SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

IN RE: NEW YORK CITY ASBESTOS LITIGATION — NYCAL

----------x

THIS DOCUMENT APPLIES TO:

Hon. Sherry Klein Heitler
I.A.S. Part 30

CHARLES L. CHIDESTER	Index No 190293/2011
JOSEPH MILAZZO	Index No 190311/2011
WILLIAM L. MORITZ	Index No 190294/2011
ROBERTO ROMAN	Index No 190262/2011
EDWARD SADOWSKI	Index No 190215/2011
GEORGE W. SMITH	Index No 190299/2011

***AMICI* BRIEF OPPOSING JOINT NYCAL PLAINTIFFS' MOTION SEEKING ORDER VACATING CMO § XVII**

----------x

AMICI CURIAE BRIEF OF COALITION FOR LITIGATION JUSTICE, INC., LAWSUIT REFORM ALLIANCE OF NEW YORK, NORTHEASTERN RETAIL LUMBER ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, NFIB SMALL BUSINESS LEGAL CENTER, AMERICAN TORT REFORM ASSOCIATION, WASHINGTON LEGAL FOUNDATION, AMERICAN INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, AMERICAN CHEMISTRY COUNCIL, AND AMERICAN COATINGS ASSOCIATION IN SUPPORT OF DEFENDANTS AND OPPOSING JOINT NYCAL PLAINTIFFS' MOTION SEEKING ORDER VACATING CMO § XVII

Victor E. Schwartz (NY Bar # 2071629)
Mark A. Behrens (*pro hac* pending)
SHOOK, HARDY & BACON L.L.P.
1155 F Street, NW, Suite 200
Washington, DC 20004
(202) 783-8400

Attorneys for *Amici Curiae*
* Counsel of Record

(Of Counsel Listed on Next Page)

INDEX

Page

TABLE OF AUTHORITIES

CASES **Page**

STATUTES

OTHER AUTHORITIES

ISSUE PRESENTED

Whether this Court should abandon CMO § XVII ("Counts for punitive damages are deferred until such time as the Court deems otherwise, upon notice and hearing."), which has governed New York City Asbestos Litigation (NYCAL) for nearly twenty years, and adopt a position that will threaten recoveries for future plaintiffs, frustrate settlements, result in longer and more complex trials, spawn appeals that will further delay recoveries for *in extremis* trial plaintiffs, serve no legitimate policy purpose, and jeopardize the very existence of the CMO.

STATEMENT OF INTEREST

Amici are organizations that represent companies doing business in New York, their insurers, and civil justice reform groups. *Amici* have a substantial interest in ensuring that NYCAL case management continues to balance the demands of justice and reflects sound public policy. *Amici* will show that allowing punitive damage claims in NYCAL cases will disrupt the operation of the Court, jeopardize the availability of resources to compensate future plaintiffs, and fail to achieve the policy goals that punitive damages typically serve.

STATEMENT OF THE CASE

Amici adopt Defendants' Statement of the Case as relevant to this Brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

As this Court is aware, punitive damages have been deferred in NYCAL cases since 1996. This longstanding practice was instituted by Your Honor's predecessor, Justice Helen Freedman, because it was the "fair thing to do for a number of reasons." Helen S. Freedman, *Selected Ethical Issues in Asbestos Litigation*, 37 Sw. U.L. Rev. 511, 527 (2008). Justice Freedman, now on the appellate bench, summarized some of those reasons as follows:

> First, to charge companies with punitive damages for wrongs committed twenty or thirty years before, served no corrective purpose. In many cases, the wrong was committed by a predecessor company, not even the company now charged. Second, punitive damages, infrequently paid as they are, only deplete resources that are better used to compensate injured parties. Third, since some states do not permit punitive damages, and the federal MDL court precluded them, disparate treatment among plaintiffs would result. Finally, no company should be punished repeatedly for the same wrong.

Id. at 527-28.

The considerations which led to CMO § XVII continue in today's asbestos litigation environment. *See* Mark A. Behrens & Cary Silverman, *Punitive Damages in Asbestos Personal Injury Litigation: The Basis for Deferral Remains Sound*, 8 Rutgers J. L. & Pub. Pol'y 50, 72 (2011) ("The reasoning supporting deferral of punitive damages in asbestos cases remains sound both to help ensure timely and adequate compensation for sick claimants and to provide fundamental fairness for defendants given that the purposes of punitive damages no longer serve a legitimate purpose in the litigation.").

"If earlier-filing claimants are able to obtain windfall punitive damages awards, then assets are depleted and may become exhausted due to the length and enormity of asbestos litigation, jeopardizing tort recoveries for later-filing claimants with mesothelioma, asbestos-related lung cancer, or debilitating asbestosis." *Id.* at 51.

Additionally, allowing punitive damages would frustrate settlements, slow the processing of cases, lengthen trials, lead to appeals that will delay recoveries for *in extremis* plaintiffs, encourage more NYCAL claim filings, and threaten to undo the entire CMO (with all of its provisions that benefit plaintiffs).

For these reasons, the Court should not upset the apple cart after nearly two decades, but should continue to apply CMO § XVII as written.

ARGUMENT

I. AWARDING PUNITIVE DAMAGES WILL JEOPARDIZE COMPENSATORY RECOVERIES FOR FUTURE PLAINTIFFS

Now entering its fourth decade,[1] asbestos litigation has led over 100 companies with asbestos-related liabilities to file bankruptcy.[2] With a finite pool of resources available for plaintiffs, opening the floodgates of punitive damages would exhaust funds that are needed to provide future asbestos plaintiffs with compensation. To help preserve depleting resources for future plaintiffs and their families, the well-established practice of deferring punitive damages claims in NYCAL cases must continue.

As the U.S. Court of Appeals for the Third Circuit noted, punitive damages in asbestos cases represent a "continued hemorraghing of available funds [that] deprives current and future victims of rightful compensation." *In re Collins*, 233 F.3d 809, 812 (3d Cir. 2000). Multiple recoveries of punitive damages can deplete a defendant's limited resources, endangering the ability of future claimants to recover even basic out-of-pocket expenses and damages for their pain and suffering. *See* Mark A. Behrens & Barry Parsons, *Responsible Public Policy Demands an End to the Hemorrhaging Effect of Punitive Damages in Asbestos Cases*, 6 Tex. Rev. of L. & Pol. 137 (2001).

---

1 *See Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973) (asbestos manufacturers found strictly liable for injuries to industrial insulation workers exposed to their products), *cert. denied*, 419 U.S. 869 (1974).

2 *See* Lloyd Dixon et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* 25 (Rand Corp. 2010); Mark D. Plevin et al., *Where Are they Now, Part Six: An Update on Developments in Asbestos-Related Bankruptcy Cases*, 11:7 Mealey's Asbestos Bankr. Rep. 1, Chart 1 (Feb. 2012).

The *in terrorem* effect of punitive damages in cases that settle also threatens the availability of funds needed to compensate sick claimants. "[T]he potential for punitive awards is a weighty factor in settlement negotiations and inevitably results in a larger settlement agreement than would ordinarily be obtained. To the extent that this premium exceeds what would otherwise be a fair and reasonable settlement for compensatory damages, assets that could be available for satisfaction of future compensatory claims are dissipated." *Dunn v. Hovic*, 1 F.3d 1371, 1398 (3d Cir.) (Weis, J., dissenting), *modified in part*, 13 F.3d 58 (3d Cir. 1993); *see also* Mark A. Behrens, *Some Proposals for Courts Interested in Helping Sick Claimants and Solving Serious Problems in Asbestos Litigation*, 54 Baylor L. Rev. 331, 353 (2002) (punitive damages threaten compensation for future asbestos plaintiffs "even in cases that are settled out of court, because of the leveraging effect punitive damages have at the settlement table.").

Furthermore, the influx of asbestos claims shows no signs of abating. A 2012 review of asbestos-related liabilities reported to the Securities and Exchange Commission by over 150 publicly traded companies showed that "[s]ince 2007, filings have been fairly stable." Mary Elizabeth C. Stern & Lucy P. Allen, NERA Economic Consulting, *Asbestos Payments per Resolved Claim Increased 75% in the Past Year—Is This as Dramatic as it Sounds?*, 7 (Aug. 2012); *see also* Jenni Biggs et al., *A Synthesis of Asbestos Disclosures from Form 10-Ks — Updated* 1 (Towers Watson June 2013) (mesothelioma claim filings have "remained near peak levels since 2000."). "Typical projections based on epidemiology studies assume that mesothelioma claims arising from occupational exposure to asbestos will continue for the next 35 to 50 years." Biggs et al., *supra*, at 5. Industry analysts predict that "28,000 mesothelioma claims will be filed in 2013 and subsequent years." *Id.* at 1.

If the Court chooses to permit punitive damages to be awarded in NYCAL cases, it will be forcing "later victims, not the enterprise, [to] effectively bear the punishment." Behrens & Silverman, 8 Rutgers J. L. & Pub. Pol'y at 68 (citation omitted). Others who could be negatively impacted include the defendants' employees, who may lose their jobs; other businesses that rely on the defendants or their employees for income; shareholders, such as union pension funds and ordinary citizens' retirement funds, and other investors. *See Dunn*, 1 F.3d at 1403 (Weis, J., dissenting) ("Payment of [punitive damages] awards not only jeopardizes the ability to provide compensation for future plaintiffs, but also, by forcing companies into bankruptcy, injures employees, customers, and trade creditors who had no part in, and had no knowledge of, the wrongdoing."); *see also* Joseph E. Stiglitz et al., *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms*, 12 J. Bankr. L. & Prac. 51 (2003).

II. ALLOWING PUNITIVE DAMAGES WOULD FRUSTRATE SETTLEMENTS, WORSEN THE BACKLOG OF CASES ON THE NYCAL DOCKET, AND THREATEN THE CMO'S EXISTENCE

If CMO § XVII is abandoned, settlements will be frustrated, the processing of cases will slow, trials will take longer and be more complex, recoveries for *in extremis* plaintiffs will be delayed by inevitable appeals of punitive damages judgments, more plaintiffs will be drawn to the NYCAL, and the entire CMO, including other provisions that protect plaintiffs' interests, may unravel.

Imposition of punitive damages in asbestos cases poses a significant obstacle to settlement negotiations and blocks the ability of claimants to recovery quickly for their injury or the loss of a loved one. As one federal district judge wrote, "Barring successive punitive damages awards against a defendant for the same conduct would remove the major obstacle to settlement of mass tort litigation and open the way for the prompt resolution of the damage

claims of many thousands of injured plaintiffs." William M. Schwarzer, *Punishment Ad Absurdum*, 11 Cal. Law. 116 (Oct. 1991).

CMO § XVII fosters settlements because it removes the "wild card" element of punitive damages. This allows plaintiffs and defendants to more easily value claims. In contrast, allowing punitive damages awards would inject tremendous uncertainty into NYCAL cases. Plaintiff and defense counsel may be oceans apart in terms of estimating both the likelihood and potential amount of any particular defendant's liability for punitive damages. The uncertainty of how much, if any, punitive element should factor into settlements will mean that plaintiff and defense counsel will likely start their negotiations much farther apart than has been the case historically in NYCAL cases and it will be harder for the parties to come together.

Additionally, punitive damages trials would be longer and more complex than current NYCAL trials, also slowing the processing of NYCAL cases. Plaintiffs' counsel would need to put on the additional evidence required to satisfy their heightened burden of proof for punitive damages. Defendants may request bifurcated trials that would require fact finders to resolve compensatory liability and damages issues prior to considering evidence relevant only to punitive damages. Some plaintiffs' counsel may even be more likely to take cases to trial to hold out for the possibility of hitting the punitive damages "jackpot."

Punitive damages verdicts in NYCAL cases also would raise the specter of lengthy appeals that would delay recoveries for *in extremis* plaintiffs. Because New York does not have a statutory punitive damages cap, an excessive and disproportionate punitive damages award is a real possibility. Defendants will pursue constitutional challenges to address this problem. As this Court is likely aware, punitive damages have been a fertile field for appellate litigation. *See, e.g., Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Prod. Corp. v. Alliance Res.*

Corp., 509 U.S. 443 (1993); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc., v. Leatherman Tool Group Inc.*, 532 U.S. 424 (2001); *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408 (2003); *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).[3]

Forum-shopping by plaintiffs that are now filing their cases elsewhere may add to the backlog of cases on the NYCAL docket if the Court opens the door to punitive damages. *See* Patrick J. Borchers, *Punitive Damages, Forum Shopping, and the Conflict of Laws*, 70 La. L. Rev. 529, 536 (2010) ("If a plaintiff has a large number of states from which to choose, the plaintiff and his counsel would be foolish—indeed, might be committing malpractice in the latter's case–not to base the choice upon obtaining plaintiff-friendly legal rules, including the availability of punitive damages."). To the extent such claims involve nonresidents, they could slow recoveries for New Yorkers because of the competition for trial settings that would occur.

Indeed, the longstanding practice in the federal multi-district asbestos litigation has been "to sever all punitive damages claims from federal asbestos cases before remanding compensatory damages for trial." David C. Landin et al., *Lessons Learned From the Frontlines: A Trial Court's Checklist for Promoting Order and Sound Policy in Asbestos Litigation*, 16 Brook. J.L. & Pol'y 589, 653 (2008). This practice was affirmed by the Third Circuit in *In re Collins*, 233 F.3d at 812, which concluded that it was "responsible public policy to give priority to compensatory claims over exemplary punitive damage windfalls." *Id.* The Third Circuit strongly urged state courts to sever or stay punitive damages claims in asbestos cases to preserve assets for sick claimants. *See id.*

---

[3] "Federal and state courts have also expressed strong concerns that multiple punitive damages awards, such as those in asbestos cases, may violate constitutionally protected due process rights." Behrens & Parsons, 6 Tex. Rev. L. & Pol. at 145.

In addition, "trial courts in Baltimore City, Northhampton County (Bethlehem and Easton), Pennsylvania; [and] Philadelphia" do not permit punitive damages in asbestos cases. Landin et al., 16 Brook. J.L. & Pol'y at 654. Importantly, Philadelphia Court of Common Pleas Judge John Herron recently issued new protocol governing mass torts cases in the court's Complex Litigation Center (CLC); that protocol continues the CLC's longstanding practice of deferring punitive damage claims in asbestos cases. *See* Court of Com. Pl. Phila. County, Pa., *General Court Regulation No. 2013-01*, Order at ¶ 3 (Feb. 7, 2013) ("All punitive damage claims in asbestos claims shall be deferred."). Similarly, Florida enacted a law banning punitive damages "in any civil action alleging an asbestos or silica claim." Fla. Stat. Ann. § 774.207(1). "Some states...simply do not permit punitive damages in tort cases." Freedman, 37 Sw. U. L. Rev. at 527,[4] and many other states cap punitive damages by statute.[5] In comparison to all of these jurisdictions, New York would become a magnet for asbestos filings.

---

[4] "A few States award [punitive damages] rarely, or not at all. Nebraska bars punitive damages entirely, on state constitutional grounds.... Four others permit punitive damages only when authorized by statute: Louisiana, Massachusetts, and Washington as a matter of common law, and New Hampshire by statute codifying common law tradition." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 495 (2008). "Michigan courts recognize only exemplary damages supportable as compensatory, rather than truly punitive, while Connecticut courts have limited what they call punitive recovery to the "expenses of bringing the legal action, including attorney's fees, less taxable costs." *Id.*

[5] *See* Ala. Code § 6-11-21; Alaska Stat. § 9.17.020; Colo. Rev. Stat. § 13-21-102; Conn. Gen. Stat. Ann. § 52-240b; Fla. Stat. Ann. § 768.73; Fla. Stat. § 774.207; Ga. Code Ann. § 51-12-5.1; Idaho code ann. § 6-1604; Ind. Code Ann. § 34-51-3-4,-5; Kan. Stat. Ann. § 60-3702; Me. Rev. Stat. Ann. tit.18-A § 2-804; Miss. Code Ann. § 11-1-65; Mo. Rev. Stat. § 510.265.1; Mont. Code Ann. § 27-1-220; Nev. Rev. Stat. Ann. § 42.005; N.H. Rev. Stat. § 507:16; N.J. Stat. Ann. § 2A:15-5.14; N.C. Gen. Stat. § 1D-25; N.D. Cent. Code § 32.03.2-11; Ohio Rev. Code Ann. § 2315.21; Okla. Stat. Ann. tit. 23, § 9.1 ; S.C. Code Ann. § 15-32-530; Tenn. Code Ann. § 29-39-104; Tex. Civ. Prac. & Rem. Code Ann. § 41.008; Va. Code Ann. § 8.01-38.1; Wis. Stat. Ann. § 895.043. "The States that rely on a multiplier have adopted a variety of ratios, ranging from 5:1 to 1:1." *Exxon Shipping*, 554 U.S. at 496.

Finally, abandonment of CMO § XVII may lead defendants to move to vacate the entire CMO. *See* Behrens & Silverman, 8 Rutgers J. L. & Pub. Pol'y at 71 ("[T]he reintroduction of punitive damages into the settlement equation could post a major obstacle to the prompt resolution of legitimate claims, particularly with respect to New York City claims since this approach could unravel a negotiated and agreed-upon CMO that has governed the litigation for many years."). As written, the NYCAL CMO reflects a balanced approach to "bring about the fair, expeditious, and inexpensive resolution of these cases." *In re New York City Asbestos Litig.*, Index No. 4000/88, Amended Case Management Order, at 2 (May 26, 2011). Discarding CMO § XVII would upset this balance.

The current language regarding punitive damages was listed as one of the "Issue Swaps" on a February 29, 1996 Agenda of the CMO Drafting Committee Conference attended by representatives of both plaintiffs and defendants. Through the years, the CMO has highlighted the joint effort that went into drafting the document. *See id.* (stating the drafting was carried out "by a steering committee including the Special Master, [and] plaintiffs' and defendants' counsel...."); *see also* Frank M. Ortiz, Letter to Special Master Michael Rozen on NYCAL Amended CMO, May 29, 1996 (noting that plaintiff law firms' agreement to many of the proposals in the CMO was "premised on the CMO Amendments taken as a whole.").

This Court recently referred to the CMO as a "negotiated" document that "was crafted with great care by representatives chosen by both the plaintiffs' and the defendants' asbestos personal injury bar...." *In re New York City Asbestos Litig.*, 37 Misc. 3d 1232(A), 2012 WL 6554893, *2, *9 (N.Y. Sup. Ct. New York County Nov. 15, 2012) (Heitler, J.) (quoting *In re New York City Asbestos Litig (Ames v. Kentile Floors),* Index No. 107574/08, at 2 (N.Y. Sup. Ct. New York County June 17, 2009), *aff'd,* 66 A.D.3d 600, 887 N.Y.S.2d 580 (1st Dept 2009)).

The Court also acknowledged that the CMO "is the product of deliberate, arms-length negotiations through which, to the benefit of both sides, the parties have charted their own course.... While the plaintiffs' bar is not completely satisfied with some of the CMO's provisions, the defendants' bar is similarly not content with others. That is the reality of any bargained for position, to which the parties have signed on." *Id.* at *9. "For the [C]ourt to now vacate [CMO § XVII] which effects the intent of the parties would diminish the effectiveness of the CMO as a whole," *id.* at *10, and give defendants cause to vacate the CMO.

III. PUNITIVE DAMAGES IN NYCAL CASES WOULD NOT SERVE THE TWIN POLICY GOALS OF DETERRENCE OR PUNISHMENT

The purposes of punitive damages generally are to punish wrongdoers and to deter those actors and others from future misconduct. *See Campbell,* 538 U.S. 408, 416 (2003); John M. Leventhal & Thomas A. Dickerson, *Punitive Damages: Public Wrong or Egregious Conduct? A Survey of New York Law*, 76 Albany L. Rev. 961, 964 (2013) ("New York has historically viewed punitive damages as somewhat penal in nature."). The twin purposes of punitive damages do not justify imposing punitive damages in NYCAL cases. *See* Victor E. Schwartz, *A Letter to the Nation's Trial Judges: Asbestos Litigation, Major Progress Made Over the Past Decade and Hurdles You Can Vault in the Next*, 36 Am. J. of Trial Advoc. 1 (2012).

First, the deterrent function of punitive damages is not served because the asbestos litigation today arises from exposures that took place long ago. In 1972, the federal Occupational Safety and Health Administration (OSHA) issued permanent standards regulating occupational exposure to asbestos. "The OSHA regulations established standards for exposure to asbestos dust and mandated methods of compliance with the exposure requirements, including monitoring work sites, compelling medical examinations, and, for the first time, labeling

products with warnings." *Horne v. Owens-Corning Fiberglas Corp.*, 4 F.3d 276, 280 (4th Cir. 1993). OSHA's asbestos regulations became increasingly stringent over time and most uses of asbestos ceased in the United States.

Second, as Vanderbilt University Law School Professor Kip Viscusi has recognized, "[f]or long-term risks, such as asbestos, the economic players today are quite different from those who made the risk decisions decades ago at the time of exposure." Kip Viscusi, *Why There is No Defense of Punitive Damages*, 87 Geo. L.J. 381, 383 (1998). CMO § XVII reflects Justice Freedman's appreciation that in "many cases, the wrong was committed by a predecessor company, not even the company now charged." Freedman, 37 Sw. U.L. Rev. at 527.

Third, the "message of deterrence, both specific and general, has been heard loud and clear in asbestos cases." Landin et al., 16 Brook. J.L. & Pol'y at 652–53.

Fourth, as Yale Law School Professor George Priest has stated, "Punitive damages can be justified only where it is believed that compensatory damages alone will be insufficient to fully internalize injury costs to defendants." George L. Priest, *The Cumulative Sources of the Asbestos Litigation Phenomenon*, 31 Pepp. L. Rev. 261, 266 (2003). Total spending on asbestos cases has been in the tens of billions of dollars.

Fifth, now that most primary historical defendants have filed bankruptcy, the defendants being named today are increasingly remote and therefore less culpable than the defendants that were being targeted in 1996.

By the late 1990s, the asbestos litigation had reached such proportions that the United States Supreme Court noted the "elephantine mass" of cases, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999), and referred to the litigation as a "crisis." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 597 (1997). Mass filings pressured many of the traditional defendants to

seek bankruptcy court protection, creating a domino effect and leading to a flood of bankruptcies between 2000-2002. As a result of these bankruptcies, "the net...spread from the asbestos makers to companies far removed from the scene of any putative wrongdoing." Editorial, *Lawyers Torch the Economy*, Wall St. J., Apr. 6, 2001, at A14, *abstract at* 2001 WLNR 1993314. As Justice Freedman explained,

> The bankruptcies of most of the major raw material providers and product manufacturers have created an incentive for plaintiffs' lawyers to find what may have been termed peripheral defendants or downstream users or consumers of asbestos containing products who either incorporated the products into their manufactured goods, or who recommended use in conjunction with products (furnaces or water heaters), or who owned premises where asbestos was present, or who acquired companies that previously manufactured asbestos containing products.

Freedman, 37 Sw. U.L. Rev. at 512.[6] One plaintiffs' attorney described the litigation as an "endless search for a solvent bystander." *'Medical Monitoring and Asbestos Litigation' - A Discussion with Richard Scruggs and Victor Schwartz*, 17:3 Mealey's Litig. Rep.: Asbestos 5 (Mar. 1, 2002) (Mr. Scruggs).

---

[6] Commentators have also explained that,

> [F]ollowing the bankruptcies of those frontline defendants during the Bankruptcy Wave, plaintiff attorneys shifted their litigation strategy away from the traditional thermal insulation defendants and towards peripheral and new defendants associated with the manufacturing and distribution of alternative asbestos-containing products such as gaskets, pumps, automotive friction products, and residential construction products.

Marc C. Scarcella et al., *The Philadelphia Story: Asbestos Litigation Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010*, 27:17 Mealey's Litig. Rep.: Asbestos 1 (Oct. 10, 2012); *see also* Charles Bates et al., *The Naming Game*, 24:15 Mealey's Litig. Rep.: Asbestos 1, 4 (Sept. 2, 2009) ("As the bankrupt companies exited the tort environment, the number of defendants named in a complaint increased, on average, from fewer than 30 on average to more than 60 defendants per complaint."); Charles Bates et al., *The Claiming Game*, 25:1 Mealey's Litig. Rep.: Asbestos 1 (Feb. 3, 2010).

The dockets reflect that the litigation has moved beyond the era in which manufacturers, producers, suppliers, and distributors of friable asbestos-containing products or raw asbestos are the principal defendants. *See* Congressional Budget Office, *The Economics of U.S. Tort Liability: A Primer* 8 (Oct. 2003) (asbestos suits have expanded "from the original manufacturers of asbestos-related products...."). The expanded range of defendants has produced exponential growth in the dimensions of the litigation. "Parties formerly viewed as peripheral defendants are now bearing the majority of the costs of awards relating to decades of asbestos use." American Academy of Actuaries, *Overview of Asbestos Claims Issues and Trends* 3 (Aug. 2007).

As the litigation has grown more attenuated, so has any foundation that otherwise might support the imposition of punitive damages. As summarized in a recent report:

> The causal connection between earlier peripheral defendants and asbestos was clear.... However, the relationship of asbestos to some of the more recent peripheral defendants in not as obvious (e.g., Campbell's Soup, Gerber [baby food maker], and Sears Roebuck). *This later group of peripheral defendants was not as likely to have known of the dangers of asbestos.*

Overview of Asbestos Claims Issues and Trends, supra, at 3.

Other commentators have stated that "most traditional asbestos companies have already declared for bankruptcy protection, thus, the burden of paying punitive damages falls to the peripheral defendants who have generally not engaged in conscious, flagrant wrongdoing." Victor Schwartz et al., *A Letter to the Nation's Trial Judges: Serious Asbestos Cases – How to Protect Cancer Claimants and Wisely Manage Assets*, 30 Am. J. Trial Advoc. 295, 327-28 (2006).

Finally, the same concerns that drove the decisions to defer punitive damages claims against the traditional asbestos defendants remain. Asbestos-related bankruptcies have not ended. "Since 2000, dozens of companies have sought to use the trust provisions of § 524(g) of

the Bankruptcy Code to globally resolve their asbestos liabilities." William P. Shelley et al., *The Need for Transparency Between the Tort System and Section 524(g) Asbestos Trusts*, 17 Norton J. Bankr. L. & Prac. 257, 257 (2008).

It is just a matter of time before additional defendants are forced to seek bankruptcy court protection from their asbestos liabilities. As Stanford Law Professor Deborah Hensler has explained in summarizing the evolution of the asbestos litigation:

> To make up the difference between the total amount of money that had been available from asbestos defendants to compensate asbestos claimants and the smaller amount of money that was now available [due to major defendants filing bankruptcy], asbestos plaintiff attorneys turned to "peripheral" defendants: corporations that had not previously been central to the litigation but against whom there were colorable claims of negligence or strict liability. For many years, many of these corporations had settled claims for modest amounts of money, essentially "nuisance value," in order to avoid greater litigation expense. Now asbestos plaintiff attorneys told these defendants that they would have to put more money on the table to avoid litigation-perhaps several times the amount paid previously by these defendants-explaining that they needed to make up for what was no longer available from target defendants. *Within a very short time, some peripheral defendants became central to the litigation, and their asbestos liability exposure ballooned. The result might have been anticipated: the once peripheral defendant corporations followed the target defendants into bankruptcy.*

Deborah R. Hensler, *Asbestos Litigation in the United States: Triumph and Failure of the Civil Justice System*, 12 Conn. Ins. L.J. 255, 272 (2006) (emphasis added).

"Actions taken by courts that could accelerate this process would be irresponsible absent a clear and compelling justification that does not exist with respect to the awarding of punitive damages in modern asbestos cases." Behrens & Silverman, 8 Rutgers J. L. & Pub. Pol'y at 65. As Georgetown University law School Professor Paul Rothstein has said, "Continuing to award punitive damages in asbestos cases no longer makes sense." Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 Miss. L.J. 1, 26 (2001).

CONCLUSION

For these reasons, *amici* urge the Court to enforce the CMO as written and deny requests to abandon CMO § XVII deferring punitive damages awards.

Respectfully submitted,

Victor E. Schwartz* (NY Bar # 2071629)
Mark A. Behrens (*pro hac* pending)
SHOOK, HARDY & BACON L.L.P.
1155 F Street, NW, Suite 200
Washington, DC 20004
(202) 783-8400

Attorneys for *Amici Curiae*
* Counsel of Record

Dated: October 31, 2013

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing brief upon counsel by depositing a copy in a first-class postage-prepaid envelope into a depository under the exclusive care and custody of the United States Postal Service this 31st day of October, 2013, addressed as follows:

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR PLAINTIFF	Joseph Belluck, Esq. **BELLUCK & FOX, LLP** 546 Fifth Avenue New York, NY 10036	**BELLUCK & FOX, LLP**
ATTORNEYS FOR PLAINTIFFS	Mark Strauss, Esq. **EARLY & STRAUSS** 360 Lexington Avenue New York, NY 10017	**EARLY & STRAUSS**
ATTORNEYS FOR PLAINTIFFS	Joseph P. Williams, Esq. **THE WILLIAMS LAW FIRM, P.C.** 245 Park Avenue, 39th Floor New York, New York 10167	**THE WILLIAMS LAW FIRM, P.C.**
ATTORNEYS FOR PLAINTIFFS	Charles Ferguson, Esq. **WEITZ & LUXENBERG, P.C.** 700 Broadway New York, New York 10003	**WEITZ & LUXENBERG, P.C.**
ATTORNEYS FOR PLAINTIFFS	Robert Komitor, Esq. **LEVY PHILLIPS & KONIGSBERG** 800 Third Avenue, 13th Floor New York, New York 10022	**LEVY PHILLIPS & KONIGSBERG**
ATTORNEYS FOR PLAINTIFFS	Douglas von Oiste, Esq. **KARST & VON OISTE, LLP** 19500 State Highway 249 Houston, Texas 77070	**KARST & VON OISTE, LLP**
ATTORNEYS FOR PLAINTIFFS	W. Mark Lanier, Esq. **THE LANIER LAW FIRM** 126 East 56th Street New York, New York 10022	**THE LANIER LAW FIRM**
ATTORNEYS FOR PLAINTIFFS	Christopher Seeger, Esq. **SEEGER WEISS, LLP** 77 Water Street New York, New York 10005	**SEEGER WEISS, LLP**
ATTORNEYS FOR PLAINTIFFS	Kevin Berry, Esq. **WILENTZ GOLDMAN & SPITZER, P.A.** 110 William Street, 26th Floor New York, New York 10038	**WILENTZ GOLDMAN & SPITZER, P.A.**
ATTORNEYS FOR PLAINTIFFS	Kardon A. Stolzman, Esq. **NAPOLI, BERN RIPKA SHKOLNIK, LLP** 350 Fifth Avenue, Suite 7413 New York, NY 10118	**NAPOLI, BERN RIPKA SHKOLNIK, LLP**

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR PLAINTIFFS	Gene Locks, Esq. **THE LOCKS LAW FIRM** 747 Third Avenue New York, New York 10017	**THE LOCKS LAW FIRM**
ATTORNEYS FOR DEFENDANTS	Nancy L. Pennie, Esq. **AARONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, LLP** 600 Third Avenue New York, NY 10016	**AARONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, LLP**
ATTORNEYS FOR DEFENDANTS	Frank Cecere, Esq. James Edwards, Esq. **AHMUTY DEMERS & McMANUS** 200 I.U. Willets Road Albertson, New York 11507	**AHMUTY DEMERS & McMANUS**
ATTORNEYS FOR DEFENDANTS	James Coons, Esq. **ANSA ASSUNCAO LLP.** Two Tower Center Boulevard, Suite 1600 East Brunswick, New Jersey 08816-1100	**ANSA ASSUNCAO LLP**
ATTORNEYS FOR DEFENDANTS	Suzanne Halbardier, Esq. **BARRY McTIERNAN & MOORE** 2 Rector Street, 14th Floor New York, New York 10006	**BARRY McTIERNAN & MOORE**
ATTORNEYS FOR DEFENDANTS	Timothy J. McDonnell, Esq. **BENNETT GIULIANO MCDONNELL & PERRONE LLP** 494 Eighth Avenue, 7th Floor New York, NY 10001	**BENNETT GIULIANO MCDONNELL & PERRONE LLP**
ATTORNEYS FOR DEFENDANTS	Michael Field, Esq. **BOROWSKY & BOROWSKY, LLC** 59 Avenue at the Common Suites 101 & 102 Shrewsbury, New Jersey 07702	**BOROWSKY & BOROWSKY, LLC**
ATTORNEYS FOR DEFENDANTS	Lisa M. Pascarella, Esq. **PASCARELLA, DIVITA, LINDENBAUM & TOMASZEWSKI** 2137 Route 35, Suite 290 Holmdel, New Jersey 07733	**PASCARELLA, DIVITA, LINDENBAUM & TOMASZEWSKI**
ATTORNEYS FOR DEFENDANTS	Lindsay P. Cambron, Esq. **BRACH EICHLER LLC** 101 Eisenhower Parkway Roseland, NJ 07068	**BRACH EICHLER, LLC**
ATTORNEYS FOR DEFENDANTS	Kenneth Krajewski **BROWN & KELLY** 1500 Liberty Building Buffalo, New York 14202	**BROWN & KELLY**
ATTORNEYS FOR DEFENDANTS	Daniel P. Waxman, Esq. **BRYAN CAVE, LLP** 1290 Avenue of the Americas New York, New York 10104	**BRYAN CAVE, LLP**

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR DEFENDANTS	Stuart Slotnick, Esq. Kristi Davidson, Esq. Natalie Peled, Esq. **BUCHANAN INGERSOLL & ROONEY PC** 1290 Avenue of the Americas, 30th Floor New York, New York 10104	**BUCHANAN INGERSOLL & ROONEY PC**
ATTORNEYS FOR DEFENDANTS	James B. Daniels, Esq. **BUDD LARNER, P.C.** 150 John F. Kennedy Parkway Short Hills, New Jersey 07078-0999	**BUDD LARNER, P.C.**
ATTORNEYS FOR DEFENDANTS	John S. Rand, Esq. Lawrence T. D'Aloise Esq. **CLARK GAGLIARDI & MILLER, P.C.** 99 Court Street White Plains, NY 10601	**CLARK GAGLIARDI & MILLER, P.C.**
ATTORNEYS FOR DEFENDANTS	William F. Mueller, Esq. Lori A. Fee, Esq. Jessie C. Basner, Esq. Matthew H. Mueller, Esq. **CLEMENTE MUELLER, P.A.** 218 Ridgedale Avenue P.O. Box 1296 Morristown, New Jersey 07962	**CLEMENTE MUELLER, P.A.**
ATTORNEYS FOR DEFENDANTS	Marshall S. Turner, Esq. **CONDON & FORSYTH, LLP** 7 Times Square New York, NY 10036	**CONDON & FORSYTH, LLP**
ATTORNEYS FOR DEFENDANTS	Timothy Corriston, Esq. **CONNELL FOLEY** 85 Livingston Avenue Roseland, New Jersey 07068	**CONNELL FOLEY**
ATTORNEYS FOR DEFENDANTS	Steven E. Garry, Esq. **COSTELLO, SHEA & GAFFNEY, LLP** 44 Wall Street, 11th floor New York, New York 10005 T: (212) 483-9600 F: (212) 344-7680 sgarry@csgllplaw.com	**COSTELLO, SHEA & GAFFNEY, LLP**
ATTORNEYS FOR DEFENDANTS	Kenneth G. Roberts, Esq. **COZEN O'CONNOR** 45 Broadway, 16th floor York, New York 10006 Jill Mandell, Esq. **COZEN O'CONNOR** 277 Park Avenue New York, NY 10172	**COZEN O'CONNOR**
ATTORNEYS FOR DEFENDANTS	John Fanning, Esq. Raghu Bandlamudi, Esq. **CULLEN & DYKMAN** 44 Wall Street New York, NY 10005	**CULLEN & DYKMAN**

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR DEFENDANTS	Carol Snider, Esq. **DAMON & MOREY LLP** The Avant Building 200 Delaware Avenue, Suite 1200 Buffalo, NY 14202-2150	**DAMON & MOREY LLP**
ATTORNEYS FOR DEFENDANTS	Jennifer W. Darger, Esq. **DARGER ERRANTE YAVITZ & BLAU** 116 East 27th Street, 12th Floor New York, NY 100016	**DARGER ERRANTE YAVITZ & BLAU**
ATTORNEYS FOR DEFENDANTS	Marc D. Crowley, Esq. **DAY PITNEY, LLP** One Jefferson Road Parsippany, New Jersey 07054	**DAY PITNEY, LLP**
ATTORNEYS FOR DEFENDANTS	Rob C. Tonogbanua, Esq. **DICKIE McCAMEY** **& CHILOTE, P.C.** 41 South Haddon Avenue, Suite 5 Haddonfield, New Jersey 08033 Rob C. Tonogbanua, Esq. Public Ledger Building 150 South Independence Mall, Suite 901 West Philadelphia, PA 19106-3409	**DICKIE McCAMEY** **& CHILOTE, P.C.**
ATTORNEYS FOR DEFENDANTS	Thuy T. Biu, Esq **DRINKER BIDDLE & REATH, LLP** 1177 Avenue of the Americas, 41st Floor New York, New York 10036-2714	**DRINKER BIDDLE & REATH, LLP**
ATTORNEYS FOR DEFENDANTS	Thomas M. Smith, Esq. David Katzenstein, Esq. **ECKERT SEAMANS** **CHERIN & MELLOTT LLC** 10 Bank Street, Suite 700 White Plains, New York 10606	**ECKERT SEAMANS** **CHERIN & MELLOTT LLC**
ATTORNEYS FOR DEFENDANTS	Robert J. Hafner, Esq. **ECKERT SEAMANS CHERIN &** **MELLOTT LLC** Two Liberty Place 50 South 16th Street Philadelphia, PA 19102	**ECKERT SEAMANS CHERIN &** **MELLOTT LLC**
ATTORNEYS FOR DEFENDANTS	George R. Talarico, Esq. **EDWARDS, WILDMAN & PALMER** One Giralda Farms Madison, New Jersey 07940	**EDWARDS, WILDMAN & PALMER**
ATTORNEYS FOR DEFENDANTS	Nicholas S. Allison, Esq. **EPSTEIN BECKER & GREEN, P.C.** 250 Park Avenue New York, NY 10177	**EPSTEIN BECKER & GREEN, P.C.**
ATTORNEYS FOR DEFENDANTS	Stephen Manuele Esq. **FELDMAN, KIEFFER & HERMAN, LLP** The Dun Building 110 Pearl Street, Suite 400 Buffalo, New York 14202	**FELDMAN, KIEFFER & HERMAN, LLP**

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR DEFENDANTS	Jason Cohen, Esq. **FLEMMING ZULACK & WILLIAMSON, LLP** One Liberty Plaza, 35th Floor New York, New York 10006	**FLEMMING ZULACK & WILLIAMSON, LLP**
ATTORNEYS FOR DEFENDANTS	Thomas M. Canevari, Esq. **FREEHILL HOGAN & MAHAR, LLP** 80 Pine Street New York, N.Y. 10005-1759	**FREEHILL HOGAN & MAHAR, LLP**
ATTORNEYS FOR DEFENDANTS	Salvatore G. Gangemi, Esq. **GANGEMI LAW FIRM, P.C.** 700 White Plains Road, Suite 223 Scarsdale, New York 10583	**GANGEMI LAW FIRM, P.C.**
ATTORNEYS FOR DEFENDANTS	Christine E. Fernandez, Esq. **GARBARINI & SCHER, P.C.** 432 Park Avenue South New York, NY 10016	**GARBARINI & SCHER, P.C.**
ATTORNEYS FOR DEFENDANTS	Anthony J. Marino, Esq. Stephen F. Balsamo, Esq. **GARRITY, GRAHAM, MURPHY, GARAFOLO & FLINN** 72 Eagle Rock Avenue, Suite 350 P.O. Box 438 East Hanover, New Jersey 07936	**GARRITY, GRAHAM, MURPHY, GARAFOLO & FLINN**
ATTORNEYS FOR DEFENDANTS	Robert D. Brown, Jr., Esq. **GIBBONS, P.C.** One Gateway Center Newark, New Jersey 07102	**GIBBONS, P.C.**
ATTORNEYS FOR DEFENDANTS	C. Christopher Bridge, Esq. **GIBSON, McASKILL & CROSBY** 69 Delaware Avenue, Suite 900 Buffalo, New York 14202	**GIBSON, McASKILL & CROSBY**
ATTORNEYS FOR DEFENDANTS	Frank J. Ciano, Esq. Mark P. Donohue, Esq. **GOLDBERG SEGALLA, LLP** 11 Martine Avenue, Suite 750 White Plains, New York 10606	**GOLDBERG SEGALLA, LLP**
ATTORNEYS FOR DEFENDANTS	Norman Senior, Esq. **GREENFIELD, STEIN & SENIOR** 600 Third Avenue, 11th Floor New York, New York 10016	**GREENFIELD, STEIN & SENIOR**
ATTORNEYS FOR DEFENDANTS	Cynthia Weiss Antonucci, Esq. Abbie Eliasberg Fuchs, Esq. David Kochman, Esq. **HARRIS BEACH, PLLC** 100 Wall Street, 23rd Floor New York, New York 10005	**HARRIS BEACH, PLLC**
ATTORNEYS FOR DEFENDANTS	Michael Masino, Esq. **HARRIS BEACH, PLLC** 99 Garnsey Rd. Pittsford, New York 14534	**HARRIS BEACH, PLLC**

DEFENDANTS	COUNSEL	FIRM NAME
ATTORNEYS FOR DEFENDANTS	Russel A. Pepe, Esq. **HARWOOD LLOYD, LLC** Empire State Building 130 Main Street Hackensack, New Jersey 07601	**HARWOOD LLOYD, LLC**
ATTORNEYS FOR DEFENDANTS	Bruce Gilpatrick, Esq. **HEIDELL, PITTONI, MURPHY & BACH, LLP.** 81 Main Street White Plains, New York 10601 Bruce Gilpatrick, Esq. **HEIDELL, PITTONI, MURPHY & BACH, LLP.** 30 Oak Street, 2nd Floor Stanford, CT 06905	**HEIDELL, PITTONI, MURPHY & BACH, LLP.**
ATTORNEYS FOR DEFENDANTS	Michael B. Sena, Esq. **HERZFELD & RUBIN, P. C.** 125 Broad Street New York, New York 10004	**HERZFELD & RUBIN, P. C.**
ATTORNEYS FOR DEFENDANTS	Linda Clark, Esq. **HISCOCK & BARCLAY** 80 State Street Albany, New York 12207	**HISCOCK & BARCLAY**
ATTORNEYS FOR DEFENDANTS	Marc S. Gaffrey, Esq. Wendy Kagan, Esq. **HOAGLAND LONGO MORAN DUNST & DOUKAS** 40 Patterson Street P.O. Box 480 New Brunswick, New Jersey 08903	**HOAGLAND LONGO MORAN DUNST & DOUKAS**
ATTORNEYS FOR DEFENDANTS	Cindy Messemer, Esq. George Hodges, Esq. **HODGES WALSH & SLATER** 55 Church Street White Plains, New York 10601	**HODGES WALSH & SLATER**
ATTORNEYS FOR DEFENDANTS	Chirstian J. Soller, Esq. **HODGSON RUSS, LLP** 677 Broadway, Suite 301 Albany, New York 12207	**HODGSON RUSS, LLP**
NORTH SAFETY PRODUCTS, LLC	Robert Iscaro, Esq. **JONES DAY** 222 East 41st Street New York, New York 10017	**JONES DAY**
ATTORNEYS FOR DEFENDANTS	Eric R.I. Cottle, Esq. Kirsten Alford Kneis, Esq. **K&L GATES, LLP** 599 Lexington Avenue New York, New York 10022	**K&L GATES, LLP**

ATTORNEYS FOR DEFENDANTS	Christine Montenegro, Esq. Kevin J. Dooley, Esq. Marc E. Kasowitz, Esq. **KASOWITZ, BENSON, TORRES & FRIEDMAN** 1633 Broadway New York, New York 10019	**KASOWITZ, BENSON, TORRES & FRIEDMAN**
ATTORNEYS FOR DEFENDANTS	Christopher Hannan, Esq. **KELLEY JASONS McGOWAN SPINELLI & HANNA, LLP** 120 Wall Street, 30th Floor New York, New York 10005	**KELLEY JASONS McGOWAN SPINELLI & HANNA, LLP**
ATTORNEYS FOR DEFENDANTS	James S. Nowak, Esq. Eric Genau, Esq. **KENNEY, SHELTON, LIPTAK & NOWAK** Rand Building 14 Lafayette Square, Suite 510 Buffalo, New York 14203	**KENNEY, SHELTON, LIPTAK & NOWAK, LLP**
ATTORNEYS FOR DEFENDANTS	Daniel S. Moretti, Esq. Christopher Kozak, Esq. **LANDMAN, CORSI, BALLAINE & FORD** 120 Broadway, 27th Floor New York, New York 10271	**LANDMAN, CORSI, BALLAINE & FORD**
ATTORNEYS FOR DEFENDANTS	Thomas Beneventano, Esq. **LaSORSA & BENEVENTANO** 3 Barker Avenue, 2nd Floor White Plains, New York 10601	**LASORSA & BENEVENTANO**
ATTORNEYS FOR DEFENDANTS	Timothy McHugh, Esq. **LAVIN, O'NEIL, RICCI, CEDRONE & DISIPRO** Graybar Building 420 Lexington Avenue, Suite 2900 New York, New York 10170	**LAVIN, O'NEIL, RICCI, CEDRONE & DISIPRO**
ATTORNEYS FOR DEFENDANTS	Andrew Czerepak, Esq. Timothy McCann, Esq. **LAW OFFICES OF RICHARD BANIECZ** 4 Irving Place New York, New York 10003	**LAW OFFICES OF RICHARD BANIECZ**
ATTORNEYS FOR DEFENDANTS	David L. Ferstendig, Esq. **LAW OFFICES OF DAVID L. FERSTENDIG, LLC** 292 Madison Avenue New York, NY 10017	**LAW OFFICES OF DAVID L. FERSTENDIG, LLC**
ATTORNEYS FOR DEFENDANTS	James F. O'Brien, Esq. **LAW OFFICES OF JAMES F. O'BRIEN** 500 North Broadway, Suite 105 Jericho, New York 11753	**LAW OFFICES OF JAMES F. O'BRIEN**
ATTORNEYS FOR DEFENDANTS	Joseph Colao, Esq. **LEADER & BERKON** 630 Third Avenue, 17th Floor New York, New York 10017	**LEADER & BERKON**

ATTORNEYS FOR DEFENDANTS	Philip O'Rourke, Esq. Steven Corbin, Esq. Bhavna Changrani, Esq. **LEWIS BRISBOIS BISGAARD & SMITH** 77 Water Street New York, New York 10005	**LEWIS BRISBOIS BISGAARD & SMITH**
ATTORNEYS FOR DEFENDANTS	Andrew Sapon, Esq. **LITCHFIELD CAVO, LLP** 420 Lexington Avenue New York, New York 10170	**LITCHFIELD CAVO, LLP**
ATTORNEYS FOR DEFENDANTS	Edward Fogarty, Jr. **LITCHFIELD CAVO, LLP** 420 Lexington Avenue New York, New York 10170	**LITCHFIELD CAVO, LLP**
ATTORNEYS FOR DEFENDANTS	Jason P. Sultzer, Esq. **THE SULTZER LAW GROUP, P.C.** 77 Water Street, 8th Floor New York, NY 10005	**THE SULTZER LAW GROUP, P.C.**
ATTORNEYS FOR DEFENDANTS	Richard Mendelsohn, Esq. **LONDON FISCHER** 59 Maiden Lane New York, New York 10038	**LONDON FISCHER**
ATTORNEYS FOR DEFENDANTS	Jim Lynch, Esq. Scott R. Emery, Esq. **LYNCH DASKAL EMERY, LLP** 264 West 40th Street New York, New York 10018	**LYNCH DASKAL EMERY, LLP**
ATTORNEYS FOR DEFENDANTS	Thomas Maimone, Esq. **MAIMONE & ASSOCIATES, PLLC** 150 Haven Avenue Port Washington, New York 11050	**MAIMONE & ASSOCIATES, PLLC**
ATTORNEYS FOR DEFENDANTS	Robert C. Malaby, Esq. David P. Schaffer, Esq. **MALABY & BRADLEY, LLC** 150 Broadway, Suite 600 New York, New York 10038	**MALABY & BRADLEY, LLC**
ATTORNEYS FOR DEFENDANTS	Matthew Connahan, Esq. **MALOOF, LEBOWITZ, CONNAHAN & OLESKE, P.A.** 127 Main Street Chatham, New Jersey 07928	**MALOOF, LEBOWITZ, CONNAHAN & OLESKE, P.A.**
ATTORNEYS FOR DEFENDANTS	Rob C. Tonogbanua, Esq. **MARGOLIS EDELSTEIN** PO Box 2222 216 Haddon Avenue, Suite 200 Westmont, New Jersey 08108	**MARGOLIS EDELSTEIN**
ATTORNEYS FOR DEFENDANTS	Diane Miller, Esq. Richard Marin, Esq **MARIN GOODMAN** 500 Mamaroneck Avenue, Suite 501 Harrison, New York 10528	**MARIN GOODMAN**

ATTORNEYS FOR DEFENDANTS	James Skelly, Esq. **MARKS O'NEILL** **O'BRIEN & COURTNEY** 530 Saw Mill River Road Elmsford, New York 10523	**MARKS O'NEILL O'BRIEN & COURTNEY**
ATTORNEYS FOR DEFENDANTS	Andrew Constantine, Esq. **MARON, MARVEL, BRADLEY & ANDERSON** 75 Montgomery Street, Suite 200 Jersey City, New Jersey 07302	**MARON, MARVEL, BRADLEY & ANDERSON**
ATTORNEYS FOR DEFENDANTS	Norman J. Golub, Esq./Stacey Snyder, Esq. **MARSHALL CONWAY** **WRIGHT & BRADLEY, P.C.** 45 Broadway New York, New York 10006	**MARSHALL CONWAY WRIGHT & BRADLEY, P.C.**
ATTORNEYS FOR DEFENDANTS	Anna DiLonardo, Esq. Andrew Warshauer, Esq. **MARSHALL, DENNEHY, WARNER, COLEMAN & GOGGIN** 888 Veterans Memorial Hwy., Suite 540 Hauppauge, New York 11788 Arthur Bromberg, Esq. **MARSHALL, DENNEHY, WARNER, COLEMAN & GOGGIN** 425 Eagle Rock Avenue Roseland, New Jersey 07068	**MARSHALL, DENNEHY, WARNER, COLEMAN & GOGGIN**
ATTORNEYS FOR DEFENDANTS	Sherilyn Pastor, Esq. **McCARTER & ENGLISH, LLP** Four Gateway Center 100 Mulberry Street Newark, New Jersey 07102	**McCARTER & ENGLISH, LLP**
ATTORNEYS FOR DEFENDANTS	James S. Montano, Esq. **MCCULLOUGH GINSBERG MONTANO & PARTNERS, LLP** 320 East 53rd Street, Suite 100 New York, New York 10022	**MCCULLOUGH GINSBERG MONTANO & PARTNERS, LLP**
ATTORNEYS FOR DEFENDANTS	Donald R. Pugliese, Esq. **McDERMOTT WILL & EMERY** 340 Madison Avenue New York, New York 10173	**McDERMOTT WILL & EMERY**
ATTORNEYS FOR DEFENDANTS	Nancy McDonald, Esq. Joseph LaSala, Esq, **McELROY DEUTSCH & MULVANEY** 1300 Mount Kemble Avenue P.O. Box 2075 Morristown, New Jersey 07962	**McELROY DEUTSCH & MULVANEY**
ATTORNEYS FOR DEFENDANTS	Kerryann Cook, Esq. Laura Hollman, Esq. **McGIVNEY & KLUGER, P.C.** 80 Broad Street, 23rd Floor New York, New York 10004	**McGIVNEY & KLUGER, P.C.**
ATTORNEYS FOR DEFENDANTS	Genevieve MacSteel, Esq. **MCGUIREWOODS, LLP** 1345 Avenue of the Americas, 7th Floor New York, New York 10105-0005	**MCGUIREWOODS, LLP**

ATTORNEYS FOR DEFENDANTS	Heidi Chang, Esq. **McMAHON MARTINE & GALLAGHER** 55 Washington Street Brooklyn, New York 11201	**McMAHON MARTINE & GALLAGHER**
ATTORNEYS FOR DEFENDANTS	John M. Deitch, Esq. **MENDES & MOUNT, LLP** One Newark Center, 19th Floor Newark, New Jersey 07102	**MENDES & MOUNT, LLP**
ATTORNEYS FOR DEFENDANTS	Marc Shanker, Esq. Bernard J. Garbutt III, Esq. Gregory B. Atwood **MORGAN LEWIS & BOCKIUS, LLP** 101 Park Avenue New York, New York 10178-0060	**MORGAN LEWIS & BOCKIUS, LLP**
ATTORNEYS FOR DEFENDANTS	Julia D'Agostino, Esq. **MORRISON MAHONEY,LLP** 17 State Street, Suite 1110 New York, NY 10004	**MORRISON MAHONEY,LLP**
ATTORNEYS FOR DEFENDANTS	Joseph J. Ortego, Esq. **NIXON PEABODY** 437 Madison Avenue New York, NY 10022	**NIXON PEABODY**
ATTORNEYS FOR DEFENDANTS	Richard Menchini, Esq. **O'HARE PARNAGIAN LLP** 82 Wall Street, Suite 300 New York, New York 10005	**O'HARE PARNAGIAN LLP**
ATTORNEYS FOR DEFENDANTS	Steven Weiner, Esq. **O'TOOLE FERNANDEZ WEINER VAN LIEU, LLC** 60 Pompton Avenue, 2nd Floor Verona, New Jersey 07044	**O'TOOLE FERNANDEZ WEINER VAN LIEU, LLC**
ATTORNEYS FOR DEFENDANTS	Christopher Renzulli, Esq. **RENZULLI LAW FIRM, LLP** 81 Main Street, Suite 508 White Plains, NY 10601	**RENZULLI LAW FIRM, LLP**
ATTORNEYS FOR DEFENDANTS	Brian S. Schlosser, Esq. **RIVKIN RADLER LLP** 926 RXR Plaza Uniondale, New York 11556-0926	**RIVKIN RADLER LLP**
ATTORNEYS FOR DEFENDANTS	John Ronca, Jr. Esq. **RONCA MCDONALD & HANLEY** 5 Regent Street, Suite 517 Livingston, New Jersey 07039	**RONCA MCDONALD & HANLEY**
ATTORNEYS FOR DEFENDANTS	Paul Scrudato, Esq. Brian J. Neff, Esq. **SCHIFF HARDIN, LLP** 666 Fifth Avenue, Suite 1700 New York, New York 10103	**SCHIFF HARDIN, LLP**
ATTORNEYS FOR DEFENDANTS	Peter C. Langenus, Esq. Matthew S. Tamasco, Esq. **SCHNADER HARRISON SEGAL & LEWIS** 140 Broadway, Suite 3100 New York, New York 10005	**SCHNADER HARRISON SEGAL & LEWIS**

ATTORNEYS FOR DEFENDANTS	Michael Tanenbaum, Esq. Dennis Vega, Esq **SEDGWICK LLP** Three Gateway Center, 12th Floor Newark, New Jersey 07102	**SEDGWICK LLP**
ATTORNEYS FOR DEFENDANTS	James Keale, Esq. **SEDGWICK LLP** Three Gateway Center, 12th Floor Newark, New Jersey 07102	**SEDGWICK LLP**
ATTORNEYS FOR DEFENDANTS	Ted Eder, Esq. Steven Rosenblatt, Esq. **SEGAL, MCCAMBRIDGE, SINGER & MAHONEY** 850 Third Avenue, Suite 1100 New York, New York 10022	**SEGAL, MCCAMBRIDGE, SINGER & MAHONEY**
ATTORNEYS FOR DEFENDANTS	James S. Yu, Esq. **SEYFARTH SHAW LLP** 620 Eight Avenue New York, New York 10018	**SEYFARTH SHAW LLP**
ATTORNEYS FOR DEFENDANTS	Renee Simon Lesser, Esq. Leonard Lesser, Esq. **SIMON LESSER, PC** 420 Lexington Avenue New York, New York 10170	**SIMON LESSER, PC**
ATTORNEYS FOR DEFENDANTS	John C. Canoni, Esq. Edward P. Abbot, Esq. **HAWKINS, PARNELL, THACKSTON & YOUNG, LLP** 90 Broad Street, 4th Floor New York, NY 10004	**HAWKINS, PARNELL, THACKSTON & YOUNG, LLP**
ATTORNEYS FOR DEFENDANTS	Patrick Dwyer, Esq. **SMITH STRATTON, WISE, HEHER and BRENNAN** 100 Park Avenue, Suite 1600 New York, New York 10017-5516	**SMITH STRATTON, WISE, HEHER and BRENNAN**
ATTORNEYS FOR DEFENDANTS	John Snyder, Esq. **SNR DENTON US LLP** 4520 Main Street, Suite 1100 Kansas City, MO 64111	**SNR DENTON US LLP**
ATTORNEYS FOR DEFENDANTS	Justin Perri, Esq. Shehzad Hasan, Esq. **STEPTOE & JOHNSON** 1114 Avenue of the Americas, 35th Floor New York, New York 10036	**STEPTOE & JOHNSON**
ATTORNEYS FOR DEFENDANTS	Ellen Nunno Corbo, Esq. **TAYLOR COLICCIO & SILVERMAN LLP** 502 Carnegie Center, Suite 103 Princeton, New Jersey 08540	**TAYLOR COLICCIO & SILVERMAN LLP**
ATTORNEYS FOR DEFENDANTS	Elisa T. Gilbert, Esq. **THE GILBERT FIRM** 325 East 57th Street New York, New York 10022	**THE GILBERT FIRM**

ATTORNEYS FOR DEFENDANTS	Ruthe A. Nepf, Esq. **THOMPSON HINE LLP** 335 Madison Avenue, 12th Floor New York, NY 10017	**THOMPSON HINE LLP**
ATTORNEYS FOR DEFENDANTS	Kevin C. Tierney, Esq. **TIERNEY LAW OFFICES** 11 Penn Plaza, 5th Floor New York, NY 10001	**TIERNEY LAW OFFICES**
ATTORNEYS FOR DEFENDANTS	Stephen G. Traflet, Esq. **TRAFLET & FABIAN** Carriage Court Two 264 South Street Morristown, New Jersey 07960	**TRAFLET & FABIAN**
ATTORNEYS FOR DEFENDANTS	Thomas F. Vasti, III, Esq. **VASTI & VASTI** 1733 Main Street/Route 44 P.O. Box 656 Pleasant Valley, New York 12569	**VASTI & VASTI**
ATTORNEYS FOR DEFENDANTS	John Kot, Esq. Giovanni Regina, Esq. **WATERS McPHERSON McNEIL** 300 Lighting Way P.O. Box 1560 Secaucus, New Jersey 07096	**WATERS McPHERSON McNEIL**
ATTORNEYS FOR DEFENDANTS	Edward Wilbraham, Esq. **WILBRAHAM LAWLER & BUBA** 140 Broadway, 46th Floor New York, NY 10005 John Howarth, Esq. **WILBRAHAM LAWLER & BUBA** 1818 Market St. Suite 3100 Philadelphia, PA 19103	**WILBRAHAM LAWLER & BUBA**
ATTORNEYS FOR DEFENDANTS	Julie Evans, Esq. Erik DiMarco, Esq. **WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP** 150 East 42nd Street New York, New York 10017	**WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP**
ATTORNEYS FOR DEFENDANTS	**WINSTON and STRAWN LLP** 200 Park Avenue New York, NY 10166	**WINSTON and STRAWN LLP**
ATTORNEYS FOR DEFENDANTS	Steve Kevelson, Esq. One Cozine Avenue Brooklyn, New York 11207	**STEVE KEVELSON, ESQ.**
ATTORNEYS FOR DEFENDANTS	Richard O'Leary, Esq. **TROUTMAN SANDERS, LLP** Chrysler Building 405 Lexington Avenue New York, New York 10174	**TROUTMAN SANDERS, LLP**