IN THE SUPREME COURT OF FLORIDA



CASE NO. 96,139

GENERAL MOTORS CORPORATION, a foreign corporation and POTAMKIN CHEVROLET, INCORPORATED, a domestic corporation,

Petitioners,

v.

BRIAN W. NASH, as Personal Representative of the Estate of MARIA DEL CARMEN NASH, et al.

Respondents.
_____/

On Discretionary Review from a Decision of the District Court of Appeal, Third District

---

# BRIEF OF AMICUS CURIAE PRODUCT LIABILITY ADVISORY COUNCIL, INC.

---

Of counsel:
Hugh F. Young, Jr.
Product Liability Advisory Council, Inc.
1850 Centennial Park Dr., Suite 510
Reston, Virginia 20191
(703) 264-5300

Benjamin H. Hill, III
Florida Bar No. 094585
Marie A. Borland
Florida Bar No. 847984
HILL, WARD & HENDERSON
Suite 3700, Barnett Plaza
101 East Kennedy Blvd.
Tampa, Florida
(813) 221-3900

William Powers, Jr.
Texas Bar No. 16213350
Steven Goode
Texas Bar No. 08144300
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-1297
Attorneys for Amicus Curiae
Product Liability Advisory Council, Inc.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Statutes**



**Other Authorities**

## CERTIFICATE OF TYPE SIZE AND STYLE

This brief uses 14 point proportionally spaced Times New Roman font.

## STATEMENT OF INTEREST

The Product Liability Advisory Council, Inc. ("PLAC") is a nonprofit corporation with 127 corporate members representing a broad cross-section of American industry. PLAC's corporate members are listed in Appendix **A.** These corporate members include manufacturers and sellers in a wide range of industries, from electronics to automobiles to pharmaceutical products. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (i.e., non-voting) members of PLAC.

PLAC's primary purpose is to file *amicus curiae* briefs on behalf of its members on issues that affect the development of the law of product liability. PLAC has submitted numerous *amicus curiae* briefs in state and federal courts, including this Court.

PLAC and its members have a strong interest in the issues in this case. The applicability of section 768.81 to enhanced injury cases is an issue of substantial importance to many of its members. More generally, the membership of PLAC is vitally interested in seeing that the system of comparative fault embraced by section 768.81 is not eviscerated. The court of appeal's holdings that an intoxicated driver who causes an injury has committed an intentional tort and that plaintiffs' negligence, products liability and breach of warranty suit against General Motors qualifies as an action "based upon an intentional tort" threaten to undermine the

Florida Legislature's decision to replace joint and several liability with a system in which a defendant's liability is commensurate with its degree of fault. The notion that it is impermissible for a jury to compare the fault of an intoxicated driver with that of a manufacturer that allegedly produced a defective product is antithetical to the Florida comparative fault scheme.

## SUMMARY OF ARGUMENT

The court of appeal's ultimate holding that plaintiffs' suit against General Motors—brought on negligence, products liability, and breach of warranty theories—was really an action "based upon an intentional tort" is fundamentally at odds with the Legislature's decision to eliminate joint and several liability. The two conclusions upon which this holding is premised are inconsistent with the express language of section 768.81 and an overwhelming body of caselaw. The lower court's conclusions are also rejected by the American Law Institute's Restatements of Torts, the nation's most authoritative analyses of tort law.

This Court's decisions in *Merrill Crossings Assoc. v. McDonald,* 705 So.2d 560 (Fla. 1997), and *Stellas v. Alamo Rent-A-Car,* 702 So.2d 232 (Fla. 1997), do not stand for the general proposition that a products liability crashworthiness case is transformed into an action "brought upon an intentional tort" simply because a drunk driver happened to cause the accident. Instead, these cases exempt from section 768.81 a small and clearly defined set of cases: when the defendant's negligence is based upon its failure to protect against the specific risk of the intentional tort suffered by the plaintiff. The Restatement (Third) of Torts: Apportionment of Liability confirms this analysis.

The court of appeal's conclusion that an injury caused by an intoxicated driver constitutes an intentional tort is contrary to Florida law and a vast body of

authority. Since an intentional tortfeasor must intend the consequences of his act (rather than merely intending to do the act), the intentional tortfeasor must either desire to cause the injury or believe that his conduct is substantially certain to cause the injury. Drunk driving cases do not meet that standard.

## ARGUMENT

### I. INTRODUCTION

Section 768.81, Florida Statutes, "replace[d] joint and several liability with a system that requires each party to pay for noneconomic damages only in proportion to the [party's] percentage of fault." *Fabre v. Marin*, 623 So.2d 1182, 1185 (Fla. 1993). The impetus for this legislative reform was the fundamental idea that it is unfair to require "a defendant to pay more than his or her percentage of fault." *Id*. Despite this, the court of appeal held that the trial court improperly allowed Chatfield, the drunk driver who undisputedly caused the accident, to appear on the verdict form with General Motors, whose allegedly defective seat belt allegedly enhanced Mrs. Nash's injury. This holding is at odds with the express language of Section 768.81, an overwhelming body of caselaw, and the views of the most respected scholars in the field.[1]

### II. PLAINTIFFS' SUIT WAS NOT "BASED UPON AN INTENTIONAL TORT"

Section 768.81(4)(b) exempts from its purview "any action based upon an intentional tort." The court of appeal held that plaintiffs' suit fell within this exemption, and consequently, that Chatfield should not have appeared on the

---

[1] The arguments made in this Brief are substantially the same as the arguments made in Section II of the Brief filed by Amicus in D'Amario v. Ford Motor Co.,

verdict form. To arrive at the holding, however, the court of appeal was first required to reach two rather startling conclusions: first, that an accident caused by a drunk driver is an intentional tort; and second, that plaintiffs' products liability action against a manufacturer is an action "based upon an intentional tort." Neither of these conclusions withstands the slightest scrutiny.

### A. The Fact that a Drunk Driver Caused the Accident Does Not, Under *Merrill Crossings* and *Stellas*, Transform This Suit Into an Action Based Upon An Intentional Tort

#### 1. The policy behind the exemption for intentional torts

A drunk driver caused the accident in this case. But that fact does not transform the products liability crashworthiness case brought by plaintiffs into an action based upon an intentional tort. Strong policy reasons support the Legislature's decision to exempt intentional torts from section 768.81. In *Merrill Crossings Assoc. v. McDonald*, 705 So.2d 560 (Fla. 1997), and *Stellas v. Alamo Rent-A-Car*, 702 So.2d 232 (Fla. 1997), this Court brought within that exemption a small and clearly defined set of cases: when the defendant's negligence is based upon its failure to protect against the specific risk of the intentional tort suffered by the plaintiff. In fact, both the statutory exemption for actions based upon an intentional tort and this Court's decisions in *Merrill Crossings* and *Stellas* are

---

(Case No. 95,881). Amicus files this Brief so that it will be readily available to this Court when it reviews the materials filed in this case.

consistent with the scholarly analysis of the Restatement (Third) of Torts: Apportionment of Liability.2 But the Restatement does not exempt crashworthiness cases such as this one from apportionment, and neither should this Court.

The Restatement recognizes that intentional torts present special problems regarding apportionment. It questions3 (without ultimately deciding)4 whether an intentional tortfeasor should be able to raise the plaintiff's comparative fault in an effort to reduce the plaintiffs recovery. (It expressly supports apportionment of liability between intentional and negligent defendants. *Id.* § 1, Reporters' Note, Comment c at 17.) To afford "appropriate redress to victims of intentional torts," *id.* § 1, Comment c. at 7, the Restatement adopts a special rule imposing joint and

---

2 The Restatement was adopted at the May 1999 Annual Meeting of the American Law Institute. In this brief, all citations and quotations from this Restatement come from the Proposed Final Draft (Revised). The final version will be published this spring. It has some stylistic changes to the material we have cited in this brief, but none of these changes are substantive in nature.

3 "There is an intuitive sense that a plaintiffs own failure to use reasonable care should not affect a plaintiffs recovery against an intentional tortfeasor." Restatement (Third) of Torts: Apportionment of Liability § 1, Reporters' Note, Comment c at 13.

4 *Id.* at 17.

several liability on intentional tortfeasors. *Id.* § 22.[5] This special rule parallels section 768.81.

### 2. *Merrill Crossings* and *Stellas* apply only when the defendant's alleged negligence is its failure to protect the plaintiff from the specific risk of an intentional tort

In *Merrill Crossings*, this Court held that an action by the victim of an intentional assault against the owner and a tenant of a shopping center for failure to maintain reasonable security measures qualified as an action "based upon an intentional tort," and was thus exempt from the comparative fault scheme of section 768.81. *Stellas*, decided the same day, reached a similar conclusion in a suit by an assault victim against a car rental company for its negligent failure to warn that touring in certain areas of Miami with a bumper sticker saying "Alamo" posed the risk of just such an assault.

This Court made clear, however, that its decision to term what was in each case ostensibly a negligence suit an action "based upon an intentional tort" was actually quite a modest step. The Court emphasized that it was dealing with a sharply-defined kind of negligence action: "in the instant case **we** deal with a negligent tortfeasor whose acts or omissions give rise to or permit an intentional

---

[5] "Each person who commits a tort that requires intent is jointly and severally liable for any indivisible injury legally caused by the tortious conduct." *Id,* § 22.

tortfeasor's actions.'' *Merrill* ***Crossings,*** 705 So.2d at 562. The Court underscored this point by quoting from the Restatement (Second) of Torts § 4496 and by explaining that "it would be irrational to allow a party who negligently fails to provide reasonable security measures to reduce its liability because there is an intervening intentional tort, where the intervening intentional tort is exactly what the security measures are supposed to protect against." *Id.* at 562-63.

***Merrill*** *Crossings* and *Stellas* are consistent with another special rule of liability adopted by the Restatement (Third) of Torts: Apportionment of Liability.[7] Section 24 imposes joint and several liability on "a person who is liable to another based on a failure to protect the other from the specific risk of an intentional tort.'' The Restatement thus takes the view that it is not unfair to hold a party liable for the entirety of the damages caused by an intentional tort when the party's liability

---

The Restatement does not take a position on whether joint and several liability should apply generally. See *id.* § 20 Comment a.

6 "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby." Restatement (Second) of Torts § 449, quoted in *Merrill Crossings,* 705 So.2d at 562.

7 In fact, the Restatement cites with approval both the district court of appeal opinion in ***Merrill*** *Crossings* and *Slawson v. Fast Food Enter.,* 671 So.2d 255 (Fla. 4th DCA 1996), review dismissed, 679 So.2d ***773*** (Fla. 1996), which this Court relied upon in ***Merrill*** *Crossings, 705* So.2d at 563.

lies specifically in its failure to protect against that particular type of risk. *Id.* § 24, Comment b. at 164.

The Restatement cautions, however, that this special rule is limited to the negligent failure to protect against the specific risk of an intentional tort. Warning of the danger of expanding this special rule beyond its narrow confines, it offers a crashworthiness case as an example of the type of case to which the special rule should *not* apply. See ***id.*** § 24, Comment a, Ill. **3;** Reporters' Note, Comment a at 166. ("If the rule provided in this section were applied to [crashworthiness and other similar cases] it could substantially eviscerate the policy reflected in a jurisdiction that has legislatively determined that joint and several liability for independent tortfeasors should be modified or abolished.")

The consequences of adopting the reasoning of the court of appeal would be truly perverse. Compare the results the opinion below would generate in two products liability suits brought against the manufacturer by the driver of a car whose injuries were enhanced by the car's defective design. In the first suit, the plaintiff was injured when another driver negligently collided with the plaintiffs car. In the second suit, the other driver intentionally rammed the plaintiffs car. Under the reasoning of the court of appeal, the manufacturer will be significantly worse off in the case where the other driver intentionally rammed the plaintiffs car. If the other driver is merely negligent, section 768.81 applies, comparative

fault is assigned, and joint and several liability is unavailable. But according to the court of appeal, if the other driver intentionally rammed plaintiffs car, plaintiffs products liability claim against the manufacturer is transformed into a suit based upon an intentional tort, section 768.81 does not apply, and the manufacturer will be left jointly and severally liable and without the ability to seek an apportionment of fault.

It was just such an anomalous result that prompted *Fabre* v. *Marin* to reject the plaintiffs claim that a defendant's fault should be compared only to fault of other defendants, and not to that of non-parties. As this Court noted, "it defies common sense" to allow a defendant's liability to hinge on factors immaterial to the defendant's degree of fault. That is precisely what the court of appeal's opinion would do. The manufacturer's liability would fluctuate wildly, depending on whether the other tortfeasor acted negligently or intentionally. Perversely, the more egregious (and the more worthy of punishment) the other tortfeasor's conduct, the worse off the manufacturer would be.

Accepting the court of appeal's conclusions would also create serious line-drawing problems. Suppose a drunk driver is involved in an accident with two other cars. The drunk driver sues the other two drivers, claiming their negligence caused the accident. The defendants claim that the plaintiffs intoxication was at least partially to blame. The court of appeal says drunk driving is an intentional

tort. Assuming for a moment that is true, does that mean section 768.81 is inapplicable? Would the defendants be precluded from asking the jury to compare their fault with the plaintiffs and would they thus be held jointly and severally liable? *Nash* implies that the answers to these questions would be yes. Not only does that defy common sense, it is contrary to Florida law. Section 768.36, Fla. Stat., provides that a plaintiff who is intoxicated may not recover any damages if the trier of fact finds that the plaintiff was more than fifty percent at fault. This obviously requires juries to compare the defendant's fault to the drunk driver plaintiffs fault. See also *Demoya v. Lorenzo,* 468 So.2d 358 (Fla. 3rd DCA 1985).

The court of appeal's conclusions would also create, however unintentionally, bad public policy. Surely, in the hypothetical above, it is against the public interest to allow the plaintiff drunk driver to escape responsibility for his own reprehensible conduct. Similarly, in this case, public policy demands that responsibility be apportioned to the drunk driver who caused the accident. *Nash,* however, holds out the potential that he will never be held accountable for his actions.

The simple fact that an intentional tortfeasor is somehow involved in the chain of events that culminates in a lawsuit cannot mean that the suit qualifies as an action "based upon an intentional tort." To do so would thwart the Legislature's purpose. By enacting section 768.8 1, the Legislature sought to eliminate joint and

several liability in most cases. The holding below, however, would reinstate joint and several liability in a great number of cases. And it would do so on almost a random basis, depending on whether an intentional tortfeasor fortuitously happened to have some connection to the accident. Section 768.81 must instead be read in a manner faithful to the Legislature's intent that, except for intentional tortfeasors, liability should be assigned on the basis of a tortfeasor's fault.

### B. One Who Causes an Injury While Driving While Intoxicated Has Not Committed an Intentional Tort

The other conclusion of the court of appeal-that one who causes an injury while driving intoxicated has committed an intentional tort-is clearly erroneous. It goes against the vast weight of precedent and scholarly opinion. Florida law holds that a person commits an intentional tort only when that person either "exhibit[s] a deliberate intent to injure or engage[s] in conduct which is substantially certain to result in injury or death." *Fisher v. Shenandoah General Construction Co,,* 498 So.2d 882, 883 (Fla. 1986). See also *Spivey v. Battaglia,* 258 So.2d 8 15, 8 17 (Fla. 1972) ("where a reasonable man would believe that a particular result was *substantially certain* to follow, he will be held in the eyes of the law as though he had intended it . . . However, the knowledge and appreciation of a *risk,* short of substantial certainty, is not the equivalent of intent.") (emphasis

in original); *General Motors Acceptance Corp. v. David,* 632 So.2d 123, 125 (Fla. 1st DCA 1994).

While drunk drivers may intend to engage in the *act* of drunk driving, that is not the same as intending the *result* of causing injury. See Restatement (Second) of Torts § 8A, Comment a at 15 (intent refers "to the *consequences* of an act rather than the act itself') (emphasis added); *Kawaauhau v. Geiger, 523* U.S. 57, 61-62 (1998). Nor does drunk driving, deplorable as it is, create that substantial certainty of injury required of an intentional tort.

In *Fisher v. Shenandoah General Construction* Co. this Court equated substantial certainty with "virtual certainty." 498 So.2d 882, 884. A "strong probability" of injury is not enough; nor is a "great" risk. A defendant acting with the awareness of such risk may be reckless or wanton, but is still not engaged in an intentional tort. *Id.* at 883-84. Quoting Prosser & Keeton, the Court stated:

> the mere knowledge and appreciation of a risk-something short of substantial certainty-is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but is not an intentional tort.

*Id.* at 884 (quoting Prosser & Keeton on Torts 36 (W. Keeton 5th ed. 1984)). See also *General Motors Acceptance Corp. v. David,* 632 So.2d 123, 125 (Fla. 1st DCA 1994) (Substantial certainty "requires more than a strong probability of injury. It requires virtual certainty.").

That intentional torts are limited to those situations where the tortfeasor intended the result or knew the risk of injury was virtually certain is hornbook law. It is the position of the Restatement (Second) of Torts § 8A (which this Court relied on in *Spivey v. Battaglia,* 258 So.2d at 817 n.2), the Restatement (Second) of Torts § 500, Comment f (which this Court relied on in *Fisher v. Shenandoah General Construction Co.,* 498 So.2d at 884), and the proposed Restatement (Third) of Torts: General Principles § 1 (Discussion Draft 4/5/99) (intent is found when actor acts with desire of bringing about the harm or with belief that the harm is substantially certain to result), *See* also *Garratt v. Dailey,* 46 Wash.2d 197, 279 P.2d 1091, 1093-94 (1955) (substantial certainty requires more than very grave risk).8

The court of appeal brushed aside this overwhelming body of authority with no discussion and with citation to just three cases, none of which is apposite. It cited only one Florida case, *Ingram v. Pettit,* 340 So.2d 922 (Fla. 1976). *Ingram,* however, holds only that a jury may consider awarding punitive damages when a tortfeasor acts negligently and is intoxicated, That is a far cry from holding that

---

8 "It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact . . . . Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact . . . will result, the actor has not that intention which is necessary to make him liable . . ." *279* P.2d at 1093-94.

causing injury while driving while intoxicated is an intentional tort. Indeed, as this Court explained in *Ingram*, punitive damages will lie when a tortfeasor is reckless. *Id.* at 924. Moreover, answering the question of whether causing an injury while driving intoxicated is sufficiently egregious conduct to justify an award of punitive damages is different from answering whether such conduct is an intentional tort and thus outside the ambit of section 768.81. An affirmative answer to the first question does not resolve the second.

The two other cases cited by the court below are likewise inapposite. Both are bankruptcy cases holding that debts arising from injuries caused by the debtor's intoxication were not dischargeable pursuant to 11 U.S.C.A. § 523(a)(6), which disallows the discharge of debts for "willful and malicious injury by the debtor." *In re Ray,* 5 1 B.R. 236 (B.A.P. 9th Cir. 1985); *In re Fielder,* 799 F.2d 656 (1 lth Cir. 1986). Once again, these cases involve an issue very different from the one addressed in *Nash.* Whether a debt arising from an injury caused by the debtor's intoxication should be included in the class of debts for which a discharge in bankruptcy is disallowed is a completely different question from whether such tortfeasors should be subjected to joint and several liability. Furthermore, in *Kawaauhau v. Geiger,* 523 U.S. 75 (1998), the Supreme Court repudiated the logic

of these cases, stripping them of any precedential value they might otherwise have had.[9]

The court of appeal's holding that one who causes an injury while driving intoxicated has committed an intentional tort is utterly lacking in support. It goes against long-standing and established authority, and should, therefore, be rejected.

## CONCLUSION

For these reasons, Amicus Product Liability Advisory Council, Inc. respectfully requests that this Court reverse the judgment of the Third District Court of Appeal.

---

9 The Court noted that a 1990 amendment to the Bankruptcy Code that disallows the discharge of debts "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated," 11 U.S.C.A. § 523(a)(9), would be superfluous if debts arising from injuries caused by the debtor's intoxication were already nondischargeable under § 523(a)(6). In other words, the bankruptcy cases cited in ***Nash*** got it wrong.

Respectfully submitted,

Benjamin H. Hill, III
Florida Bar No. 094585
Marie A. Borland
Florida Bar No. 847984
**HILL, WARD &HENDERSON**
Suite 3700, Barnett Plaza
101 East Kennedy Blvd.
Tampa, Florida
(813) 221-3900

William Powers, Jr.
Texas Bar No. 16213350
Steven Goode
Texas Bar No. 08144300
727 East Dean Keeton Street
Austin, Texas 78705
(5 12) 232-1297

Attorneys for Amicus Curiae
Product Liability Advisory
Council, Inc.

Of counsel:
Hugh F. Young, Jr.
Product Liability Advisory Council, Inc.
1850 Centennial Park Dr., Suite 5 10
Reston, Virginia 20 19 1
(703) 264-5300

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this Brief was mailed this 12a y of January, 2000 to all counsel of record as follows:

Daniel S. Pearson, Esq.
HOLLAND & KNIGHT
701 Brickell, Suite 3000
Miami, Florida 33 13 1

Chilton Davis Varner, Esq.
Halli D. Cohn, Esq.
Michelle Jerusalem Cole, Esq.
KING & SPALDING
191 Peachtree Street, Suite 4900
Atlanta, Georgia 30303- 1763

Marc Poses
**POSES & HALPERN,** P.A.
2626 Museum Tower
150 West Flagler Street
Miami, Florida 33 130

Marc Cooper, Esq.
Nancy C. Ciampa, Esq.
**COOPER& WOLFE,** P.A.
200 South Biscayne Blvd., Suite 3580
Miami, Florida 33 13 1-23 16

Benjamin H. Hill, III

## CORPORATE MEMBERS/ PRODUCT LIABILITY ADVISORY COUNCIL, INC.

*12-Jan-00*

3M

Allegiance Healthcare Corporation

American Home Products Corporation

American Medical Systems, Inc.

American Suzuki Motor Corporation

Andersen Corporation

Andrx Corporation

Anheuser-Busch Companies, Inc.

Appleton Papers, Inc.

Atlantic Richfield Company

BASF Corporation

Baxter International, Inc.

Bayer Corporation

BIC Corporation

Biomet, Inc.

Black & Decker (U.S.) Inc.

BMW of North America, Inc.

Boeing Company, The

Bombardier Inc., Recreational Products

Bridgestone/Firestone, Inc.

Briggs & Stratton

Brown and Williamson Tobacco Company

Brown-Forman Corporation

Budd Company, The

C. R. Bard, Inc.

Caterpillar, Inc.

Chevron Corporation

CLARK Material Handling Company

Coleman Company, Inc., The

Compaq

Continental General Tire, Inc.

Coors Brewing Company

DaimlerChrysler Corporation

Dana Corporation

Deere & Company

Dow Chemical-Company. The

DuPont

E. & J. Gallo Winery

Eaton Corporation

Eli Lilly and Company

Emerson Electric Co.

Estee Lauder Companies

Exxon Mobil Corporation

FMC Corporation

Ford Motor Company

Fortune Brands, Inc.

Freightliner Corporation

Gates Corporation, The; Stnnt Corporation

General Electric Company

General Motors Corporation

Georgia-Pacific Corporation

Glaxo Wellcome Inc.

Global Industrial Technologies, Inc.

Goodyear Tire & Rubber Company, The

Great Dane Limited Partnership

Guidant Corporation

Harley-Davidson Motor Company

Harnischfeger Industries Inc.

Heil Company, The

Hoechst Marion Roussel, Inc.

Honda North America, Inc.

Hyundai Motor America

International Paper Company

Isuzu Motors America, Inc.

Johnson &Johnson

Johnson Controls, Inc.

Joseph E. Seagram & Sons; Inc.

Kawasaki Motors Corp., U.S.A.

Kolcraft Enterprises, Inc.

Kraft Foods, Inc.

Loewen Group International, Inc.

Lucas Varity

Lucent Technologies Inc.

Mack Trucks, Inc.

Mazda (North America), Inc.

Medtronic. Inc.

Melroe Company

Mercedes-Benz of North America, Inc.

Michelin North America, Inc.

Miller Brewing Company

Mitsubishi Motors R. & D. of America, Inc.

Motor Coach Industries International, Inc.

Navistar International Transportation Corp.

Niro Inc.

Nissan North America, Inc.

0. F. Mossberg & Sons, Inc.

Otis Elevator Co.

PACCAR Inc

Panasonic Company ,

Pentair, Inc.

Pfizer Inc.

Philip Morris Companies, Inc..

Polaris

Porsche Cars North America, Inc.

Procter & Gamble Co., The

Raymond Corporation, The

Raytheon Aircraft Company

Rheem Manufacturing

RJ Reynolds Tobacco Company

Rover Group, Ltd.

Schindler Elevator Corp.

SCM Group USA, Inc.

Sears, Roebuck and Company

Shell Oil Company

Sherwin-Williams Company, The

Siemens Corporation

Smith & Nephew, Inc.

Snap-on Incorporated

Sofamor Danek Croup, Inc.

Solutia Inc.

Sturm, Ruger & Co., Inc.

Subaru of America

Synthes (U.S.A.)

Taylor Wharton Gas Equipment, A Division of Harsco

Tenneco Automotive

Textron Inc.

Thomas Built Buses, Inc.

Toro Company, The

Toshiba America Incorporated

Toyota Motor Sales, USA, Inc.

TRW Inc.

UST (U.S. Tobacco)

Volkswagen of America, Inc.

Volvo Cars of North America, Inc.

Vulcan Materials Company

Whirlpool Corporation

Yamaha Motor Corporation, U.S.A.