IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOHN S. HAHN,

Special Master,

BADER FARMS, INC.,

Plaintiff-Appellee,

BILL BADER,

Plaintiff,

V.

MONSANTO COMPANY,

Defendant-Appellant,

BASF CORPORATION,

Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of Missouri, 1:16cv299-SNLJ District Judge Stephen N. Limbaugh, Junior

AMICI CURIAE BRIEF OF MISSOURI CHAMBER OF COMMERCE AND INDUSTRY, MISSOURI AGRIBUSINESS ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, AND COALITION FOR LITIGATION JUSTICE, INC. IN SUPPORT OF DEFENDANTS-APPELLANTS

Mark A. Behrens (Counsel of Record)
Philip S. Goldberg
Kateland R. Jackson
SHOOK, HARDY & BACON L.L.P.
1800 K Street NW, Suite 1000
Washington, DC 20006
(202) 783-8400
mbehrens@shb.com
pgoldberg@shb.com
krjackson@shb.com
Attorneys for Amici Curiae

March 19, 2021



DISCLOSURE STATEMENT PURSUANT TO RULES 26.1 AND 29

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel for *amici curiae* states that the Missouri Chamber of Commerce and Industry (Missouri Chamber), Missouri Agribusiness Association (MO-AG), Chamber of Commerce of the United States of America (U.S. Chamber), National Association of Manufacturers (NAM), and Coalition for Litigation Justice, Inc. (Coalition) are the only parties appearing as *amici* on this brief. *Amici* have no parent corporations and have no issued stock.

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, counsel for *amici curiae* states that (1) no party's counsel authored this brief in whole or in part; (2) no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person—other than *amici*, their members, or their counsel—contributed money that was intended to fund the preparation or submission of the brief.

Shook, Hardy & Bacon LLP is the only firm appearing for amici in this case.

/s/ Mark A. Behrens
Mark A. Behrens



TABLE OF CONTENTS

	<u>PAGE</u>	<u>}</u>
TAB	LE OF AUTHORITIES ii	
QUE	STION PRESENTED1	
IDEN	TITY AND INTEREST OF AMICI CURIAE1	
SUM	MARY OF ARGUMENT1	
ARG	UMENT3	
I.	UNDER MISSOURI LAW, A PARTY IS NOT LIABLE FOR HARM CAUSED BY A PRODUCT IT DID NOT MAKE OR SELL3	
II.	MISSOURI IS ALIGNED WITH THE MAJORITY RULE NATIONWIDE THAT MANUFACTURERS ARE NOT LIABLE FOR PRODUCTS MADE OR SOLD BY THIRD PARTIES	
III.	PLAINTIFF'S NOVEL THEORY IS UNSOUND POLICY10	
CON	CLUSION 12	



TABLE OF AUTHORITIES

<u>CASES</u>	PAGE
Acoba v. General Tire, Inc., 986 P.2d 288 (Haw. 1999)	9
Bailey v. Innovative Mgmt. & Inv., Inc., 916 S.W.2d 805 (Mo. Ct. App. 1995)	5
Baughman v. General Motors Corp., 780 F.2d 1131 (4th Cir. 1986)	9
Brown v. Drake-Willock Int'l, Ltd., 530 N.W.2d 510 (Mich. App. 1995)	7
Callahan v. Cardinal Glennon Hosp., 863 S.W.2d 852 (Mo. 1993)	3
Chemical Design, Inc. v. American Standard, Inc., 847 S.W.2d 488 (Mo. Ct. App. 1993)	4
Childress v. Gresen Mfg. Co., 888 F.2d 45 (6th Cir. 1989)	8
City of St. Louis v. Benjamin Moore & Co., 226 S.W.3d 110 (Mo. 2007)	passim
Cousineau v. Ford Motor Co., 363 N.W.2d 721 (Mich. Ct. App. 1985)	9
Dreyer v. Exel Indus., S.A., 326 F. App'x 353 (6th Cir. 2009)	8
Emmons v. Bridgestone Americas Tire Operations, LLC, No. 1:10CV41, 2012 WL 6200411 (E.D. Mo. Dec. 12, 2012)	6
Firestone Steel Prods. Co. v. Barajas, 927 S.W.2d 608 (Tex. 1996)	9
Fleck v. KDI Sylvan Pools, 981 F.2d 107 (3d Cir. 1992)	9
Ford v. GACS, Inc., 265 F.3d 670 (8th Cir. 2001), cert. denied, 535 U.S. 754 (2002)	
Ford Motor Co. v. Wood, 703 A.2d 1315 (Md.App. 1998)	9
Hagen v. Celotex Corp., 816 S.W.2d 667 (Mo. 1991)	4
Hill v. General Motors Corp., 637 S.W.2d 383 (Mo. Ct. App. 1982)	5
Huck v. Wyeth. Inc. 850 N.W.2d 353 (Iowa 2014)	12



In re Darvocet, Darvon, & Propoxyphene Prods. Liab. Litig., Nos. 2:11-189 to -190, -296 to -297, -299 to -300, -328 to 329, -331 to -347, -358 to -380, 2012 WL 3610237 (E.D. Ky. Aug. 21, 2012) (unreported), aff'd on other grounds, 756 F.3d 917 (6th Cir. 2014)
In re Deep Vein Thrombosis, 356 F. Supp. 2d 1055 (N.D. Cal. 2005)8
In re Zantac (Ranitidine) Prods. Liab. Litig., MDL No. 2924, No. 20-MD-2924, 2020 WL 7866660 (S.D. Fla. Dec. 31, 2020)
John Crane, Inc. v. Scribner, 800 A.2d 727 (Md. 2002)9
Johnson v. Auto Handling Corp., 523 S.W.3d 452 (Mo. 2017)5
Long v. Cottrell, Inc., 265 F.3d 663 (8th Cir. 2001), cert. denied, 535 U.S. 931 (2002)
Lytell v. Goodyear Tire & Rubber Co., 439 So. 2d 542 (La. Ct. App. 1983)9
Mitchell v. Sky Climber, Inc., 487 N.E.2d 1374 (Mass. 1986)
Phelps v. Wyeth, Inc., No. 09-6168-TC, 2010 WL 2553619 (D. Or. May 28, 2010)
Rastelli v. Goodyear Tire & Rubber Co., 591 N.E.2d 222 (N.Y. 1992)9
Reynolds v. Bridgestone/Firestone, Inc., 989 F.2d 465 (11th Cir. 1993)9
Sanders v. Ingram Equip., Inc., 531 So. 2d 879 (Ala. 1988)9
Shaw v. General Motors Corp., 727 P.2d 387 (Colo. App. 1986)
Spencer v. Ford Motor Co., 367 N.W.2d 393 (Mich. Ct. App. 1985)9
Toth v. Econ. Forms Corp., 571 A.2d 420 (Pa. Super. Ct. 1990)9
Wagner v. Bondex Int'l, Inc., 368 S.W.3d 340 (Mo. Ct. App. 2012)5
Walton v. Harnischfeger, 796 S.W.2d 225 (Tex. App. 1990)
Wiler v. Firestone Tire & Rubber Co., 95 Cal. App. 3d 621 (1979)9
Westchem Agric. Chems. v. Ford Motor Co., 990 F.2d 426 (8th Cir. 1993)7
Zafft v. Eli Lillv & Co., 676 S.W.2d 241 (1984)passim



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

