No. 121281

IN THE SUPREME COURT OF ILLINOIS

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company,	)	On Appeal From the Appellate Court of Illinois, First Judicial District, No. 1-15-1876
Plaintiff-Appellee,	)	
v.	)	There Heard on Appeal From the Circuit Court of Cook County, Illinois
INTERSTATE WAREHOUSING, INC.	)	
Defendant-Appellant.	)	No. 14 L 7376
	)	Hon. John P. Callahan, Jr. *Judge Presiding*

BRIEF OF CERTAINTEED CORP., HONEYWELL INTERNATIONAL INC., AND UNION CARBIDE CORP. AS AMICI IN SUPPORT OF APPELLANT

Craig H. Zimmerman
Michael W. Weaver
McDermott Will & Emery LLP
227 West Monroe Street, Suite 4400
Chicago, IL 60606
(312) 372-2000
czimmerman@mwe.com
mweaver@mwe.com

Attorneys for Honeywell International Inc.

Michele Odorizzi
Richard F. Bulger
Gary A. Isaac
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600
modorizzi@mayerbrown.com

Attorneys for Union Carbide Corporation

Tobin J. Taylor
Heyl, Royster, Voelker & Allen, P.C.
33 N. Dearborn Street, 7th Floor
Chicago, IL 60602
(312) 853-8700
ttaylor@heylroyster.com

Attorneys for CertainTeed Corp.

POINTS AND AUTHORITIES

Page

POINTS AND AUTHORITIES
(Continued)

Page

Pursuant to Illinois Supreme Court Rule 345, CertainTeed Corp. ("CertainTeed"), Honeywell International Inc. ("Honeywell"), and Union Carbide Corp. ("Union Carbide") file this brief as *amici curiae* in support of appellant in the above-entitled case.

INTEREST OF THE AMICI CURIAE

CertainTeed, Honeywell, and Union Carbide are all frequently named as defendants in asbestos cases brought in Cook County and Madison County. In a significant number of those cases, plaintiffs do not have any basis for asserting that Illinois has specific jurisdiction over their claims against the *amici*: their complaints make no effort to connect their claims to Illinois and affirmatively allege that the plaintiffs live and were exposed to asbestos entirely outside of Illinois. As a result, the plaintiffs in these cases are forced to rely on principles of general jurisdiction in order to sue the *amici* in Illinois.

For many years, Illinois trial courts exercised general jurisdiction over the *amici* and similarly situated corporate defendants in asbestos cases on the theory that they were "doing business" in Illinois. *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), however, significantly altered the jurisdictional landscape. *Daimler* rejected the proposition that general jurisdiction can be based on continuous and systematic business activities in the forum state, describing what was often referred to as "doing business" jurisdiction as "unacceptably grasping." *Id.* at 761. The Court held that under the Due Process Clause a corporation is subject to general or "all-purpose" jurisdiction only where it is "essentially at home." *Id.* Moreover, *Daimler* made clear that "except in a truly 'exceptional' case, a corporate defendant may be treated as 'essentially at home' only where it is incorporated

or maintains its principal place of business." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016).

The Supreme Court assumed in *Daimler* that the rule it had articulated would be simple and easy to apply. As the Court observed, state of incorporation and principal place of business have the "virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." 134 S. Ct. at 760. As a result, it should be easy to resolve the issue of general jurisdiction "expeditiously at the outset of the litigation" without the need for "much in the way of discovery." *Id.* at 762 n.20. Unfortunately, in many trial courts in Illinois, that is not how *Daimler* is being applied.

As the First District's opinion in this case illustrates, there is confusion in the Illinois courts about what a plaintiff must plead to carry his or her burden of pleading a *prima facie* case for general jurisdiction under *Daimler*. *Amici* have a direct interest in the outcome of this case because, like defendant Interstate Warehousing, Inc. ("Interstate"), CertainTeed, Honeywell, and Union Carbide are not incorporated under Illinois law nor is Illinois their principal place of business. That should preclude plaintiffs from suing them in Illinois under a general jurisdiction theory unless plaintiffs can plead *facts* showing that theirs is a truly exceptional case where the ordinary presumption about where a corporation is "at home" does not apply.

That is not, however, what plaintiff did here, nor is it what plaintiffs do in the asbestos cases in which *amici* are repeatedly sued under a general jurisdiction theory. Instead, plaintiffs continue to allege only that the defendant is "doing business" in Illinois. If challenged, plaintiffs either argue that that is enough to meet their burden or they seek wide-ranging and burdensome discovery into the defendant's Illinois contacts

on the ground that defendants alone know whether they present the "exceptional case" the Supreme Court hypothesized in *Daimler*. Either way, defendants' due process rights are violated.

ARGUMENT

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). This limitation on a court's authority "protects [the defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 319 (1945)).

In *Daimler*, the Supreme Court "raised the bar for [general] jurisdiction" and "emphasized that it should not lightly be found." *Kipp v. Ski Enter. Corp. of Wis., Inc.*, 783 F.3d 695, 698 (7th Cir. 2015). General or "all-purpose" jurisdiction gives a court the power "to hear any and all claims against" a defendant regardless of where the claims arose. *Goodyear*, 564 U.S. at 919. A court has general jurisdiction over a foreign corporation only if it was "essentially at home" in the forum when the complaint was filed and served. *Id.*; *see also Daimler*, 134 S.Ct. at 758 n.11 (this test requires the defendant to be "comparable to a domestic enterprise in that State"). Again, "*Daimler* established that, except in a truly 'exceptional' case, a corporate defendant may be treated as 'essentially at home' only where it is incorporated or maintains its principal place of business." *Brown v. Lockheed Martin Corp.*, 814 F.3d at 627. This is a "demanding" standard. *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2310 (2015). Indeed, as the Fifth Circuit observed in *Monkton Ins. Servs., Ltd.*

v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014), under *Daimler*, it should be "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business."

In this case, the defendant was not incorporated in Illinois nor does it have its principal place of business here. As a result, plaintiff must—at some point—accomplish the "incredibly difficult" feat of proving that this is one of those rare cases where the defendant may nevertheless be deemed "at home" in Illinois. Where the Appellate Court went wrong was in assuming that the plaintiff could punt on that issue at the pleading stage and meet its burden of pleading a *prima facie* case of general jurisdiction by simply alleging that the defendant does business in Illinois. That conclusion is based on two separate errors. The first, discussed in Part I below, is the court's failure to recognize the high standard *Daimler* requires a plaintiff to meet to fit within the exception to the ordinary rule. The second, discussed in Part II below, is the court's refusal to apply Illinois' ordinary pleading rules to that high standard and its decision to improperly shift the burden to the defendant to disprove the existence of general jurisdiction.

If allowed to stand, the decision here would have a variety of negative consequences. Plaintiffs would be encouraged to file cases that have no real connection to Illinois. And, rather than being resolved promptly with little to no discovery, as *Daimler* contemplated, disputes over general jurisdiction would be long and costly. That would both burden the judicial system and deprive defendants of their due process rights by forcing them to litigate in a forum where they are not amenable to suit. *See* Part III.

I. Only In An Exceptional Case Can A Corporation Be Deemed "At Home" In A Forum Outside Of Its State Of Incorporation Or Principal Place Of Business.

As the Court explained in *Daimler*, "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [general] jurisdiction there." 134 S. Ct. at 760. With respect to a corporation, the "paradig[m] … bases for general jurisdiction" are its "place of incorporation and principal place of business." *Id*. Although the Court declined to "foreclose" the "possibility" that "a corporation's operations in a forum other than its formal place of incorporation or principal place of business" could "be so substantial and of such a nature as to render the corporation at home in that State," it emphasized that only an "exceptional case" would meet this standard. *Id.* at 761 n.19.

Daimler gave only one example of such an "exceptional case"—*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *Daimler*, 134 S. Ct. at 756 n.8. In *Perkins*, the defendant corporation had been forced to cease its mining operations in the Philippines when the country was invaded and occupied during World War II. With no operations to speak of, the company's president temporarily relocated its headquarters to Ohio. As a result, Ohio became the company's "principal, if temporary, place of business" and, "[g]iven the wartime circumstances," a "surrogate for the place of incorporation or head office." *Id.*

By contrast, the Court did not view the case before it as even coming close to the "exceptional" category. Plaintiffs there had sued Daimler AG in California on claims arising out of the alleged misconduct of a Daimler subsidiary in Argentina. It was undisputed that Daimler AG was a German corporation with its principal place of business in Germany. It was also undisputed that Daimler had extensive contacts, through

its U.S. subsidiary (MBUSA), with California.[1] That subsidiary had "multiple California-based facilities" and was "the largest supplier of luxury vehicles to the California market," selling billions of dollars worth of vehicles in California every year, which "account[ed] for 2.4% of Daimler's worldwide sales." *Id*. at 752; *see also,* 766-67 (Sotomayor, concurring). These facts would have been more than enough to subject Daimler to general jurisdiction in California under the old "doing business" test. But the Supreme Court concluded that *Daimler*'s facts presented "no occasion" even "to *explore*" whether the "exceptional case" standard was met, because "Daimler's activities in California plainly d[id] not approach that level." *Id.* at 761 n.19 (emphasis added).

The Court explained that it would be improper to focus solely on the defendant's activities in the forum state: general jurisdiction "does not focus solely on the magnitude of the defendant's in-state contacts" but "instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20 (internal quotation marks and brackets omitted). This is so because "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* Indeed, the Court noted that if MBUSA's activities in California "sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable." *Id.* at 761. The Court characterized that result as an "exorbitant exercise[] of all-purpose jurisdiction," which would violate due process by making it impossible for out-of-state defendants "'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render

[1] Daimler conceded and the Court therefore assumed that all of the contacts Daimler's U.S. subsidiary had with California should be imputed to the parent company. 134 S. Ct. at 762.

them liable to suit.'" *Id.* at 761-62 (quoting *Burger King*, 471 U.S. at 472).

As noted above, federal appellate courts have recognized how hard it is to fit within the possible exception to the ordinary rule noted in *Daimler*. As the Eleventh Circuit observed in *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1205 (11th Cir. 2015), plaintiffs would have to show that "the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business." In other words, the forum must be a "surrogate home state," just as Ohio was in *Perkins. Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 980 n.3 (N.D. Cal. 2016).

In this case, plaintiff did not allege any facts that even remotely suggest that Illinois is Interstate's "surrogate home state" or akin to its principal place of business—as opposed to one of a number of states in which Interstate does business. Nor did plaintiff offer any evidence to support that conclusion when Interstate sought to dismiss its complaint. The Appellate Court majority cited the fact that Interstate's website and letterhead advertise a warehouse in Joliet, that an Interstate employee is the general manager of the Joliet warehouse, and that Interstate is authorized to transact business in Illinois. 2016 IL App (1st) 151876 ¶ 54. But, as the dissenting Justice pointed out, Interstate's website and letterhead also advertised warehouses in Indiana (where Interstate is incorporated and has its principal place of business), Ohio, Colorado, Michigan, Tennessee and Virginia. *Id.*, ¶ 70. There was nothing in the complaint and no evidence to suggest that Interstate's operations in Illinois are such a substantial part of its overall business as to render it "at home" in Illinois.

Under those circumstances, the key issue is whose burden is it to offer facts either

supporting or negating the possibility that this is the kind of "exceptional case" the Supreme Court had in mind in *Daimler*. And just as importantly, can a plaintiff allege simply that a non-resident defendant "does business" in Illinois and use that allegation as a ticket to conduct discovery in an attempt to fit within *Daimler*'s exception? As demonstrated below, under well-settled Illinois law, it is plaintiff's burden to plead facts showing a *prima facie* case for jurisdiction. If a plaintiff fails to do so, its complaint should be dismissed. Plaintiffs should not be entitled to conduct a fishing expedition in the transparent hope of burdening the defendant to such an extent that it abandons the effort to dismiss the complaint or settles the lawsuit.

II. The Appellate Court Failed To Properly Apply Illinois' Fact-Pleading Rules.

Under Illinois law, "'[t]he plaintiff has the burden of proving a *prima facie* case for jurisdiction when seeking jurisdiction over a nonresident defendant,'" *Wiggen v. Wiggen*, 2011 IL App (2d) 100982, ¶ 20, and "must allege *facts* in its initial complaint upon which to base" the assertion of "jurisdiction over a nonresident defendant." *Illinois Commerce Comm'n v. Entergy-Koch Trading, LP*, 362 Ill. App. 3d 790, 795-96 (1st Dist. 2005) (citing *Heller Fin., Inc. v. Conagra, Inc.*, 166 Ill. App. 3d 1, 4 (1st Dist. 1988)). A plaintiff's failure to allege "facts upon which Illinois courts could base jurisdiction… is, in and of itself, fatal" to the assertion of personal jurisdiction. *Reeves v. Baltimore & Ohio R.R. Co.*, 171 Ill. App. 3d 1021, 1024 (1st Dist. 1988) (citing *Heller Fin.*, 166 Ill. App. 3d 1).

Under these well-settled principles, a court has no choice but to dismiss a complaint if, as in this case, a plaintiff's assertion of general jurisdiction is based on nothing more than allegations that the defendant had substantial business operations in Illinois. There can be no doubt that such allegations are insufficient to state a *prima facie*

case: *Daimler* "make[s] clear that even a company's 'engagement in a substantial, continuous, and systematic course of business' is alone insufficient to render it at home in a forum." *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir.), *cert. denied*, 134 S. Ct. 2888 (2014). The Appellate Court's contrary conclusion blatantly misinterprets *Daimler*. That is evident from the fact that the majority sought to justify its conclusion by relying on a case decided more than a decade before *Daimler*, at a time when courts throughout the country (mistakenly) believed that "doing business" in a state was sufficient to subject a corporation to general jurisdiction there. 2016 IL App (1st) 151876, ¶ 55.

It is also no answer to say, as the Appellate Court majority did, that in *Daimler* itself the defendant had presented evidence of the amount of business its subsidiary did in California. *Id.*, ¶ 58. Before the Supreme Court issued its decision in *Daimler*, it was unclear what the plaintiff was required to do to meet its pleading burden. After *Daimler* and in a fact-pleading state like Illinois, however, the defendant should not be required to do any more than Interstate did here—provide evidence that its state of incorporation and principal place of business are not in Illinois. That alone creates a presumption that there is no general jurisdiction over the defendant in Illinois.

The analysis is not altered by the fact that the defendant may "uniquely ha[ve] access" to information concerning the extent of its business operations in Illinois, as opposed to other states. *Id.*, ¶ 59. As Interstate points out, plaintiff chose not to seek any jurisdictional discovery. More importantly, however, plaintiffs should not be *entitled* either to take discovery or to demand that the defendant disprove the existence of general

jurisdiction where, as here, plaintiffs have failed to plead facts establishing a *prima facie* case for jurisdiction.

Numerous post-*Daimler* cases support this conclusion. For example, in *Patera v. Bartlett*, 2016 WL 773225, at *2-3 (N.D. Ill. Feb. 29, 2016), the court rejected plaintiff's argument that "she has met the burden of establishing general jurisdiction" by showing that "'Citibank has employees and offices in Illinois, they operate under Illinois licensing requirements, they solicit Illinois residents, they conduct extensive and deliberate business in Illinois and their regional hub is located in Chicago.'" The court held that allegations that focused solely on the defendants' Illinois activities and failed to consider the defendants' activities in their entirety were "insufficient to make a prima facie showing of general jurisdiction over the Citi Defendants." *Id.*[2]

[2] *See also Pentwater Equity Opportunities Master Fund, Ltd. v. Baker, Donelson, etc.*, 2016 WL 6476541, at *2 (N.D. Ill. Nov. 2, 2016) (Plaintiffs failed to make a *prima facie* showing by focusing solely on the defendant's Illinois contacts and were "not entitled to conduct discovery before their complaint is dismissed"); *Long v. Patton Hosp. Mgmt.*, LLC, 2016 WL 760780, at *5-6 (E.D. La. Feb. 26, 2016) (plaintiff failed to make a *prima facie* case for general jurisdiction where "Louisiana is just one of the many states in which [defendant] manages properties" and "Plaintiff, who bears the burden on this motion, has not established that [defendant] is any more active in Louisiana than it is in any other state in which it operates"); *Muraco v. Sandals Resorts Int'l*, 2015 WL 9462103, at *5 (E.D.N.Y. Dec. 28, 2015) (granting motion to dismiss because "Plaintiff has not alleged that Defendants' principal places of business are in New York, that Defendants are incorporated in New York or that Defendants' activities in New York, as compared to their international activities, would otherwise indicate that Defendants are 'at home' in New York State"); *United Safeguard Distributors Ass'n, Inc. v. Safeguard Business Systems, Inc.*, 145 F. Supp. 3d 932, 943 (C.D. Cal. 2015) (granting motion to dismiss where defendants were neither incorporated nor had their principal places of business in California and plaintiffs had made no effort in their complaint "to demonstrate that this is an 'exceptional case'" under *Daimler*); *Campbell v. Fast Retailing USA, Inc.*, 2015 WL 9302847, at *3 (E.D. Pa. Dec. 22, 2015) (a complaint that alleged only that defendants "did business" in the state failed to establish a prima facie case for general jurisdiction).

As the Supreme Court observed in *Daimler*, "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home." 134 S. Ct. at 762 n.20. The Illinois Secretary of State's website provides considerable information about corporations and partnerships.[3] If a defendant is a public company, information about its state of incorporation, principal place of business, and nationwide operations will also be readily available from documents it is required to file with the Securities Exchange Commission. And even a privately held company's website is likely to have a great deal of information showing at a glance whether the plaintiff is likely to be able to assert general jurisdiction in a particular state. Interstate's website proves the point: it lists Indiana as the company's primary address and has pictures of its warehouse facilities throughout the country. *See* https://www.tippmanngroup.com/interstate-warehousing. Just looking at the pictures makes it clear that the likelihood of a plaintiff being able to show that Interstate is "at home" in Illinois is slim and none.

"For jurisdictional discovery to be warranted, plaintiff must provide some basis to believe that discovery will lead to relevant evidence and provide a foundation for the exercise of personal jurisdiction. Where courts have 'little more than a hunch' that discovery might yield relevant facts, courts have denied jurisdictional discovery." *Brady v. Southwest Airlines Co.*, 2015 WL 4074112, at *4 (D. Nev. July 6, 2015). The "exceptional case" described in *Daimler* is likely to be extremely rare. As a result, jurisdictional discovery should never be routinely granted when the defendant is neither incorporated in the forum State nor has its principal place of business there. Instead,

[3] See https://www.cyberdriveillinois.com/departments/business_services/corp.html; http://www.ilsos.gov/lprpsearch/. In this case, a simple search of the Secretary of State's website would have revealed in a matter of seconds that Interstate Warehousing, Inc. is an Indiana corporation authorized to conduct business in Illinois as a foreign corporation.

plaintiffs should be allowed to take discovery in such cases only if they can offer a reasonable basis for believing that the defendant might fit within the *Daimler* exception *and* show that the discovery they request is narrowly tailored to seek the kind of evidence necessary to do so.[4]

III. The Lower Courts' Disregard Of *Daimler* Has Produced A Number Of Adverse Consequences.

Daimler articulated simple rules for determining when a state can exercise general jurisdiction over a corporation. The benefits of having simple rules are clear. First, it avoids forum-shopping, thus reducing the risks of gamesmanship. Second, it avoids lengthy battles over the threshold issue of where the litigation should proceed, enabling courts to devote their scarce resources to addressing the merits of the plaintiffs' claims. Third, "'[s]imple jurisdictional rules. . . promote greater predictability.'" *Daimler*, 134 S.Ct. at 760. Predictability serves both plaintiffs and defendants. It gives plaintiffs one or more forums where they know the defendant can be sued. And it enables corporations, like individuals, "'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Daimler*, 134 S.Ct at 761-62 (quoting *Burger King*, 471 U.S. at 472).

---

[4] Precisely because the *Daimler* standard is so stringent, courts routinely deny jurisdictional discovery in cases like this, where the defendant is not incorporated in the forum and does not have its principal place of business there. *See, e.g., Andrews v. Mazda Motor Corp.*, 2015 WL 1851159, at * 7 (N.D. Ga. Apr. 22, 2015) (denying discovery where "Plaintiff has failed to establish a *prima facie* case of personal jurisdiction" "to avoid burdening the defendant and to promote the efficient administration of justice"); *In re Deutsche Bank Sec. Inc.*, 2015 WL 4079280, at *6 (Tex. App. July 3, 2015) (trial court erred in permitting discovery regarding general jurisdiction because plaintiff "did not make any allegations in its petition that suggests that [defendant's] business practices in Texas would fall within the narrow exception crafted by the Supreme Court" in Daimler); *American Wave Machines, Inc. v. Surf Lagoons, Inc.*, 2014 WL 10475281, at *9 (S.D. Cal. Nov. 12, 2014) (denying jurisdictional discovery where the plaintiff's request was "based on no more than a hope that it might yield jurisdictionally relevant facts").

By contrast, when lower courts fail to follow *Daimler*'s simple rules, as they did here, the result is inevitably more litigation and more forum-shopping. Denying well-founded motions to dismiss or allowing plaintiffs to pursue wide-ranging discovery without any basis for believing the defendant's situation might be exceptional serves only to put undue pressure on out-of-state defendants to give up their due process rights or to settle cases that never should have been brought in Illinois. That not only harms defendants, but also burdens the judicial system by forcing it to deal with cases that have no connection to Illinois. There is no better example than the asbestos docket in Madison County: according to a recent study, in 2015 only six percent of asbestos cases filed in Madison County involved Illinois residents.[5]

CONCLUSION

For the foregoing reasons, the *amici* urge the Court to reverse the judgment below.

Respectfully submitted,

Dated: February 1, 2017

/s Michele Odorizzi

Craig H. Zimmerman
MCDERMOTT WILL & EMERY LLP
340 Madison Avenue
New York, New York 10183
(212) 547-5400
czimmerman@mwe.com
ARDC No: 6202118

Attorneys for Honeywell International Inc.

Michele Odorizzi
Richard F. Bulger
Gary A. Isaac
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600
modorizzi@mayerbrown.com

Attorneys for Union Carbide Corporation

[5] *See* http://madisonrecord.com/stories/510703276-madison-county-asbestos-filings-total-1-224-only-6-percent-filed-on-behalf-of-illinois-residents#.WI-oxqNbJA5.email.

Tobin J. Taylor
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
33 N. Dearborn Street, 7th Floor
Chicago, IL 60602
(312) 853-8700
ttaylor@heylroyster.com

Attorneys for CertainTeed Corp.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service is 14 pages.

s/ Michele Odorizzi

No. 121281

IN THE SUPREME COURT OF ILLINOIS

ASPEN AMERICAN INSURANCE CO., as subrogee of Eastern Fish Company,	)	On Appeal From the Appellate Court of Illinois, First Judicial District, No. 1-15-1876
Plaintiff-Appellee,	)	
v.	)	There Heard on Appeal From the Circuit Court of Cook County,
INTERSTATE WAREHOUSING, INC.	)	Illinois
Defendant-Appellant.	)	No. 14 L 7376
	)	Hon. John P. Callahan, Jr.
	)	*Judge Presiding*

NOTICE OF FILING

Timothy S. McGovern
SWANSON MARTIN & BELL LLP
330 N. Wabash, Ste. 3300
Chicago, IL 60611
tmcgovern@smbtrials.com

Kimberly A. Jansen
HINSHAW & CULBERTSON LLP
222 N. LaSalle Street, Suite 300
Chicago, IL, 60601
kjansen@hinshawlaw.com

PLEASE TAKE NOTICE that on February 1, 2017, we electronically filed the MOTION OF CERTAINTEED CORP., HONEYWELL INTERNATIONAL INC., AND UNION CARBIDE CORP. FOR LEAVE TO FILE INSTANTER AMICUS BRIEF IN SUPPORT OF APPELLEES, a Proposed Order, and the foregoing BRIEF OF CERTAINTEED CORP.,

HONEYWELL INTERNATIONAL INC., AND UNION CARBIDE CORP. AS AMICI IN SUPPORT OF APPELLEES with the Clerk of the Illinois Supreme Court, copies of which are hereby served upon you..

Dated: February 1, 2017

s/ Michele Odorizzi
One of the attorneys for *Amici*

Craig H. Zimmerman
Michael W. Weaver
McDERMOTT WILL & EMERY LLP
227 West Monroe Street, Suite 4400
Chicago, IL 60606
(312) 372-2000
czimmerman@mwe.com
mweaver@mwe.com

Attorneys for Honeywell International Inc.

Michele Odorizzi
Richard F. Bulger
Gary A. Isaac
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600
modorizzi@mayerbrown.com

Attorneys for Union Carbide Corporation

Tobin J. Taylor
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
33 N. Dearborn Street, 7th Floor
Chicago, IL 60602
(312) 853-8700
ttaylor@heylroyster.com

Attorneys for CertainTeed Corp.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Proposed Amicus Union Carbide Corp. and that she served the MOTION OF CERTAINTEED CORP., HONEYWELL INTERNATIONAL INC., AND UNION CARBIDE CORP. FOR LEAVE TO FILE INSTANTER THEIR BRIEF AS AMICI CURIAE IN SUPPORT OF APPELLANT, the Proposed Order submitted herewith, and the foregoing BRIEF OF CERTAINTEED CORP., HONEYWELL INTERNATIONAL INC., AND UNION CARBIDE CORP. AS AMICI IN SUPPORT OF APPELLANT on all counsel of record by causing a copy thereof to be sent via email on February 1, 2017 to counsel at the email addresses listed below:

Timothy S. McGovern
SWANSON MARTIN & BELL LLP
330 N. Wabash, Ste. 3300
Chicago, IL 60611
tmcgovern@smbtrials.com

Kimberly A. Jansen
HINSHAW & CULBERTSON LLP
222 N. LaSalle Street, Suite 300
Chicago, IL, 60601
kjansen@hinshawlaw.com

/s Michele Odorizzi
Michele Odorizzi