EXECUTIVE SUMMARY

Petitioners strongly support the Michigan Supreme Court's Administrative Order No. 2006-6 as a vital measure to protect Petitioners' Constitutional rights of due process. Although Petitioners believe that instituting an inactive docket for asbestos cases is also needed to remedy this litigation and ensure equity and fairness, Petitioners believe that this Order is a step in the right direction.

Before entry of this Order, the Wayne County Circuit Court, as an example, engaged in the practice of "bundling" approximately 100 asbestos personal injury cases for settlement and trial every other month. Cases were "bundled," not by disease, condition, or similarity of facts and circumstances, but rather by the firm representing the plaintiffs. For example, in January 2006, Goldberg, Persky and White, P.C. had 95 cases scheduled for trial. Ex. A, January 2006 Trial Schedule, Third Judicial Circuit Court of Michigan, Asbestos Docket-Personal Injury, p. 3. In March 2006, Michael B. Serling, P.C. had 101 cases scheduled for trial. *Id.* This pattern was scheduled to continue through at least 2007. *Id.* Typically, only a handful of the approximately 100 cases consolidated for settlement and trial involved plaintiffs who were actually sick. Therefore, in order to resolve cases involving truly sick plaintiffs, such as those with mesothelioma and malignancies, defendants were forced to pay money to the overwhelming numbers of plaintiffs who are not impaired. The Order makes certain that this practice will not continue.

As noted by Justice Markman's concurrence, this Order will ensure that each claim is evaluated on its own merits. Defendants will no longer be forced into the untenable position of choosing whether to settle claims, where there is little to no asbestos-related impairment, under the threat of consolidated trials involving seriously ill plaintiffs.

By issuing this Order, Michigan joins the Ohio Supreme Court which adopted an anti-consolidation rule for asbestos cases in July, 2005. Two other states, Georgia and Texas, recently enacted anti-consolidation statutes that parallel the Michigan and Ohio rules.

ENACTMENT OF ANTI-CONSOLIDATION AND INACTIVE DOCKETS TO PROTECT DUE PROCESS RIGHTS AND ENSURE MONEY GOES TO THOSE WHO ARE SICK

A. The Ohio Anti-Consolidation Court Rule For Asbestos Actions

In September 2004, the Ohio legislature established an inactive asbestos docket. *See*, OH REV CODE § § 2307.91-2307.98. In so doing, the Ohio legislature recognized that "sixty-five per cent of the compensation paid, thus far, has gone to claimants who are not sick." Ex. B, Am. Sub. H.B. No. 292, Section 3(A)(2), 125th General Assembly, State of Ohio. The Ohio legislature further found that "the vast majority of Ohio asbestos claims are filed by individuals who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but who do not suffer from an asbestos related impairment." *Id.*, Section 3(A)(5).

When the legislature passed the inactive docket, it asked that the Ohio Supreme Court:

> [A]dopt a rule that permits consolidation of asbestos claims only with the consent of all parties, and in the absence of that consent, permits a court to consolidate for trial only those asbestos claims that relate to the same exposed person and members of the exposed person's household. Ex. B., Section 4(E).

On July 1, 2005, in response to the legislature's request, the Ohio Supreme Court promulgated Ohio Rule of Civil Procedure 42(A)(2), which states as follows:

> (2) *Asbestos, silicosis, or mixed dust disease actions.* In tort actions involving an asbestos claim, a silicosis claim, or a mixed dust disease claim, the court may consolidate pending actions for case management purposes. For purposes of trial, the court may consolidate pending actions only with the consent of all parties. Absent the consent of all parties, the court may consolidate, for purposes of trial, only those pending actions relating to the same exposed person and members of the exposed person's household.

The Ohio rule and this Court's Order have the same practical effect.

B. Texas and Georgia's Anti-Consolidation Statutes

Texas and Georgia have also enacted inactive asbestos dockets in much the same form as the Ohio inactive docket. In enacting an inactive docket, the Texas legislature recognized that:

> Many of the identified individuals (at least one estimate puts the figure as high as 90 percent of identified individuals) are not experiencing any symptoms of asbestos-related disease and are not suffering from any asbestos-related illness affecting their daily functions." Ex. C, Tex SB No 15, Section 1(a)(f).

The Texas legislature included an anti-consolidation provision. It states: "Unless all parties agree otherwise, claims relating to more than one exposed person may not be joined for a single trial." Tex Civ Prac and Rem Code § 90.009.

The Georgia legislature also included an anti-consolidation provision in its inactive docket statute:

> A trial court may consolidate for trial any number and type of asbestos claims or silica claims with the consent of all the parties. In the absence of such consent, the trial court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of his or her household. Ga Code Ann § 51-14-10.

C. The Order Did Not Impose Additional Burdens

Subsequent to issuance of this Court's Order, approximately 100 cases were set for trial in Wayne County Circuit Court in September and another 100 cases were set for trial in November. Despite some earlier concerns to the contrary, all of the cases were settled without incurring significant additional costs or requiring additional resources.

CONCLUSION

Petitioners applaud the Michigan Supreme Court's recognition that there is a problem with the Michigan asbestos litigation, and its willingness to try and fix the broken system. Petitioners still believe that a fair and complete remedy requires implementation of an Inactive Docket. However, Petitioners support this Court's Order as an important step in bringing due

process to the way asbestos cases are litigated in Michigan. The Order guarantees both sides the opportunity to engage in a full and fair evaluation of each case, on its individual merits. Three other states have adopted similar anti-consolidation rules, recognizing that consolidation of cases for settlement and trial purposes fails to ensure the proper assessment of each individual's case. All sides recognize that the resolution of each asbestos personal injury case should be determined on its own merits. For all of the reasons stated, Petitioners support Administration Order 2006-6.

Respectfully Submitted,

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Dated: November 27, 2006

Petitioners include: Ford Motor Company, DaimlerChrysler, Hi-Temp Products, American Optical, The Boomer Company, Quigley Company Inc., Satturland Supply Co., Southern Urethane, Kentile Floors, Inc. Eaton Corp., Cutler-Hammer, Owens-Illinois, Allen-Bradley Co., Durametallic Corp., Greene Tweed, Robertson-Ceco, Borg Warner, BW/IP International, Sure Seal Products, Zatkoff Seals & Packing, Ric-Wil, Inc., Friendshp Materials, A. J. Baxter, A. O. Smith, Atlas Asbestos, Duro Supply, Dynamic Seals, Inc., Hercules Chemical, ITT Industries, Lamons Metal Gasket, Lee Wilson Eng., McMaster-Carr Supply, Michigan Medical, Milton Roy Co., NIBCO, Inc., Peerless Industries Inc., Peerless Pumps, Sager Glove, Schad Boiler Setting, Standard Fuel, Stockholm Valve, William Powell Co., Yarway Corp., Edward Vogt Valve, Hedman Mines Ltd., Rome Cable, Cincinnati Valve Company, Copes Vulcan, Brown Insulation, Aurora Pump Co., Imo Industries, Leeds & Northrup, D. Brown Union Pumps, Arthur J. Peacock, Thermoprocess Systems, Seaway Mechanical, Harrison Piping, Midland Ross Corporation, McCord Corporation, Stanley Carter Co., Riley Stoker Corporation, Sealite Inc., Refractory Handling, Beazer East, Inc., Alliance Machine, Furmanite America, Ingersoll-Rand, Melrath Gasket, Inc., Rex Roto, Singer Safety, Daubert Chemical Co., Champion International, Flintkote Company, Crown Cork & Seal, Siemens Corp., Howden Buffalo, Inc., Richard Klinger Inc., Cleaver Brooks, J. H. France, Goodall Rubber Co., Moen Inc., E. D. Bullard Co., Excelsior, Inc., Marlo Sealing Co., Viking Pump Co., American Standard, Gallop Pipe, Gould Pumps, Inc., Dow Chemical, Goodyear Tire & Rubber, Metropolitan Life, Rust International, McGraw Edison Co., Taco Inc.