RECEIVED
04-14-2015
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Yasmine Clark a Minor, by her Guardian ad litem, Susan M. Gramling,

Plaintiff-Respondent,

v.

American Cyanamid Company, Armstrong Containers. Inc., E.I. Dupont De Nemours and Company, Atlantic Richfield Company and The Sherwin-Williams Company,

Defendants-Appellants,

Milwaukee County Department of Health and Human Services and NL Industries, Inc.,

Defendants.

Appeal No. 2014AP000775

On Appeal from the Milwaukee County Circuit Court
The Honorable David A. Hansher, Presiding
Circuit Court Case No. 06-CV-12653

REPLY BRIEF OF DEFENDANTS-APPELLANTS

Dated: April 14, 2015

Submitted by:

Jeffrey K. Spoerk (WBN 100540)
James E. Goldschmidt (WBN 1090060)
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
(414) 277-5000

Charles H. Moellenberg, Jr.
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
(412) 391-3939
Counsel to Defendant-Appellant
The Sherwin-Williams Company

On Behalf of Defendant-Appellant American Cyanamid Company:

GASS WEBER MULLINS LLC
Beth Ermatinger Hanan (SBN 1026989)
Ralph A. Weber (SBN 1001563)
309 N. Water St., 7th Floor
Milwaukee, WI 53202
(414) 223-3300

GIBSON DUNN & CRUTCHER LLP
Richard W. Mark
200 Park Avenue
New York, NY 10166
(212) 351-3818

ORRICK, HERRINGTON & SUTCLIFFE LLP
Elyse D. Echtman
51 West 52nd St.
New York, NY 10019
(212) 506-3753

On Behalf of Defendant-Appellant Armstrong Containers, Inc.:

BASCOM BUDISH & CEMAN SC
Timothy A. Bascom (SBN 1010017)
2600 N. Mayfair Road, #1140
Wauwatosa, WI 53226
(414) 774-8835

MORRIS, MANNING & MARTIN, LLP
Robert P. Alpert
Jeffrey K. Douglass
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326
(404) 233-7000

On Behalf of Defendant-Appellant E.I. Du Pont De Nemours & Company:

MICHAEL BEST & FRIEDRICH LLP
Paul E. Benson (SBN 1001457)
100 E. Wisconsin Ave., Suite 3300
Milwaukee, WI 53202
(414) 271-6560

McGUIRE WOODS LLP
Steven R. Williams
Joy C. Fuhr
Christian E. Henneke
One James Center
901 E. Cary Street
Richmond, VA 23219
(804) 775-1000

On Behalf of Defendant-Appellant Atlantic Richfield Company:

GODFREY & KAHN S.C.
Anthony S. Baish (SBN 1031577)
780 N. Water St., Suite 1500
Milwaukee, WI 53202
(414) 273-3500
Daniel T. Flaherty (SBN 1011357)
100 W. Lawrence St.
P.O. Box 2728
Appleton, WI 54913
(920) 830-2800

ARNOLD & PORTER LLP
Phillip H. Curtis
Bruce R. Kelly
William Voth
Matthew D. Grant
Reuben S. Koolyk
399 Park Avenue
New York, NY 10022
(212) 715-1000

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES

(continued)

Page(s)

TABLE OF AUTHORITIES

(continued)

Page(s)

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Plaintiff's opposition brief disregards the essential issue: The question is not whether a judicial decision can be applied retroactively if the appropriate factors are met, but instead whether a previously non-existent right can be retroactively vested in a way that contradicts the Legislature's actions. It cannot. Vested rights protect parties' legal expectations that are well-settled at the time of injury. By definition, a right that did not exist at the time of injury cannot be well-settled and, therefore, cannot be vested. That point is dispositive of this appeal.

Moreover, at all times before the Legislature acted in 2013, whether Plaintiff had a viable claim under *Thomas v. Mallett*, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523, was contingent on unresolved factual and legal questions. Therefore, Plaintiff never had a vested right to sue using *Thomas*.

Furthermore, even vested rights are not immune from legislative clarification. All legislation enjoys a strong presumption of constitutionality. The Legislature had a rational purpose in restoring the risk-contribution theory to accord with public policy and then applying its policy to pending cases.

Finally, Plaintiff tries to distract this Court by arguing that the 2013 amendments violate the separation of powers principle and are unconstitutional private legislation. But, the amendments are not specific to any person, place, or thing; because they address a matter of statewide concern, they are not private legislation. Far from being "smuggled" into law, the amendments were introduced

initially as a single-subject bill and discussed at public hearings, during which Plaintiff's counsel testified.

The Court should reverse the trial court and uphold Section 895.046 as constitutional.

I. WIS. STAT. § 895.046 DOES NOT IMPAIR A "VESTED RIGHT."

A. Retroactive Application Of *Thomas* Cannot Create A Vested Right.

Plaintiff argues a proposition of no relevance to this appeal: whether a court can retroactively apply a judicial decision after applying the *Chevron* three-factor analysis. Defs.' Br. 27-28; *see also* Pl.'s Br. 13. That a judicial decision can apply retroactively does not address whether a right can vest retroactively. On this point, Plaintiff is silent.

Vested rights protect parties' settled legal expectations as they exist at the time of injury. *See, e.g., Hunter v. School Dist.*, 97 Wis.2d 435, 293 N.W.2d 515 (1980); *Matthies v. Positive Safety Mfg. Co.*, 2001 WI 82, 244 Wis.2d 720, 628 N.W.2d 842. Consequently, a right must be well-settled at the time of injury in order to vest. *Id.*

No Wisconsin court has suggested that a right may vest retroactively. Nor would such a ruling make sense: by definition, a plaintiff has no expectation to a legal right that does not come into existence until years after her injury. As the Ninth Circuit held in *Boykin v. Boeing Co.*, "there is no injustice in retroactively depriving a person of a right that was created *contrary to his expectations* at the

time he entered into the transaction from which the right arose." 128 F.3d 1279, 1283 (9th Cir. 1997) (emphasis in original). *Boykin* is the most analogous case that any party has cited. Plaintiff ignores it and offers no contrary authority. Because *Thomas* did not exist at the time of her alleged injury, Plaintiff had no vested right in that decision.[1] R. 476; A-App. 017, 021.

Plaintiff instead argues for a vested right under *Collins v. Eli Lilly Co.*, 116 Wis .2d 166, 342 N.W.2d 37 (1984). Pl.'s Br. 20. But, *Collins* limited use of the risk-contribution theory to circumstances "factually similar" to DES. Defs.' Br. 8; *see also* Pl.'s Br. 20 (quoting *Collins*, 116 Wis.2d at 192). *Thomas* recognized that white lead carbonate ("WLC") claims were "not identical to *Collins*" and several "dissimilarities between [the two cases]" existed. 2005 WI 129, ¶¶ 147, 150, 152, 154. Without the theory's "extension" in *Thomas*, Plaintiff would not have any claim against the manufacturing defendants. *Id.* ¶ 27. Indeed, at the time of Plaintiff's alleged injury, this Court ruled that, under existing Wisconsin law, a plaintiff could not maintain a risk-contribution claim for WLC. *Thomas ex rel. Gramling v. Mallett*, 2004 WI App 131, 275 Wis. 2d 377, 685 N.W.2d 791.

Nor can Plaintiff change her injury date to avoid dismissal. Plaintiff "conceded" that she "is claiming indivisible injuries that accrued during the first period of exposure in March 2003." R. 476; A-App. 017, 027. She cannot recant her factual concession on appeal. More importantly, Plaintiff does not dispute that

[1]Also analogous and persuasive are the cases finding no due process violation in modifying a statute of limitations before it has run. *See, e.g.*, *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 2010 WI 68, 326 Wis.2d 444, 786 N.W.2d 385.

a claim accrues with the manifestation of Plaintiff's *first* compensable injury, which was March 2003. *See* Defs.' Br. 8.

In sum, in 2003, at the time of her alleged injury, Plaintiff had no right, let alone a vested right, to sue Defendants using *Collins* or *Thomas*'s extension of the risk-contribution theory. This conclusion is dispositive.

B. *Thomas* Has Too Many Contingencies To Create A "Vested Right."

Defendants' first argument alone requires reversal, but there is another, independent basis for reversal. Plaintiff's right to sue using the risk-contribution theory never vested by the time of the 2013 amendments, because the existence of Plaintiff's claim under *Thomas* was (and is) entirely contingent. Before the 2013 amendments were passed, a federal district court struck down the risk-contribution theory as unconstitutional. *Gibson v. Am. Cyanamid Co.*, 719 F. Supp. 2d 1031 (E.D. Wis. 2010), *rev'd* 760 F.3d 600 (7th Cir. 2014), *petition for cert. pending* (U.S. Jan. 16, 2015) (No. 14-849). It is hard to imagine a claim being more contingent than that. That the decision was reversed in 2014 suggests more uncertainty, and is irrelevant to whether the right was absolute and perfected before the 2013 amendments.

Plaintiff next asserts that unresolved public policy questions do not matter because they are to be "determined by the judge after trial." Pl.'s Br. 17. However, Wisconsin courts grant motions to dismiss claims or defenses that contradict public policy. *See, e.g.*, *MBS-Certified Pub. Accountants, LLC v. Wis.*

Bell, Inc., 2012 WI 15, ¶ 72, 338 Wis.2d 647, 809 N.W.2d 857. Moreover, the issue here is whether the viability of a risk-contribution claim for WLC was settled when Plaintiff's claim arose. Since *Thomas* left the public policy question unsettled, her claim could not have vested. The absolute nature of vested rights demands that there be no public policy obstacles, regardless of when they will be addressed.

Aside from a brief footnote, Plaintiff offers no substantive response to the third contingency: whether it is constitutional to apply *Thomas* retroactively.[2] The trial court analyzed none of the factors set forth in *Wenke v. Gehl Co.*, 2004 WI 103, ¶¶ 70-71, 274 Wis.2d 220, 682 N.W.2d 405. No court has undertaken the *Wenke* inquiry with respect to *Thomas*. Defs.' Br. 25-26.

Finally, far from "irrelevant," Pl.'s Br. 18, a finding that WLC pigments are fungible is a prerequisite to Plaintiff's ability to use the risk-contribution theory. *Thomas*, 2005 WI 129, ¶ 140 & n.47. Plaintiff cannot rely on *Godoy ex rel. Gramling v. E.I. du Pont de Nemours & Co.*, 2009 WI 78, ¶ 23, 319 Wis.2d 91, 768 N.W.2d 674 for a preclusive finding of fungibility, because the question is a factual one that must be adjudicated on a record yet to be made in this case. Defendants have never had an opportunity to litigate the fungibility issue with a fully developed factual record, and binding them without such an opportunity

[2] Despite acknowledging that the trial court considered the issue, Plaintiff erroneously asserts that this issue was waived. Pl.'s Br. 17. Issues are preserved when the trial court addresses them, even if *sua sponte*. *See e.g.*, *Fid. Coop. Bank v. Nova Cas. Co.*, 726 F.3d 31, 39 (1st Cir. 2013); *Koerner v. Grigas*, 328 F.3d 1039, 1047 (9th Cir. 2003).

would violate state and federal due process of law. *See, e.g., Oddsen v. Bd. Of Fire & Police Comm'rs for City of Milwaukee*, 108 Wis.2d 143, 159, 321 N.W.2d 161 (1982).

Each of these four separate contingencies (due process, public policy, *Thomas*'s retroactive application, and fungibility) goes to the existence of a claim against Defendants. None concerns whether Plaintiff can prove her claim and recover damages, *cf.* Pl.'s Br. 14-15, but whether it is constitutional and feasible to bring a claim at all. As she has conceded, without *Thomas*'s risk-contribution theory, she cannot pursue a claim against Defendants. R. 476; A-App. 017, 021. Accordingly, Plaintiff has no vested right.

II. THE TRIAL COURT IMPROPERLY SUBSTITUTED ITS OWN VIEW FOR THE LEGISLATURE'S BALANCE OF PUBLIC AND PRIVATE INTERESTS.

Rather than address the separation of powers principles barring the trial court from second-guessing legislative policy, Plaintiff suggests that this Court overlook them. But, a court cannot "ignore the doctrine of separation of powers." *City of Appleton v. Outagamie County*, 197 Wis. 4, 11, 220 N.W. 393 (1928). "It is conceived to be a *fundamental principle* of our government that when one co-ordinate branch acts within its constitutional field, its action may not be inquired into or interfered with by another co-ordinate branch." *Id.* (emphasis added). Far from having "nothing to do with" the vested rights analysis, the separation of powers decisions cited by Defendants set forth constitutionally-defined boundaries that courts must observe. Pl.'s Br. 21, 23-24.

The strong presumption of constitutionality that Plaintiff must overcome extends even to legislation deemed to be retroactive. *See Soc'y Ins.*, 2010 WI 68, ¶ 30 ("[M]erely 'identifying a substantive, or vested, property right is not dispositive for due process purposes.'") (citations omitted));[3] *Chappy v. LIRC*, 136 Wis.2d 172, 180, 401 N.W.2d 568 (1987).

The trial court exceeded its constitutional authority. A court cannot refuse to apply the Legislature's stated purpose and set out to "fix[] a broken system," as the trial court did here. R. 476; A-App. 017, 038. The separation of powers doctrine is not "inapposite," Pl.'s Br. 23-24; that doctrine prohibits the trial court's response in this case: "[W]hen the legislature has acted, 'the judiciary is limited to applying the policy the legislature has chosen to enact, and may not impose its own policy choices.'" *Progressive N. Ins. Co. v. Romanshek*, 2005 WI 67, ¶ 60, 281 Wis.2d 300, 697 N.W.2d 417. Although Plaintiff attempts to downplay and mischaracterize *Soc'y Ins.*, 2010 WI 68, ¶ 13, the Supreme Court was explicit that the Legislature's public purpose need not be substantial, *id.* ¶ 30 n.12; it is enough that the Legislature has made and articulated the policy determination.

Courts defer to the Legislature's assessment of the necessity and reasonableness of legislation. *Chappy*, 136 Wis.2d at 188; *compare Matthies*, 2001 WI 82, ¶ 46 (legislative history was silent on public purpose). The trial court erred by deciding that Legislative policy was incorrect, and by disregarding

[3] Whether viewed as a facial or as-applied challenge to a statute, all Justices agreed that the party challenging a statute's constitutionality bears the burden of proving that it is unconstitutional beyond a reasonable doubt. *Soc'y Ins.*, 2010 WI 68, ¶ 27.

Legislative history and other evidence that did not support its own view. *See Northwest Airlines, Inc. v. Wis. Dep't of Revenue*, 2006 WI 88, ¶ 59, 293 Wis.2d 202, 717 N.W.2d 280.

Ironically, Plaintiff argues that the *Legislature* infringed on the judiciary's domain. Pl.'s Br. 26-32. After conceding that "the judicial department has no power to interfere with the legislative process," Plaintiff contends that Section 895.046 evinces an "intent to abrogate the *Thomas* Court's interpretation of Art. I, § 9 of the Wisconsin Constitution." Pl.'s Br. 27-28. Section 895.046 did nothing of the kind. It preserved a remedy consistent with traditional tort law principles and public policy. The Legislature is not preventing access to the courts—the right Art. I, § 9 protects. The question here is whether the Legislature can constitutionally pass legislation that disagrees with *Thomas*. *Cf.* Pl.'s Br. 28. The answer is obvious: the Legislature can enact a law that supersedes a judicial decision, and it has passed such laws before. *See, e.g., Northern Air Servs., Inc. v. Link*, 2011 WI 75, ¶ 51, 336 Wis.2d 1, 804 N.W.2d 458. It is equally apparent that the Legislature can pass laws to amend tort principles, and it has passed such laws many times before. *See e.g., Ervin v. City of Kenosha*, 159 Wis.2d 464, 476, 464 N.W.2d 654 (1991); *MBS-Certified Pub. Accountants, LLC*, 2012 WI 15, ¶ 3.

Here, after a public policy assessment, the Legislature determined that Section 895.046 best served Wisconsin by re-establishing certain tort principles and protecting the economy. That decision is for the Legislature to make. *City of Appleton*, 197 Wis. at 11 ("Most certainly a court cannot inquire into the character

of the intent with which a co-ordinate branch of the government exercises its powers and, if it deems that the co-ordinate branch of the government is not acting with proper intent, to set aside and nullify its acts."). To hold otherwise would permit judicial second-guessing of legislative and economic policy and harkens back to the discredited era of *Lochner v. New York*, 198 U.S. 45 (1905). *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 460 (1985).

The only question here is whether the Legislature could rationally conclude, as it did, that public interests in the Constitution, fair tort law, and the economy can outweigh the private interests of a litigant to bring a claim that she did not have at the time of her injury. While the Legislature and the courts might disagree on that balance, "courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963); *Ervin*, 159 Wis.2d at 476, 478 (recognizing "that such a holding has negative consequences for unfortunate victims in cases such as this. … [But] when a legislative mandate is 'clearly expressed and there is no warrant for alternative construction, a court may not impose its view of what the law should be.'").

III. SECTION 895.046 IS NOT PRIVATE LEGISLATION.

Plaintiff claims that Section 895.046 is unconstitutional, private legislation, either because the amendments are facially specific to "particular people" —the lead pigment manufacturer defendants—or because they create a "closed classification" consisting of "lead poisoned children whose causes of action

accrued prior to February 1, 2011." Pl.'s Br. 35. But, Plaintiff misreads Section 895.046. It applies to *all* manufacturers and sellers, for *all* products, across the state. By its own language, it reaches "all actions in law or equity, whenever filed or accrued, in which a claimant alleges that the manufacturer, distributor, seller, or promoter of a product is liable for an injury or harm to a person or property…." Wis. Stat. §895.046(2).

The Legislature enacted Section 895.046 to serve "the public interest to clarify product liability law, generally, and the application of the risk contribution theory of liability…." Wis. Stat. § 895.046(1g).[4] This statewide concern precludes a finding of private legislation. *See Milwaukee Brewers Baseball Club v. Wis. Dep't of Health & Soc. Servs.*, 130 Wis.2d 79, 119, 387 N.W.2d 254 (1986) ("The legislature's finding…'that prison overcrowding is a critical problem in this state,' with which the circuit court agreed, is the specific type of statewide concern which we failed to find in *Soo Line*.").[5] The benefit to Defendants or burden on other parties does not weigh in the analysis; "general legislation which legitimately serves the public interest will often incidentally

[4] Plaintiff's erroneous argument that Sherwin-Williams "contaminated" the legislative process flouts First Amendment law. *See, e.g., Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961); *Mercatus Group, LLC v. Lake Forest Hosp.*, 641 F.3d 834, 847-48 (7th Cir. 2011). Moreover, lobbying does not impact Section 895.046's presumption of constitutionality. *See Lake Country Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25, ¶¶ 12, 19-20, 289 Wis.2d 498, 710 N.W.2d 701 ("frequent legislative contacts and media advertising by groups supporting and opposing the measure, as well as press reports" did not disrupt presumption of constitutionality); *Group Health Coop v. Wis. Dep't of Revenue*, 229 Wis.2d 846, 851 n.2, 601 N.W.2d 1 (Ct. App. 1999).

[5] As an example of private legislation, Plaintiff cited *Soo Line R.R. Co. v. Dep't of Transp.*, 101 Wis.2d 64, 76, 303 N.W.2d 626 (1981), which struck down legislation related "to a specific point on a specific highway" and only affecting "a particular entity, the Soo Line Railroad." *Cf.* Pl.'s Br. 32.

confer a benefit or burden on particular entities." *Id.* at 116. That incidental benefit does not upset Section 895.046's broader purposes to serve "the public interest," preserve well-settled Wisconsin tort law, and ensure that "businesses may conduct activities in this state without fear of being sued for indefinite claims of harm." Wis. Stat. § 895.046(1g).

Finally, Plaintiff's contention that Section 895.046 was "smuggled" into the biennial budget ignores reality. Under Article IV, Section 18 of the Wisconsin Constitution, courts must presume constitutionality "where it is evident that the legislature did adequately consider or discuss the legislation in question, even where such legislation was passed as part of a voluminous bill." *Flynn v. Dep't of Admin.*, 216 Wis.2d 521, 537, 576 N.W. 2d 245 (1998); *Jackson v. Benson*, 218 Wis.2d 835, 885-87, 578 N.W.2d 602 (1998). Here, the Legislature considered the amendments in public hearings. The exact language of the amendments first appeared in an earlier, single-subject bill: 2011 Senate Bill 373, introduced in January 2012. The Senate conducted a public hearing on Senate Bill 373, and Plaintiff's counsel testified against it. R. 476; A-App. 017, 036. Once Senate Bill 373's text was reintroduced as part of 2013 Wisconsin Act 20, Plaintiff's counsel again publicly opposed the amendments. Thus "[f]orged in the deliberative kiln of public debate," Section 895.046 is constitutional. *Jackson*, 218 Wis.2d at 885-87.

CONCLUSION

This Court should reverse the trial court's decision.

Dated: April 14, 2015

/s/ Jeffrey K. Spoerk
Jeffrey K. Spoerk
Wis. Bar No. 1005405
James E. Goldschmidt
Wis. Bar No. 1090060
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
(414) 277-5000

Charles H. Moellenberg, Jr.
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
(412) 391-3939

Counsel to Defendant-Appellant
The Sherwin-Williams Company

CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b) and (c) as to form and length for a reply brief produced with a proportional serif font. The length of this brief is 2,981 words, including footnotes.

Dated: April 14, 2015

/s/ Jeffrey K. Spoerk

Jeffrey K. Spoerk
Wis. Bar No. 1005405
James E. Goldschmidt
Wis. Bar No. 1090060
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
(414) 277-5000

Charles H. Moellenberg, Jr.
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
(412) 391-3939

Counsel to Defendant-Appellant
The Sherwin-Williams Company

CERTIFICATION REGARDING ELECTRONIC BRIEF

I certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated: April 14, 2015

/s/ Jeffrey K. Spoerk
Jeffrey K. Spoerk
Wis. Bar No. 1005405
James E. Goldschmidt
Wis. Bar No. 1090060
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
(414) 277-5000

Charles H. Moellenberg, Jr.
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
(412) 391-3939

Counsel to Defendant-Appellant
The Sherwin-Williams Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three true and correct copies of the Defendants-Appellants' Response to Plaintiff-Respondent's Motion to Dismiss Appeal and Remand for Trial and this Certificate of Service were sent via U.S. Mail this 14th day of April, 2015 to the following:

Peter G. Earle
Law Offices of Peter Earle, LLC
839 N. Jefferson St., Suite 300
Milwaukee, WI 53202

Victor C. Harding
Warshafsky, Rotter, Tamoff & Bloch, S.C.
839 N. Jefferson St., Suite 300
Milwaukee, WI 53202

Jonathan D. Orent
Motley Rice LLC
321 South Main Street, Suite 200
Providence, RI 02903

Dated: April 14, 2015

/s/ Jeffrey K. Spoerk
Jeffrey K. Spoerk
Wis. Bar No. 1005405
James E. Goldschmidt
Wis. Bar No. 1090060
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
(414) 277-5000

Charles H. Moellenberg, Jr.
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
(412) 391-3939
Counsel to Defendant-Appellant
The Sherwin-Williams Company