courtroom.” In re “Agent Orange” Prod. Liab. Litig., 611 F. Supp. 1223, 1245 (E.D.N.Y. 1985) (Weinstein, J.), *aff’d*, 818 F.2d 187 (2d Cir. 1987), *cert. denied*, 487 U.S. 1234 (1988). That is not to say that judges, in performing this important “gatekeeping” function, must themselves become experts and decipher whether an expert is “right.” Instead, “[t]he judge, without interfering with the jury’s role as trier of fact, must determine whether the purported scientific evidence is ‘reliable’ and will ‘assist the trier of fact,’ thereby keeping from juries testimony that . . . isn’t even good enough to be wrong.” Hon. Stephen Breyer, Introduction, in Federal Judicial Center, Reference Manual on Scientific Evidence 6 (3d ed. 2011). Rather than allowing “experts subject to adversarial bias to present opinions to lay jurors that rel[y] solely on

the experts' say-so, unsupported by objective evidence such as peer-reviewed published studies," judges can limit expert opinions to those based on reliable principles and methodologies. David E. Bernstein, The Misbegotten Judicial Resistance to the *Daubert* Revolution, 89 NOTRE DAME L. REV. 27, 40 (2013) (internal citations omitted). They can ensure that each expert allowed to reach the jury "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." Breyer, *supra*, at 6 (quoting Kumho Tire Co., 526 U.S. at 152).

Critically, there is no good reason—nor practical way—to confine this gatekeeping role to "scientific," as opposed to "engineering," experts. Indeed, "it would prove difficult, if not impossible, for judges to administer evidentiary rules under which a gatekeeping obligation depended upon a distinction between 'scientific' knowledge" and "engineering" knowledge." Kumho Tire Co., 526 U.S. at 148. "Disciplines such as engineering rest upon scientific knowledge" and "conceptual efforts to distinguish the two are unlikely to produce clear legal lines capable of application in particular cases." *Id.* Put another way, engineering is an "applied science" that relies on "scientific reasoning and methodology." *Id.* (internal quotation marks and citation omitted). Trying to distinguish or separate the two would elevate titles (e.g., "chemical engineer" versus "chemist") above the substantive need to subject such experts to reliability review. It would be anomalous, in a given case, to subject a physicist's testimony to reliability screening, but to allow the other side to oppose with a mechanical engineer—whose testimony would necessarily be rooted in the same physics principles—to be admitted without any review.

Nor does cross-examination alone ensure the discrediting of unreliable engineering experts. To be sure, cross-examination is an important tool for probing how an expert's knowledge comes to bear in a given case. But it is no panacea for eliminating the experts whose

misleading views should not reach the jury to begin with. Cross-examination alone cannot readily distinguish valid expert conclusions from junk science, and thus cannot take the court's place in determining an expert's reliability in the first instance:

This treatment of cross-examination as the palliative choice has its flaws, not merely in its expectation that cross-examination without other resources can fairly respond to an expert witness. The mythic status of cross-examination in this regard actually impedes accurate fact-finding because leading questions are not always an appropriate tool for truth finding.

Jules Epstein, Cross-Examination: Seemingly Ubiquitous, Purportedly Omnipotent, and "At Risk," 14 WIDNER L. REV. 427, 436-37 (2009) (internal citations omitted). Thus, standing alone, vigorous cross-examination is no substitute for judicial gatekeeping.

The importance of rigorously screening expert testimony so that only reliable testimony is presented to juries is critical to the integrity of the judicial process. Rapid technological advances promise to keep emerging scientific theories and methodologies at the center of many legal disputes. "Proper resolution of those disputes matters not just to the litigants but also to the general public—those who live in our technologically complex society and whom the law must serve." Breyer, supra, at 2. Working hypotheses and untested engineering ideas may be good for the clinic, but not the courtroom. See Tamraz v. Lincoln Electric Co., 620 F.3d 665 (6th Cir. 2010). Rather, given its extreme influence on a jury, "the courtroom is not the place for scientific guesswork, even of the inspired sort." Rosen v. Ciba-Geigy Corp., 78 F.3d 316, 319 (7th Cir. 1996) (Posner, J.). Accordingly, the Court should grant transfer to resolve the continuing dispute over the proper role of judges in ensuring the reliability of expert engineering testimony.

III. The Court Of Appeals' Failure To Test The Reliability Of Engineers Has Significant Adverse Economic Implications For Indiana's Business Climate.

The decision below to deviate from the weight of authority nationally is not only wrong on the law, it can also have dramatic policy implications for Indiana. The Court of Appeals' decision to abdicate its gatekeeping function even for highly complex mechanical engineers imposes significant new costs (and liability) on defendants and, ultimately, Indiana's business environment. Indiana courts' inability to serve as gatekeepers against unreliable engineering testimony places Indiana businesses at a significant disadvantage in comparison to businesses in the vast majority of other States that do subject engineers to such scrutiny.

The potential economic impact of the Court of Appeals' decision can be inferred from the increased importance of highly technical expert testimony (including engineering) in American courtrooms. “[S]cience in all its forms—hard science, soft science, even so-called ‘junk science’—has in recent years invaded the courtroom to an unparalleled extent.” Hon. Jed S. Rakoff, Science and the Law: Uncomfortable Bedfellows, 38 SETON HALL L. REV. 1379 (2008). “In the past three decades, the use of expert witnesses has skyrocketed,” so much so that “[s]ome commentators claim that the American Judicial hearing is becoming a trial by expert.” Girardot v. United States, 92 A.3d 1107, 1114 (D.C. 2014). This purported expert testimony is often the linchpin for tort claims that, as here, seek sizeable monetary damages. As a result, business defendants are greatly impacted by the evidentiary rules that screen so-called expert witnesses. With reliability review, business defendants are assured that such claims will proceed only if grounded in sound principles.

But absent such protection, business owners may see no option but to settle even unmeritorious cases backed by dubious but seductive scientific or engineering theories, rather than take their chances with a lay jury. See Margaret A. Berger, The Admissibility of Expert

Testimony, in Federal Judicial Center, Reference Manual on Scientific Evidence 19 (3d Ed. 2011) (“[A]n inability by defendant to exclude plaintiffs’ experts undoubtedly affects the willingness of the defendant to negotiate a settlement.”). This calculus is perhaps most daunting for small businesses, for which the costs of defending a questionable lawsuit through trial can be ruinous.

Concerns about the courts’ gatekeeping failures extend much more broadly than the individual business defendants forced to endure erroneous expert testimony rulings and unjust verdicts and settlements. Unfounded damages awards “can improperly force abandonment” of a product and deprive the public of a device, tool, or other product that confers important benefits. Breyer, supra, at 3. As Justice Breyer has cautioned, it is “particularly important” that judges fulfill their “gatekeeping function, so they help “assure that the powerful engine of tort liability. . . points toward the right [products] and does not destroy the wrong ones.” Joiner, 522 U.S. at 148-49 (Breyer, J. concurring). Indeed, history is replete with examples of products removed from the market after large jury verdicts provoked by “expert” testimony that is later shown to be spurious—and it is the public that loses out as a result. *See* Victor E. Schwartz & Cary Silverman, The Draining of *Daubert* and the Recidivism of Junk Science in Federal and State Courts, 35 HOFSTRA L. REV. 217, 225 (2006) (describing how plaintiffs’ litigation backed by faulty expert testimony regarding silicone breast implants eventually forced company into bankruptcy even though scientists found no link between the implants and autoimmune disorders, cancer, or any other serious disease); id. at 224 (describing how judge allowed unreliable experts to testify that Bendectin caused birth defects, leading to multimillion dollar verdicts and the company to pull the drug from the market and deprive women of the only FDA approved drug for morning sickness, only to be reversed on appeal).

While both business litigants and judicial integrity fair poorly under the decision below, perhaps most concerning are the ramifications for the State of Indiana and its over 6.5 million residents. In our modern economy, states strive to foster a welcoming business environment, one that will attract employers—and the critical jobs and tax revenue they bring with them. *See* Daniel J. Wilson, Competing for Jobs: Local Taxes and Incentives, Federal Reserve Bank of San Francisco (Feb. 23, 2015), <http://www.frbsf.org/economic-research/publications/economic-letter/2015/february/jobs-state-tax-incentives-economic-growth> (accessed Oct. 9, 2015).

In these days of economic competition between states, states are assessed and “ranked” on their attractiveness to new businesses; business leaders consult these rankings in deciding where to do business. *See, e.g.*, 2015 Best and Worst State Rankings, CHIEF EXECUTIVE (June 1, 2015), <http://chiefexecutive.net/best-worst-states-business> (accessed Aug. 13, 2015) (survey results “clearly show that CEOs favor states that foster growth”). Chief among the factors weighed in such rankings are a state’s regulatory and legal environment and the hurdles they place on expanding business and jobs. *See* Kurt Badenhausen, Ranking The Best States For Business 2014: Behind The Numbers, FORBES (Nov. 12, 2014), <http://www.forbes.com/sites/kurtbadenhausen/2014/11/12/ranking-the-best-states-for-business-2014-behind-the-numbers> (accessed Oct. 9, 2015); *see also* Chad Brooks, States with the Best and Worst Legal Climates for Starting a Business, BUSINESS NEWS DAILY (Oct. 9, 2012), www.businessnewsdaily.com/3115-states-with-the-best-and-worst-legal-climates-for-starting-a-business.html (accessed Aug. 13, 2015) (“More than ever, businesses are looking at a state’s legal environment when deciding where to locate or expand their operations, new research shows.”); ILR, *supra*, at 7 (ranking state liability systems in part based on how they treat “scientific and technical

evidence”). These are the realities of the modern, versatile, information-based economy in which businesses, states, and nations all compete.

In operating in this competitive, modern environment, businesses seek predictability and reasonable, fair treatment in the jurisdictions in which they operate. The Court of Appeals’ decision, however, signals that Indiana courts will not provide business with a fair forum to litigate disputes. By interpreting Indiana’s evidentiary rules to make a rigid distinction between “scientists” and “engineers,” the Court of Appeals’ rule threatens business litigants with liability based upon so-called expert engineering testimony that would not be generally accepted by other engineers in the relevant field. A difficult legal climate has the potential to deter continued investment in Indiana. For these reasons too, the Court should grant transfer.

CONCLUSION

Amici Curiae respectfully request that the Court grant transfer and affirm the trial court’s judgment for the Ford Motor Company.

Respectfully submitted,



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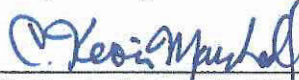
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Undersigned counsel for Amici Curiae, pursuant to Appellate Rule 44(E), hereby verifies that the Petition to Transfer contains 4139 words, exclusive of the items listed in Appellate Rule 44(C), as counted by the word-processing system used to prepare the brief, Microsoft Word 2010.

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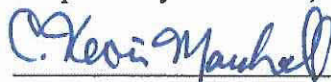
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