

February 14, 2014

Advisory Committee on Civil Rules
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Suite 7-240
One Columbus Circle, NE
Washington, D.C. 20544

Re: Letter from Companies in support of the Proposed Amendments to the FRCP

Dear Judge Campbell and Members of the Federal Civil Rules Advisory Committee:

We write in support of the proposed amendments to the Federal Rules of Civil Procedure currently open for public comment. We collectively submit this letter requesting that the amendments be formally approved with important improvements.

Federal litigation today is inefficient, too expensive, and fraught with too many uncertainties that have little or nothing to do with the merits of particular cases. This stems, in large part, from costly and inconsistent obligations to preserve, process and produce vast amounts of data for discovery, even though much of that data has no real relevance to the issues in dispute and, even though in many cases, the data is never used at trial. Parties, particularly corporations, lack clear and consistent national guidelines for preservation of information that may be required for discovery. In many cases, corporate parties over-preserve in order to avoid tactical threats of spoliation sanctions. In other cases, parties must simply settle claims or defenses based on the high costs, rather than on the merits of the litigation.

Proposed Rule 37(e), while not perfect, holds great promise in addressing these problems. To be effective, however, it should be revised to clarify that an award of sanctions requires a showing of specific intent to deprive another party of discoverable information, and that the threshold for “curative measures” requires a showing of significant prejudice to a party to the litigation.

Finally, we welcome the proposed amendments to Rule 26(b), and in particular, deletion of the confusing phrase, “[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” This phrase has been abused by parties and misconstrued by many courts. As a result, it has stretched the scope of discovery beyond the reasonable intention of its original drafters.

Taken together, these proposed amendments will address the burdens of both over-preservation and overbroad discovery. More importantly, they will begin to reverse the trend favoring resolution of cases based on costs, rather than on the merits.

Thank you again for the opportunity to comment.

3M Company
Ann Marie Hanrahan
Vice President and Associate
General Counsel
3M Litigation and
Preventive Law

A.W. Chesterton Company
Brian O'Donnell
President & CEO

Aetna Inc.
William J. Casazza
General Counsel

Aimia, Inc.
David Glogoff
General Counsel - US

**Air Products and
Chemicals, Inc.**
Stephen Ferrara
Assistant General Counsel -
Litigation and Government
Regulation

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David Horn
Executive Vice President,
General Counsel & Secretary

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Inc.**
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General Counsel

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Gordon G. Martin
Senior Vice President and
General Counsel

Allergan
Arnold Pinkston
Executive Vice President
and General Counsel

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Executive Vice President,
General Counsel and
Secretary

ALOM
Hannah Kain
CEO

Altec, Inc.
Robert Hunter
Senior Vice President,
General Counsel & Secretary

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Association**
James Brehm
General Counsel

American Capital, Ltd.
Samuel A. Flax
Executive Vice President
and General Counsel

**American Greetings
Corporation**
Andrea Wilson
Senior Counsel -- Litigation
and Compliance

**American International
Group, Inc.**
Thomas A. Russo
Executive Vice President
and General Counsel

American University
Mary E. Kennard
Vice President and General
Counsel

AmeriFirst Financial, Inc.
Germán A. Salazar
General Counsel

Amsted Industries
Stephen Smith
Vice President-General
Counsel

Anheuser-Busch InBev
Sabine Chalmers
Chief Legal & Corporate
Affairs Officer

Appliance Factory Outlet
Dennis Kaw
General Counsel

**Archer Daniels Midland
Company**
D. Cameron Findlay
Senior Vice President,
General Counsel & Secretary

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Peter Ganz
Sr. Vice President, Genral
Counsel & Secretary

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Mark Sheft
Director of Labor &
Litigation

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Richard Meeusen
Chairman, President & CEO

Bank of America
Gary G. Lynch
Global General Counsel and
Head of Compliance and
Regulatory Relations

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Senior Vice President and
General Counsel

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Kaspar Stoffelmayr
Vice President and Associate
General Counsel

Behlen Mfg. Co.
Erik Hash
General Counsel

Benco Dental
Kenneth Lee
Corporate Counsel

The Bilco Company
Roger Joyce
Executive Vice President

Bioventus LLC
Jeanne M. Forneris
Vice President Business
Development and General
Counsel

Blastcrete Equipment Co.
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President

Blue Bell Creameries, L.P.
Paul Kruse
President and CEO

BNSF Railway Co.
Charles Shewmake
Vice President and General
Counsel

**Bombardier Recreational
Products, Inc.**
Yves St-Arnaud
Director Legal Services

Boston Scientific, Inc.

Timothy Pratt
President FDCC, Executive
Vice President, Chief
Administrative Officer,
General Counsel and
Secretary

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John E. Lynch, Jr.
Deputy Group General
Counsel

Brink's U.S.

Chris Cage
Senior Vice President and
General Counsel

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David Djavaherian
Associate General Counsel

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Corporation**

Matthew E. Hamel
Executive Vice President,
General Counsel and
Secretary

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Kristin M. Coleman
Vice President, General
Counsel & Secretary

Bunge Limited

Frank R. Jimenez
General Counsel, Secretary
and Managing Director,
Government Affairs

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Industry Association**

Nick Cammarota
General Counsel

Callison

Lisa Strauch Eggers
Chief Legal Officer and
Corporate Secretary

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Thad Miller
Executive Vice President,
Chief Legal Officer &
Secretary

Canam Steel Corporation

Ron Peppe
Vice President, Legal &
Human Resources

Cargill, Incorporated

Laura Witte
Vice President, General
Counsel

Caterpillar, Inc.

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Executive Vice President
and Chief Legal Officer Law
and Public Policy

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President

**Chiquita Brands
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Allyson Bouldon
Vice President and Chief
Compliance Officer

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Incorporated**

Alan K. Tse
Executive Vice President
and General Counsel

CIRCOR International

Alan Glass
VP, General Counsel and
Secretary

Cloud Peak Energy

Bryan Pechersky
Senior Vice President,
General Counsel and
Corporate Secretary

CNA Insurance Companies

Heather Davis
Senior Vice President,
Government Relations

CNH Industrial N.V.

Richard Konrath
General Counsel, North
America

**Comcast Cable
Communications**

Thomas R. Nathan
Senior Deputy General
Counsel

ConAgra Foods, Inc.

Brent Baglien
VP Government Affairs

ConocoPhillips

Janet Langford Kelly
Senior Vice President Legal,
General Counsel and
Corporate Secretary

Continental Resources, Inc.

Eric S. Eissenstat
Sr. VP, General Counsel and
Secretary

Continental Tire the

Americas, LLC
Tammy L. Fanning
Senior Counsel

Cooling Tower Depot, Inc.

Robert Brown, Esq.,
General Counsel

**Cooper Tire & Rubber
Company**

Stephen Zamansky
Vice President, General
Counsel & Secretary

CoreLogic

Stergios "Terry" Theologides
Senior Vice President
General Counsel

COUNTRY Financial

James M. Jacobs
General Counsel

Crane Group Co.

Timothy T. Miller
Vice President & General
Counsel

CRB USA

James J. Scott
General Counsel

**Crosstex Energy Services,
L.P.**

Joe Davis
Executive Vice President
and General Counsel

**Crown Equipment
Corporation**

John Maxa
Vice President and General
Counsel

**CrownQuest Operating
LLC**

W. Michael Scott
Vice President and General
Counsel

CSX Corporation

Ellen M. Fitzsimmons
Executive Vice President –
Law and Public Affairs and
General Counsel

Cubic Corporation

James R. Edwards
Senior Vice President,
General Counsel & Secretary

CUNA Mutual Group

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Associate General Counsel

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Christopher A. Griffin
Deputy General Counsel

De Lage Landen

Peter Ochroch
General Counsel

Deere & Company
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General Counsel

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CEO

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General Counsel & Secretary

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General Counsel

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Company**
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General Counsel, Corporate
Secretary, and Executive
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Global Senior Counsel

DuPont
Thomas L. Sager
Senior Vice President and
General Counsel

Eau Claire Press Company
Debra Hayden
Director/Human Resources

**Electrolux North America,
Inc.**
Michael L. Bell
Senior Associate General
Counsel - Litigation

Eli Lilly and Company
Michael Harrington
Senior Vice President and
General Counsel

Emerson
Michael J. Keating
Vice President & Associate
General Counsel - Litigation
& Product Safety

**Energy Future Holdings
Corp.**
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Executive Vice President &
General Counsel

Energy Systems Group
Jonathan D. Shell
Vice President, Contracts
and General Counsel

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Connie Lewis Lensing
Senior Vice President -
Litigation and Employment

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Vice President, Litigation
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Angela M. Hughes, Esq.
Corporate Counsel, Legal
Dept.

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General Counsel

Garmin International, Inc.
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Vice President and General
Counsel

**General Dynamics
Corporation**
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Senior Vice President and
General Counsel

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Vice President, Litigation
and Legal Policy

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PD Villarreal
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Global Litigation

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Pamela Hammond Davis
Director, Legal

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General Counsel

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General Counsel & Secretary

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Counsel

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Senior Vice President and
General Counsel

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General Counsel & Secretary

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General Counsel
and
Matt Miller
Deputy General Counsel for
Litigation

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Vice President & Chief
Litigation Counsel, Law
Department

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General Counsel

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Counsel

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Director, Government
Affairs

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CEO

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Senior Vice President –
Claims and General Counsel

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Vice President & General
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John Flack
Vice President Finance

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Head of Production Division

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Litigation
Legal Department

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and Regulatory Affairs,
and General Counsel

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Robert Katz Esq.
Senior Vice President and
General Counsel

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Executive Vice President,
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Vice President – Litigation

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President

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Company Counsel

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President of Strategic
Acquisitions

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CEO

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VP, Deputy General
Counsel, Litigation and
Investigations

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A. Kaiper Wilson
Chief Counsel - Litigation

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V.P. and General Counsel

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General Counsel

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General Counsel & Secretary
and Lawrence Muscarella
Assistant General Counsel,
Litigation

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Vice President, General
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Robert C. Moore
Chief Legal Officer

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Executive Vice President &
General Counsel

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Roger A. Petersen
General Counsel - Litigation

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James M. Drozdowski
Vice President & General
Counsel

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Jill Witter
Senior Vice President,
General Counsel, Ethics and
Compliance Officer

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Corporate Vice President &
General Counsel

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VP, General Counsel &
Secretary

ON Semiconductor
G. Sonny Cave
Senior Vice President,
General Counsel, Chief
Compliance & Ethics Officer
and Corporate Secretary,
Law Department

O'Reilly Auto Parts
Jeffrey L. Groves
General Counsel
Vice President of Legal
Services

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Executive Vice President,
General Counsel and
Secretary

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Executive Vice President,
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Senior Vice President and
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Executive Vice President &
General Counsel

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Hyun Park
Senior Vice President and
General Counsel

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Vice President, General
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Stacy Bogart
Vice President and General
Counsel

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Dyke Messinger
President

**The Procter & Gamble
Company**
Joseph D. Heyd
Director & Associate
General Counsel, Global
Litigation

**The Progressive Group of
Insurance Companies**
James A. Dodrill
Corporate Claims Counsel

**Property Casualty Insurers
Association of America**
Colleen Reppen Shiel
Legal Counsel

**Public Service Enterprise
Group**
J. A. Bouknight, Jr.
Executive Vice President
and General Counsel

Puget Sound Energy
Steve Secrist
Vice President and General
Counsel

**Quanex Building Products
Corporation**
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Senior Vice President –
General Counsel & Secretary

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General Counsel

R. R. Street & Co. Inc.
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Executive Vice President &
General Counsel

Rabo AgriFinance
John Manning
General Counsel

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York Branch**
Andrew Sherman
General Counsel

Rabobank, N.A.
Dan Weiss
General Counsel

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General Counsel

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Michael Herman
Senior Vice President and
General Counsel

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Scott Bates
Corporate Vice President
and General Counsel

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Kurt Robinson
President

Rockland Trust Company

Edward H. Seksay
General Counsel and
New Markets Tax Credit
Program Manager

Rockwell Automation, Inc.

Douglas Hagerman
Senior Vice President,
General Counsel & Secretary

Rosewood Hotels & Resorts

Susan M. Aldridge
Senior Vice President of
Legal/General Counsel
Angela B. Degeyter
Corporate Counsel

Roy O. Martin Lumber Co., LLC

Jonathan Martin
CEO

Royal Bank of Canada

David Allgood
Executive Vice President &
General Counsel

RPM International Inc.

Edward W. Moore
Senior Vice President,
General Counsel and Chief
Compliance Officer

Saint-Gobain Corporation

Timothy Feagans
Senior Vice President &
General Counsel

San Antonio Housing Authority

Tim Alcott
Director of Legal Services
and Development Services
Officer

Sanofi US

Robert DeBerardine
Senior Vice President and
General Counsel, North
America

Schaeffer Group USA

Steven Crow
General Counsel

Shell International BV

Bradford C. Nielson
General Counsel, Global
Litigation

The Sherwin-Williams Company

Catherine Kilbane
Senior Vice President,
General Counsel and
Secretary

Sigma-Aldrich Corporation

George Miller
Senior Vice President &
General Counsel

SKF USA Inc.

Timothy Gifford Esq.
Senior Vice President,
General Counsel & Secretary

Smiths Group Services Corporation

David J. Kuckelman
Senior Vice President,
Secretary & General Counsel

Snap-on Incorporated

Irwin Shur
Vice President, General
Counsel & Secretary

Snyder's-Lance, Inc.
A. Zachary Smith III
Chief General Counsel

Sonic Automotive, Inc.
Steve Coss
Senior Vice President and
General Counsel

**Sotera Defense Solutions,
Inc.**
Jesse D. Watters III
Senior Vice President,
General Counsel

Southern Company
Karl R. Moor
Senior Vice President and
Chief Environmental
Counsel

Spartan Motors, Inc.
Hugh Ogren
Director of Human
Resources

Sprint Corporation
Charlie Wunsch
General Counsel, Senior
Vice President and
Corporate Secretary

St. Jude Medical, Inc.
Jason Zellers
General Counsel
James W. A. Ladner
Deputy General Counsel –
Litigation

**Stallion Oilfield Holding,
Inc.**
Robert J. Ryan
Deputy General Counsel

**State Farm Insurance
Companies**
Jeffrey W. Jackson
Senior Vice President and
General Counsel

Stella-Jones Corp.
Jean Riley
Human Resources Director

Stellar Industries, Inc.
David Zrostlik
President

STIHL Inc.
B. Scott Tilley
General Counsel

Subaru of America, Inc.
Joseph J. Kuter
Assistant General Counsel

Sub-Zero Group, Inc.
Blaine Renfert
General Counsel

Sun Life Financial, U.S.
Scott M. Davis
Senior Vice President &
General Counsel

Tabula Energy, LLC
Matthew J. Hammer
Vice President & General
Counsel

Target Corporation
Robin L. Preble
Director, Assistant General
Counsel - Litigation

**Taro Pharmaceuticals
U.S.A., Inc.**
Stephen J. Manzano
Interim General Counsel, VP
Corporate Compliance

Tata Steel
Stephen Wilkes
Director US Governmental
& Regulatory Affairs

**The Taubman Company
LLC**
Chris B. Heaphy
Senior Vice President,
General Counsel & Secretary

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John Jenkins
Executive Vice President
and General Counsel

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John Manuck
CEO and Chairman

Technical Materials
Al Lubrano
President

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LLC; Compressor and
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General Counsel

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Executive Vice President,
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General Counsel

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Vice President, General
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Vice President & Assistant
General Counsel

Transamerica Corp.
Craig D. Vermie
Senior Vice President and
General Counsel

TransCanada Pipelines
Dawn R. Radcliffe
Discovery Manager

TransforMED
Sallie Colaco, J.D.
Corporate
Counsel/Compliance Officer

**The Travelers Companies,
Inc.**
Kenneth F. Spence III
Executive Vice President
and General Counsel

TriCal, Inc.
John Ivancovich
Corporate Planning &
Development

TriHealth, Inc.
Steve Gracey, Esq.
Director Risk Management

**Trippe Manufacturing
Company**
Charles Lang
Chief Financial Officer

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David L. Van Bebber
Executive Vice President
and General Counsel

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David Schwartz
Associate General Counsel -
Corporate and Transactions

**United Services
Automobile Association**
Steven Alan Bennett
Executive Vice President,
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Gregory A. Robbins
Senior Vice President and
General Counsel

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Company**
Norman Jetmundsen, Jr.
Vice President and Associate
General Counsel

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Karen L. Roberts
Executive Vice President
and General Counsel

Westat, Inc.
David A. Reesman
Vice President – General
Counsel

Unit Corporation
Mark E. Schell
Senior Vice President,
General Counsel, and
Secretary

**Unverferth Manufacturing
Company Inc.**
Greg Unverferth
Manufacturing Engineering
and Continuous
Improvement Manager
Daniel Fanger
Vice President

**Verizon Communications,
Inc.**
Randal S. Milch
Executive Vice President,
Public Policy and General
Counsel

W. R. Grace & Co.
Mark Shelnitz
Vice President, General
Counsel and Secretary

Weatherford
Alejandro (Alex) Cestero
Vice President, Co-General
Counsel and Corporate
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Western Extrusions
Charles McEvoy
Chairman

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Inc.**
Paul W. Doerscheln
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Vanderbilt Minerals, LLC
Jeffrey C. Brohel
General Counsel

**Volvo Group Trucks
Americas**
Dennis Slagle
Executive Vice President

Walgreen Co.
Thomas Sabatino
Executive Vice President,
General Counsel &
Corporate Secretary

WellPoint, Inc.
John Cannon
Executive Vice President,
General Counsel and Chief
Public Affairs Officer

Whirlpool Corporation
Eric J. Sharon
Chief Litigation Counsel,
North America

White Castle System, Inc.

Nicholas W. Zuk
Senior Vice President
General Counsel and
Secretary

**Yokohama Tire
Corporation**

Rob Harrelson
Vice President of
Administration

**The Williams Companies,
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Craig L. Rainey
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General Counsel

Zimbra, Inc.

Amy Howell
General Counsel

**Xerox Corporation
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Senior Vice President,
General Counsel and
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**Zipcorp, Inc., Zippo
Manufacturing Company
and W.R. Case & Sons
Cutlery Co.**

Charles Jeffrey Duke
General Counsel &
Corporate Secretary