

IN THE SUPREME COURT OF ALABAMA

FLEXIBLE PRODUCTS COMPANY,)
et al.,)
)
Petitioners.)
)
(RE: RANDY WADE BICE,) CASE NO. 1050931
)
et al.,) CIRCUIT COURT OF JEFFERSON
) COUNTY, ALABAMA
Plaintiffs,) BESSEMER DIVISION
)
v.) CIVIL ACTION NOS.
) CV-01-1194
MICON, INC., et al.,) CV-01-1341
) CV-02-1518
Defendants.))

MOTION OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS
OF THE DOW CHEMICAL COMPANY
AND TO PARTICIPATE IN ORAL ARGUMENT

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The Chamber of Commerce of the United States of America (the "Chamber"), pursuant to Alabama Rules of Appellate Procedure Rule 29, respectfully seeks leave from this Court to file a brief as *amicus curiae* in this matter, and to participate in oral argument pursuant to Alabama Rules of Appellate Procedure Rules 21 and 34. The Chamber did not become aware of the issue involved in the mandamus petition until immediately before the mandamus petition was filed. At that point, it undertook to hire counsel, to evaluate the issue and to prepare its brief in an expeditious manner. As such, the Chamber seeks leave to file at this time. Respondents should not be prejudiced by the granting of this motion in that they will have ample time to respond as their response is not due until May 30, 2006. The brief which the Chamber seeks leave to file is being conditionally filed with this Court contemporaneously herewith.

I. INTEREST OF THE AMICUS CURIAE

The Chamber is the nation's largest federation of businesses, representing an underlying membership of more than 3,000,000 businesses and professional associations of every size, in every sector, and from every region of the country, including the State of Alabama. The Chamber

serves as the principal voice of the American business community, and represents the interests of its members by serving as *amicus curiae* in cases addressing issues of national concern to American business.

The Chamber of Commerce has an interest in this Petition because Rule 30(b)(6) of the Alabama Rules of Civil Procedure is the discovery rule that specifically addresses the corporation. American businesses are required to respond everyday to Rule 30(b)(6) notices, to designate Rule 30(b)(6) witnesses, and to produce such witnesses for deposition. The Chamber has grave concerns that the decision of the trial court in this case, if allowed to stand, will have a significant and negative impact upon how corporations respond to Rule 30(b)(6) notices. Thus, this petition raises an issue of utmost importance to the Chamber of Commerce and its membership.

The clear import of the trial court's decision is that a corporation that designates the "wrong" witness or witnesses to testify as to designated areas risks incurring draconian "death penalty" sanctions. Unless the trial court's decision is reversed, corporations responding to Rule 30(b)(6) notices will be forced -- because of the

risks involved -- to designate virtually every employee having any personal knowledge of the issue in question, rather than the one or two corporate representatives that they would designate today. Though "over-designating" witnesses would make the process far more difficult for the corporation, and far less useful for the discovering party, the risk to the corporation of doing anything less - the risk of a default sanction striking each and every defense - would simply be too great. In addition, the corporation would be well-advised to file a motion for a protective order in response to every Rule 30(b)(6) notice in order to obtain explicit and advance rulings from the trial court on the adequacy of its designation, even if there were no objection by the opposing party or hint of a discovery dispute.

The end result will be detrimental to all concerned. The original purpose of Rule 30(b)(6) -- to make corporate depositions easier and more useful for both parties -- will be lost, and courts will be enmeshed in time-consuming micromanagement of discovery issues.

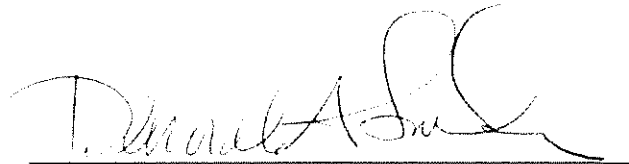
For the foregoing reasons, the Chamber has an exceedingly strong interest in participating in this case

as *amicus curiae* to bring to the Court's attention various concerns which it has on behalf of its members regarding the use and purpose of Rule 30(b)(6) and the proper exercise of judicial power and authority related to same.

For the foregoing reasons, the Chamber also requests leave to participate in oral argument granted in this case pursuant to Alabama Rules of Appellate Procedure Rules 21 and 34, so that it may aid the Court in its decisional process in this case.

WHEREFORE, the Chamber respectfully prays that this Court grant it leave to file the *amicus curiae* brief which is being conditionally filed with this Court contemporaneously herewith, grant it leave to participate in oral argument, and award to it such other and further relief as may be just and proper.

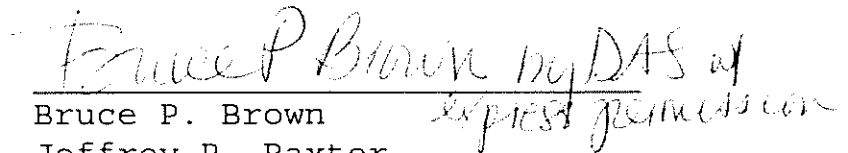
This 25th day of May, 2006.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion of the Chamber of Commerce of the United States of America for Leave to File Brief as *Amicus Curiae* in Support of the Petition of The Dow Chemical Company for Writ of Mandamus and to Participate in Oral Argument has been served on this the 25th day of May, 2006, by depositing a copy of same in the United States mail, postage prepaid and properly addressed upon the following:

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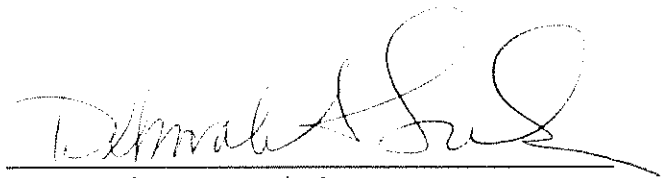
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A handwritten signature in cursive script, appearing to read "Deborah A. Smith", written over a horizontal line.

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