No. C3-02-857

STATE OF MINNESOTA
IN COURT OF APPEALS

Ronald Peterson, et al.,

Respondents,

v.

BASF Corporation, a foreign corporation,

Appellant.

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT BASF CORPORATION

Hugh V. Plunkett, III (#87282)
Robert K. Shelquist (#21310X)
Yvonne M. Flaherty (#267600)
LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2179
(612) 339-6900

Douglas J. Nill (#194876)
DOUGLAS J. NILL LAW OFFICE
1100 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402-1801
(612) 573-3669

Counsel for Plaintiffs/Respondents

James A. O'Neal (#8248X)
Bruce Jones (#179553)
FAEGRE & BENSON, L.L.P.
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

Kenneth F. Johannson (#5043X)
JOHANNSON, RUST, FAGERLUND,
YON & STOCK, P.A.
407 North Broadway
P.O. Box 605
Crookston, MN 56716
(218) 281-2400

Counsel for Appellant

Robin S. Conrad
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, DC 20062
(202) 463-5337

Evan M. Tager
Richard B. Katskee
MAYER, BROWN, ROWE & MAW
1909 K Street, N.W.
Washington, DC 20006
(202) 263-3000

Counsel for* Amicus Curiae *Chamber of Commerce of the United States

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES — Continued

Page

Statutes

TABLE OF AUTHORITIES — Continued

Page

TABLE OF AUTHORITIES — Continued

Page

Miscellaneous

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States ("the Chamber") is the world's largest business federation, representing an underlying membership of more than three million businesses and organizations. The Chamber's members do business in all fifty states and regularly defend against class actions of both the single- and multi-state varieties, as well as consumer suits more generally. Accordingly, the instant appeal involves legal issues of critical importance to the Chamber's membership. Of particular interest to the Chamber is the question of whether the statutory consumer fraud law of one state can be applied extraterritorially to the claims of a nationwide class arising out of a multitude of separate consumer transactions that occurred in other states.[1/]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Norman County District Court shoehorned the claims of thousands of persons residing in all fifty states into a single class action by holding that all of those claims could be tried under New Jersey law. It did so even though (1) most of the putative class members reside outside New Jersey; (2) defendant BASF's products were developed and manufactured outside New Jersey; (3) the products were labeled outside New Jersey; (4) advertising for them was created and in most cases communicated from outside New Jersey; (5) most of the members of the plaintiff class who actually saw the product labels and/or advertisements did so in states other than New Jersey; (6) most of the oral representations made to class

---

[1/] Pursuant to Minn. R. Civ. App. P. 129.03, *amicus* certifies that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than *amicus*, its members, or its counsel has made a monetary contribution to this brief's preparation or submission.

members about the products occurred outside New Jersey; (7) most of the sales of the products occurred outside New Jersey; (8) most of the class members' alleged injuries occurred outside New Jersey; and (9) each of New Jersey's 49 sister states exercises independent regulatory authority over the registration and use of the products within its borders. The district court's determination that this sprawling class action could be adjudicated under New Jersey law thus not only is inconsistent with Minn. R. Civ. P. 23 and Minnesota's choice-of-law rules, but also impermissibly projects New Jersey's regulatory power beyond its jurisdiction, infringing the sovereign authority of Minnesota and 48 other states in violation of the Due Process, Full Faith and Credit, and Commerce Clauses of the U.S. Constitution.

ARGUMENT

The district court applied the New Jersey Consumer Fraud Act ("NJCFA"), N.J. STAT. ANN. § 56:8-2, -19, to the claims of a nationwide class of thousands of growers of "minor crops" who purchased BASF's Poast herbicide at any point during the years 1992 through 1997, despite the fact that only a small fraction of the class actually resided or made Poast purchases in New Jersey. The court correctly recognized that consumer fraud statutes differ materially from state to state. *See* AA 805[2/] ("Having reviewed the applicable statutes of all fifty states, the Court finds there are conflicts with the New Jersey Consumer Fraud Act that could alter the out-come [sic]."); *id.* at 807-08 ("each state varies the rights and remedies afforded in their [consumer fraud] statutes"). It nonetheless failed even to consider whether

---

[2/] "AA" citations refer to Appellant's Appendix.

it might have to apply the laws of more than one state to the class members' claims. Instead, the court treated the thousands of individual claims as though they were one massive "composite" claim subject to a single jurisdiction's laws, and confined its choice-of-law inquiry to the question of ***which*** state — New Jersey or some other one — should be the one to have its laws enforced nationwide. *See, e.g.*, *id.* at 807 ("not one particular state has substantially more contacts with the parties or their claim than another"); *id.* ("This Court can apply the law of any one of the fifty states without too much difficulty. This factor does not weigh in favor of New Jersey or any of the other fifty states."). The court then found that New Jersey had just as much right to have its policy preferences govern the claims of non-New Jersey class members as any other state. *See, e.g.*, *id.* at 806 ("The Plaintiffs from the State of Minnesota could have predicted that their claims would have been resolved by Minnesota courts, rather than New Jersey, however, this is not true of Plaintiffs from the other fifty states. It is foreseeable that a cause of action brought against the Defendant could have been [sic] arisen in any one of the fifty states, including New Jersey. [The goal of predictability of results] does not weigh in favor of New Jersey or any of the other forty-nine states."). In other words, the court simply assumed that it could adjudicate a 50-state class action under the laws of a single state, and then proceeded to reason that the NJCFA could apply extraterritorially to the claims of the entire class because New Jersey has no less — but also no more — right to regulate transactions occurring outside its borders than does any other state.

1. That determination ignores the threshold question whether ***any*** single state has the right to project its regulatory authority beyond its borders to cover transactions between BASF and class members that occurred entirely in other states — a proposition that federal and state courts across the country have consistently rejected.[3/]

[3/] *See, e.g.*, *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568-73 (1996) (Alabama jury could not apply Alabama law to punish defendant for transactions taking place in other states); *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (Commerce Clause "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders") (internal quotation marks omitted); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 582-83 (1986) (rejecting New York's attempt to "project its legislation" into other states) (internal quotation marks omitted); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818-23 (1985) (Kansas court could not apply forum law to claims of class members who had no connection with Kansas); *Edgar v. MITE Corp.*, 457 U.S. 624, 641-43 (1982) (plurality op.) (Illinois anti-takeover statute impermissibly regulated transactions occurring entirely outside of Illinois); *Bigelow v. Virginia,* 421 U.S. 809, 824 (1975) ("[a] State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *New York Life Ins. Co. v. Head,* 234 U.S. 149, 161 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State * * * without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends."); *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881) ("[n]o State can legislate except with reference to its own jurisdiction"); *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012, 1018 (7th Cir. 2002); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1300-02 (7th Cir. 1995); *Poe v. Sears, Roebuck & Co.*, No. 96-CV-358-RLV, 1998 WL 113561, at *4 (N.D. Ga. Feb. 13, 1998); *In re Ford Motor Co. Bronco II Prod. Liab. Litig.*, 177 F.R.D. 360, 371 (E.D. La. 1997); *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig.*, 174 F.R.D. 332, 348 (D.N.J. 1997); *In re Masonite Corp. Hardboard Siding Prods. Liab. Litig.*, 170 F.R.D. 417, 423 (E.D. La. 1997); *Endo v. Albertine*, No. 88-C-1815, 1995 WL 170030, at *5 (N.D. Ill. Apr. 7, 1995); *Goshen v. Mutual Life Ins. Co.*, 2002 slip op. 05518, 2002 WL 1418408 (N.Y. July 2, 2002); *Oliveira v. Amoco Oil Co.*, 726 N.E.2d 51, 61-62 (Ill. App. Ct. 2000), *rev'd in part and vacated in part on other grounds*, 2002 WL 1340895 (Ill. June 20, 2002); *Duvall v. TRW, Inc.*, 578 N.E.2d 556, 559 (Ohio Ct. App. 1991).

Most notably, the U.S. Supreme Court has held that the Due Process and Full Faith and Credit Clauses prohibit application of one state's laws to the claims of persons in other states without "a significant contact or significant aggregation of contacts to the claims asserted by each member of the plaintiff class." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985) (internal quotation marks omitted). Likewise, the U.S. Supreme Court has held that the Commerce Clause bars a "single State [from] impos[ing] its own policy choice on neighboring States" (*BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996)), and instead preserves the sovereign authority of each state to regulate conduct occurring within its own borders. Thus, the district court's underlying assumption — that one jurisdiction's consumer fraud act could be applied to the claims of the entire plaintiff class — would have been erroneous as a matter of law no matter which state's statutory scheme plaintiffs had sought to invoke.

2. Furthermore, *Shutts* established that the "expectation of the parties" as to which jurisdiction's laws would apply to claims between them is an "important element" of the due process analysis. *Shutts*, 472 U.S. at 822; *cf.* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 cmt. g ("it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state"). Thus, in a class action arising out of individual transactions between a defendant and the various members of a plaintiff class, the choice of law governing each claim should reflect the mutual expectations of the particular class member and defendant involved in each separate transaction. Residents of Minnesota or North Dakota or Alaska

who viewed BASF product labels and advertisements in their home state, purchased Poast herbicide in that state, and used it on crops in that state would, for example, logically infer that any dispute they might have with BASF would be resolved in accordance with the laws of Minnesota or North Dakota or Alaska, and would not reasonably expect New Jersey law to apply instead. And in light of *Shutts*, *BMW*, and the other decisions of the U.S. Supreme Court, BASF would reach that same conclusion.

3. The constitutional requirement that the laws of each state must be applied to the claims of the class members residing in that state is not merely academic. As the U.S. Supreme Court has explained:

> No one doubts that a State may protect its citizens by prohibiting deceptive trade practices * * *. But the States need not, and in fact do not, provide such protection in a uniform manner. * * * The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.

BMW, 517 U.S. at 568-70; *accord In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012, 1018 (7th Cir. 2002) ("State consumer-protection laws vary considerably, and courts must respect these differences rather than apply one state's law to sales in other states with different rules.").

To take only the most obvious example, plaintiffs' case is premised on the theory that BASF's use of different names, labels, and marketing/advertising strategies for Poast and Poast Plus is sufficient to constitute statutory consumer fraud in New Jersey even though these actions were expressly authorized — and in some respects required — by federal and state law. At least 30 other states — including Minnesota — expressly exempt from their

consumer fraud acts conduct that complies with government regulations.[4/] Thus, even accepting for the sake of argument that the claims in this case might be viable under the NJCFA,[5/] they clearly are not under the laws of Minnesota and at least 29 other states.

As the district court recognized, such differences among state consumer fraud laws could well be outcome-determinative in this case. *See* AA 805, 807-08. Indeed, as the foregoing analysis makes clear, well over half of New Jersey's sister states apparently have decided as a matter of public policy to bar the very type of claims that plaintiffs brought here. The "state sovereignty and comity" concerns underlying *BMW* dictate that these different legislative choices must be respected, and hence that New Jersey "may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *See BMW*, 517 U.S. at 572.

[4/] *See* ALASKA STAT. § 45.50.481(a)(1); ARK. CODE ANN. § 4-88-101(3); COLO. REV. STAT. § 6-1-106; CONN. GEN. STAT. § 42-110c(a)(1); DEL. CODE ANN. tit. 6, § 2534(a)(1); GA. CODE ANN. §§ 10-1-374(a)(1), -396(1); HAW. REV. STAT. § 481A-5(a)(1); IDAHO CODE § 48-605(1); 815 ILL. COMP. STAT. 505/10b(1), 510/4(1); IND. CODE § 24-5-0.5-6; KY. REV. STAT. ANN. § 367.176; ME. REV. STAT. ANN. tit. 5, § 208(1), tit. 10, § 1214(1)(A); MASS. GEN. LAWS ch. 93A, § 3; MICH. COMP. LAWS § 445.904(1)(a); MINN. STAT. § 325D.46(1); NEB. REV. STAT. §§ 59-1617, 87-304(a)(1); NEV. REV. STAT. 598.0955(1)(a); N.H. REV. STAT. ANN. § 358-A:3; N.M. STAT. ANN. § 57-12-7; OHIO REV. CODE ANN. §§ 1345.12(A), 4165.04(A)(1); OKLA. STAT. tit. 78, § 55(A)(1); OR. REV. STAT. § 646.612(1); R.I. GEN. LAWS § 6-13.1-4; S.C. CODE ANN. § 39-5-40(a); S.D. CODIFIED LAWS § 37-24-10; TENN. CODE ANN. § 47-18-111(a)(1); UTAH CODE ANN. § 13-11-22(1)(a); VA. CODE ANN. § 59.1-199(A); WASH. REV. CODE § 19.86.170; WYO. STAT. ANN. § 40-12-110(a)(i).

[5/] For the reasons articulated in appellant's brief, *amicus* does not believe that plaintiffs' cause of action is viable even under New Jersey law. As for the remaining states, there is no reason to assume *a priori* that they would permit claims such as the ones in this case notwithstanding the lack of an express exemption in their statutes.

Yet that is precisely the result of the judgment below: The district court's application of the NJCFA to all class members' claims unconstitutionally overrides the authority of Minnesota and 48 other states to decide for themselves how they wish to regulate consumer transactions occurring within their own borders, and in essence permits New Jersey to effectuate a nationwide policy governing the naming, labeling, advertising, and marketing of herbicides, the conflicting legislative judgments of Minnesota or any other state notwithstanding. *See generally BMW*, 517 U.S. at 572 n.17 ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute"); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("regulation can be as effectively exerted through an award of damages as through some form of preventive relief"). Under *Shutts* and *BMW*, that ruling cannot stand. *See BMW*, 517 U.S. at 571 ("while we do not doubt that Congress has ample authority to enact * * * a [consumer protection] policy for the entire Nation, it is clear that no single State could do so, or even impose its own policy choice on neighboring States." (footnote omitted)); *Shutts*, 472 U.S. at 822 (one state "'may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them'" (quoting *Home Ins. Co. v. Dick*, 281 U.S. 397, 410 (1930)).

4. Nor is this constitutional infirmity overcome by the fact that BASF's corporate headquarters is in New Jersey or by plaintiffs' claim that BASF's herbicide marketing policies "emanated" from that State. New Jersey undeniably has the right to enact consumer protection statutes to shield its residents from deceptive and unfair business practices. And, to the extent not preempted by FIFRA, it has the right to enforce those statutes to regulate

herbicide sales to New Jersey residents for use on New Jersey farms. Under the Full Faith and Credit Clause, however, the defendant's place of domicile does not give New Jersey significant contacts to, or a legitimate forum interest in, "the claims asserted by each member of the plaintiff class." *Shutts*, 472 U.S. at 821. Likewise, the Commerce Clause forbids New Jersey from dictating to other states how business should be conducted there, and prevents New Jersey from imposing restraints — ***even on its own citizens*** — that would needlessly restrict commerce in those other states. *See Edgar v. MITE Corp.*, 457 U.S. 624, 640-46 (1982) (plurality op.) (holding that Illinois' anti-takeover statute, which interfered with offeror's tender for shares held by non-Illinois residents, violated the Commerce Clause even when applied to tender offer for Illinois corporation). It follows that New Jersey has no forum interest in regulating herbicide advertising, labeling, or sales outside its borders to persons living in other states for use on their non-New Jersey farms. *See, e.g.*, *Poe v. Sears, Roebuck & Co.*, No. 96-CV-358-RLV, 1998 WL 113561, at *4 (N.D. Ga. Feb. 13, 1998) (applying law of state in which defendant is headquartered to multi-state class "would not pass constitutional muster"); *In re Ford Motor Co. Bronco II Prod. Liab. Litig.*, 177 F.R.D. 360, 371 (E.D. La. 1997) (Michigan law could not be applied in nationwide class action even though defendant was headquartered in Michigan); *Goshen v. Mutual Life Ins. Co.*, 2002 slip op. 05518, 2002 WL 1418408 (N.Y. July 2, 2002) (applying New York consumer fraud law to transactions occurring in other states based on claim that defendant "'hatch[ed] a scheme' or "originat[ed] a marketing campaign in New York" would improperly "tread on the ability of other states to regulate their own markets and enforce their own consumer protection

laws"); *Oliveira v. Amoco Oil Co.*, 726 N.E.2d 51, 61 (Ill. App. Ct. 2000) (denying certification of nationwide class action alleging Illinois Consumer Fraud Act violation on ground that, under *Shutts*, "Illinois has no authority to regulate out-of-state transactions affecting non-Illinois citizens, * * * and has no interest in doing so"), *rev'd in part and vacated in part on other grounds*, 2002 WL 1340895 (Ill. June 20, 2002) (dismissing as moot the question whether class could be certified because plaintiffs' "market theory" of price inflation injury did not state cause of action for consumer fraud under Illinois law).

5. If any further reason for rejecting the trial court's approach is needed, the adage "what's sauce for the goose is sauce for the gander" provides it. Under the trial court's logic, just as it is permissible to apply the NJCFA to the claims of non-New Jersey customers of BASF in order to make a nationwide class manageable, so too would it be permissible to apply Indiana's consumer fraud act to the claims on non-Indianans when the defendant company is an Indiana domiciliary. That might be beneficial to the lawyers seeking to represent such a class, who would no doubt wind up with a large settlement and juicy attorneys' fee award no matter which law is deemed applicable, but it would be quite disadvantageous to the individual non-Indiana class members because Indiana's consumer fraud law is among the most restrictive in the country.[6/]

[6/] To begin with, unlike most other states, Indiana requires written notice to the defendant before a consumer fraud act case may be filed, and imposes extremely short limitations periods for such notice. *See* IND. CODE § 24-5-0.5.5(a)). In addition, Indiana's statute of limitations for consumer fraud claims is 2 years, and hence is substantially shorter than the limitations periods provided by most other states. *Compare id.* § 24-5-0.5.5(b) *with Scott v. Forest Lake Chrysler-Plymouth Dodge*, 637 N.W.2d 587, 594 (Minn. Ct. App. 2002) (6-year limitations period), *and Mirra v. Holland Am. Line*, 751 A.2d 138, 140 (N.J. Super.

Needless to say, the choice-of-law determination cannot turn on whose ox is being gored. If New Jersey is to rule the country when it comes to regulating the consumer transactions of BASF, then Indiana must rule the country when it comes to regulating the consumer transactions of Eli Lilly or other Indiana domiciliaries. That approach not only is irreconcilable with the principle that each state is sovereign within its own geographical territory but also is unfair to citizens of states with comparatively pro-consumer laws, who will be relegated to whatever protections some other state chooses to provide when dealing with companies located in that other state.

CONCLUSION

The judgment of the district court should be reversed.

Ct. App. Div. 2000) (same). In addition to these procedural restrictions, Indiana has limited the cause of action itself more than have many other states. For example, unlike the NJCFA, Indiana's consumer fraud statute expressly exempts conduct taken in conformity with government regulations. *See* IND. CODE § 24-5-0.5-6. Moreover, Indiana, unlike many states, has not abandoned the requirement that plaintiffs establish that they relied on the allegedly misleading statement or omission. *See id.* § 24-5-0.5-6. Finally, unlike many states, Indiana limits recovery to actual damages (except when the victim is "elderly"). *Compare id*. § 24-5-0.5.4(a), (h) *with, e.g.*, N.J. STAT. ANN. § 56:8-19 (providing for mandatory treble damages).

Respectfully submitted,

Robin S. Conrad
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, DC 20062
(202) 463-5337

Evan M. Tager
Richard B. Katskee
MAYER, BROWN, ROWE & MAW
1909 K Street, N.W.
Washington, DC 20006
(202) 263-3000

Counsel for Amicus Curiae *Chamber of Commerce of the United States*

Date: August 21, 2002

CERTIFICATE OF COMPLIANCE WITH THE REQUIREMENTS OF MINN. R. CIV. APP. P. 132.01

I, Evan M. Tager, one of the attorneys for the *amicus curiae*, hereby certify that this brief complies with the form and length requirements of Minnesota Rule of Civil Appellate Procedure 132.01, Subdivision 3. Attorneys for *amicus* prepared this brief using the word processing software WordPerfect 9.0.0.738. The *amicus* brief was printed in 13-point type using the proportional font "Times New Roman." According to the software's word count utility, the brief contains 3,497 words, and hence is within the 3,500 word limit set by this Court's order dated July 2, 2002.

_____

Evan M. Tager

August 21, 2002

No. C3-02-857

STATE OF MINNESOTA
IN COURT OF APPEALS

Ronald Peterson, et al.,

Respondents,

v.

BASF Corporation, a foreign corporation,

Appellant.

AFFIDAVIT OF SERVICE

DISTRICT OF COLUMBIA)
) ss.
CITY OF WASHINGTON)

RICHARD B. KATSKEE of the City of Washington, in the District of Columbia, being duly sworn, says that on the 21st day of August, 2002, he served two copies each of the Brief of the Chamber of Commerce of the United States As *Amicus Curiae* in Support of Appellant BASF Corporation on the following persons by placing them, charges prepaid, in the U.S. Mail, scheduled for overnight delivery:

Hugh V. Plunkett, III (#87282)
Robert K. Shelquist (#21310X)
Yvonne M. Flaherty (#267600)
LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2179
(612) 339-6900

Douglas J. Nill (#194876)
DOUGLAS J. NILL LAW OFFICE
1100 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402-1801
(612) 573-3669

Counsel for Plaintiffs/Respondents

James A. O'Neal (#8248X)
Bruce Jones (#179553)
FAEGRE & BENSON, L.L.P.
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

Kenneth F. Johannson (#5043X)
JOHANNSON, RUST, FAGERLUND, YON & STOCK, P.A.
407 North Broadway
P.O. Box 605
Crookston, MN 56716
(218) 281-2400

Counsel for Appellant

Julie Ralston Aoki
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Counsel for Proposed Amicus Curiae
Office of the Minnesota Attorney General

Affiant further says that he served two copies each of the aforementioned brief on the following persons by placing them, charges prepaid, in First Class U.S. Mail:

Hon. Robert Bork
AMERICAN ENTERPRISE INSTITUTE
1150 17th Street, NW
Washington, DC 20036

Lawrence S. Ebner
MCKENNA LONG & ALDRIDGE LLP
1900 K Street, NW
Washington, DC 20006

Counsel for Amicus Curiae
CropLife America

Robert E. Litan
Director, Economic Studies Program
BROOKINGS INSTITUTION
1775 Massachusetts Avenue, NW
Washington, DC 20036

Counsel for Amicus Curiae
American Enterprise Institute

Robert H. Morse
ESROM CONSULTING, LLC
1301 K Street, NW, Suite 600
East Tower
Washington, DC 20005

Counsel for Amici Curiae
National Association of Manufacturers and American Chemistry Council

Wayne D. Struble
BOWMAN AND BROOKE, LLP
150 South Fifth Street, Suite 2600
Minneapolis, MN 55402

Counsel for Amicus Curiae
Products Liability Advisory Council

Richard Samp
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Avenue, NW
Washington, DC 20036

Counsel for Amicus Curiae
Washington Legal Foundation Counsel

_____
Richard B. Katskee

Subscribed and sworn to before me
this 21st day of August, 2002.

_____
Notary Public