No. 14-1091

IN THE
Supreme Court of the United States

THE DOW CHEMICAL COMPANY,
Petitioner,

v.

INDUSTRIAL POLYMERS, INC., QUABAUG CORP., AND SEEGOTT HOLDINGS, INC., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

The Product Liability Advisory Council ("PLAC") respectfully submits this brief as *amicus curiae* in support of petitioner The Dow Chemical Company. ("petitioner" or "Dow").[1]

STATEMENT OF INTEREST

PLAC is a non-profit association with over 100 corporate members representing a broad cross-section of American and international product manufacturers.[2] These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product-liability defense attorneys in the country are sustaining (non-voting) members of PLAC.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that petitioner and respondents have entered blanket consents to the filing of *amicus* briefs and that *amicus curiae* timely notified counsel of record of its intent to file this brief.

[2] A list of PLAC's current corporate membership is attached to this brief as Appendix A.

Since 1983, PLAC has filed more than 1,000 briefs as *amicus curiae* in both state and federal courts, including this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product manufacturers.

PLAC's members have an interest in this case because the decisions below endorse the certification of classes in price-fixing cases based on a presumption of antitrust impact despite evidence of individualized negotiations that indisputably resulted in some class members not paying any increase in prices. The application of this presumption in the face of clearly inconsistent facts facilitated a class trial in which plaintiffs were permitted to impose liability on a manufacturer on behalf of class members who could have never proven the manufacturer liable in an individual trial – in derogation of the Due Process Clause and the Rules Enabling Act. The Court should grant review and reverse because the decision below deepened a clear and persistent division among federal courts over when a presumption of classwide impact is permissible in price-fixing cases.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an opportunity for the Court to resolve a significant and recurring issue that has divided the federal courts of appeals: whether a presumption of classwide impact may be used to certify a price-fixing class even where prices are individually negotiated. Because such a class would generally (and in this case indisputably did) include uninjured individuals – i.e., those who did not pay a higher price after their individual negotiations and who therefore could never recover in individual actions – use of such a presumption creates liability to uninjured parties and thereby violates due-process principles and the Rules Enabling Act. As such, the court below and the other courts applying a similar presumption clearly have it wrong, and the Court should grant the petition to so hold.

In this case, plaintiffs are industrial purchasers of polyurethane chemicals who sued under the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Antitrust Act, 15 U.S.C. § 15 *et seq.*, alleging that Dow conspired with other polyurethane manufacturers to fix prices by issuing coordinated price increase announcements. According to plaintiffs and their expert, these announcements artificially inflated the baseline price for all market participants, even though the undisputed evidence showed that many purported class members avoided the announced increases through rigorous negotiations or by switching to substitute products.

The Tenth Circuit erroneously found class certification appropriate under these circumstances, concluding that it could presume classwide impact

based on the theory that the conspiracy artificially inflated the baseline for price negotiations.[3] Relying on that presumption, it determined that injury was a common issue that could be tried on a classwide basis.

In so doing, the Tenth Circuit joined the Third Circuit and a chorus of district courts that have improperly presumed classwide injury in price-fixing cases in the face of evidence demonstrating that numerous class members were not injured. The First, Fifth, and Eighth Circuits, by contrast, have properly held that class certification cannot rely on such a presumption of classwide injury where prices are individually negotiated. The stark divide between the federal appeals courts and numerous district courts on this issue reflects serious confusion that the Court should resolve once and for all.

This is a particularly compelling case for review because the Tenth Circuit is on the wrong side of this split – and a billion-dollar judgment stands on its error. The Tenth Circuit's holding approved a proceeding under which individuals were swept into a class and the entire class was deemed entitled to damages despite many members having no legally cognizable injury. It also infringed Dow's fundamental due-process rights by stripping it of its right to challenge a fundamental element of individual class members' claims. In addition, by eliminating the substantive requirement of injury solely by dint of the class device, the Tenth Circuit violated this Court's command, based on the Rules Enabling Act, that Rule 23 not be interpreted to "'abridge, enlarge

[3] As petitioner explains, while the Tenth Circuit used the term "inference," it was effectively applying a presumption of classwide injury. See Pet. at 14 n.3.

or modify any substantive right.'" *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011) (quoting 28 U.S.C. § 2072(b)). On the basis of this poor substitute for a real trial, Dow is now expected to pay in excess of a billion dollars to a class that consists of several uninjured class members, including class members who negotiated *better* prices notwithstanding the supposed price-fixing conspiracy.

If left to stand, the ruling below would significantly harm American manufacturers. After all, the reflexive use of a presumption even where there is a strong record that any alleged harm is individualized opens the door to over-compensation – i.e., damages payments to individuals who were never injured by a defendant's conduct. The cost to manufacturers of such over-compensation would be passed along to their purchasers, and then to consumers, leaving only plaintiffs' lawyers to benefit. This Court should grant review to prevent these results and to resolve a significant split among the federal courts of appeals.

ARGUMENT

I. The Tenth Circuit's Decision Reinforces A Circuit Split, Abridges Dow's Due-Process Rights And Violates The Rules Enabling Act.

The Tenth Circuit's decision to affirm class certification based on a presumption of impact that has been rejected by other circuits was erroneous because it foreclosed Dow's right to rebut the presumption with individualized evidence, in violation of its due-process rights and the Rules Enabling Act.

As the Tenth Circuit recognized, in order to establish civil liability under § 4 of the Clayton Act, plaintiffs were required "to prove antitrust injury, or impact," that "flows from that which makes defend-

ant's acts unlawful." Pet. App. 5a (internal quotation marks and citations omitted). This "impact" could be shown by proof of purchase at a price higher than the competitive rate. See *Robinson v. Tex. Auto. Dealers Ass'n*, 387 F.3d 416, 422 (5th Cir. 2004).

In certain contexts, courts have allowed the use of a presumption to alleviate the plaintiff's burden to prove injury in the first instance. Thus, in the class action context, some courts have held that a presumption can relieve the plaintiff of the burden of proving each class member's injuries when, for example, the evidence shows that the alleged price-fixing conspiracy artificially inflated a product's price for *all* market participants. And where the record makes clear at the class certification stage that the defendant would not be able to rebut that presumption with any evidence showing that some market participants did not pay any increase, courts have reasoned that the case can proceed as a class action because the presumption eliminates individualized questions of injury.

But a split has emerged among federal courts over when it is appropriate to apply this presumption. As the First, Fifth, and Eighth Circuits have concluded, it makes no sense to apply a presumption of common antitrust impact in price-fixing cases where individual negotiations determine prices in the relevant market. *Robinson*, 387 F.3d at 419-20, 423. After all, purchasers could negotiate away the additional charge. *Id.* at 423. Accordingly, in the class certification setting, proof of impact would require "evidence regarding each purported class member and his transaction," which "would destroy any alleged predominance." *Id.* at 423-24; see also *In re New Motor Vehicles Can. Export Antitrust Litig.*, 522

F.3d 6, 28-29 (1st Cir. 2008); *Blades v. Monsanto Co.*, 400 F.3d 562, 569 (8th Cir. 2005); IIA Phillip E. Areeda et al., *Antitrust Law: An Analysis of Antitrust Principles and Their Application* § 398 n.21 (4th ed. 2014) ("[w]hen transaction prices are negotiated," "proof of antitrust injury is bound to be individualized"). As these courts have recognized, presuming a classwide injury in a market where individual negotiations take place would defy the reality of those markets.

The Tenth Circuit ignored this reasoning altogether. Instead, it opted to join ranks with the Third Circuit and numerous district-court decisions that have held that a presumption of classwide impact is proper "*even when prices are individually negotiated*." Pet. App. 13a (citing *In re Linerboard Antitrust Litig.*, 305 F.3d 145, 151-52 (3d Cir. 2002); *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393, 409-10 (S.D. Ohio 2007)) (emphasis added). In so doing, the Tenth Circuit reinforced an already-existing circuit split on this important area of law.

The Tenth Circuit joined the wrong side of this split, contravening the Rules Enabling Act and Dow's fundamental due-process rights by applying a presumption that all class members were injured when the record clearly established that they were not. Some class members, for example, were protected by provisions in their contracts that prohibited price increases for a set amount of time. See Pet. at 6, 9-10. Others leveraged the substantial volume of their orders, along with the threat of taking that business elsewhere, to obtain lower prices. *Id*. In fact, Dow had evidence of hundreds of instances in which manufacturers offered to reduce prices to obtain new business or to retain existing business. *Id*. at 10.

And the district court itself found that named plaintiff Quabaug "'refused to take the price increase'" from one manufacturer and began purchasing from another at five cents per pound *less*. See *id*. at 6, 26 (quoting Pet. App. 119a).

In an individual trial, there would be no presumption of injury under these circumstances, and even if there were, there is no question that a defendant would be entitled to present rebuttal evidence. That is because a presumption does not eliminate the necessary element of injury. Rather, the presumption is merely a "legal fiction" that allows a finding of injury in the absence of direct evidence. Joel S. Hjelmaas, *Stepping Back from the Thicket: A Proposal for the Treatment of Rebuttable Presumptions and Inferences*, 42 Drake L. Rev. 427, 430-31 (1993). The rationale for using presumptions is that they can "avoid wasted time and effort *when the presumed fact is strongly based on logic and common sense*." *Id*. at 434 (emphasis added). But a defendant against whom a presumption operates remains free to try to rebut it, consistent with its right to negate any element of the plaintiff's claims.

As this case illustrates, however, when courts certify class actions based on supposed presumptions, the defendant has no meaningful ability to rebut them. See Joshua P. Davis & Eric L. Cramer, *Antitrust, Class Certification, and the Politics of Procedure*, 17 Geo. Mason L. Rev. 969, 973 (2010) ("the reality is that" antitrust class action trials "rarely, if ever" address "common impact"). One reason is that once a court certifies a case for class treatment, it rarely allows discovery of absent class members – undermining a defendant's ability to develop individualized injury defenses. See, *e.g.*, 3

William B. Rubenstein, *Newberg on Class Actions* § 9:19 (5th ed. 2013) ("discovery from absent class members is exceptional"); see also *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.*, No. 3:09-00882, 2012 U.S. Dist. LEXIS 145807, at *7-12 (M.D. Tenn. Oct. 10, 2012) (noting that absent class member discovery "is rarely permitted" and denying defendants leave to propound interrogatories on absent class members in order to determine whether they relied on allegedly material representations that were the basis of a presumption of reliance).

The result is to render the presumption of injury essentially irrebuttable, abrogating a defendant's due-process rights, at least where rebuttal evidence is available. Due process requires that before a defendant is deprived of his property, a plaintiff must prove every element of his claim and a defendant must be given "'an opportunity to present every available defense.'" *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (quoting *Am. Sur. Co. v. Baldwin*, 287 U.S. 156, 168 (1932)); see also, *e.g.*, *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971) (the "right to litigate the issues raised" in a case is "a right guaranteed . . . by the Due Process Clause"); *W. Elec. Co. v. Stern*, 544 F.2d 1196, 1199 (3d Cir. 1976) (recognizing that "to deny [the defendant] the right to present a full defense on the issues would violate due process"); *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 232 (2d Cir. 2008) ("'[A]ctual injury cannot be presumed, and defendants have the right to raise individual defenses against each class member.'") (citation omitted). As such, this Court has consistently held that the right to rebut a presumption that is contrary to fact is rooted in due process. See, *e.g.*, *Vlandis v. Kline*, 412 U.S. 441, 446 (1973) (noting

that the Court has repeatedly held that rules that "creat[e] a presumption which operates to deny a fair opportunity to rebut it violate[] the due process clause") (internal quotation marks and citation omitted).

Moreover, a defendant may not be deprived of this right merely to facilitate class certification. As the Court stated in *Dukes*, "a class cannot be certified on the premise that [the defendant] will not be entitled to litigate its . . . defenses to individual claims." *Dukes*, 131 S. Ct. at 2561 (citing 28 U.S.C. § 2072(b)). Otherwise, the class action procedure would effectively curtail substantive rights, in contravention of the Rules Enabling Act. *Id.* (explaining that the Rules Enabling Act "forbids interpreting Rule 23 to 'abridge, enlarge or modify any substantive right'") (quoting 28 U.S.C. § 2072(b)). In other words, the requirement of proving injury (as well as the other essential elements of plaintiffs' claims) survives notwithstanding the certification of a class. *Id.*; see also *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845 (1999) ("The Rules Enabling Act underscores the need for caution. As we said in *Amchem*, no reading of the Rule can ignore the Act's mandate that rules of procedure shall not abridge, enlarge or modify any substantive right.") (internal quotation marks and citations omitted); *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality opinion) (a class action must "leave[] the parties' legal rights and duties intact and the rules of decision unchanged").

Therefore, the Rules Enabling Act, just like due process, mandates "a full litigation of [each] element of the cause of action, and for *each* putative class member no less." *Corder v. Ford Motor Co.*, 283

F.R.D. 337, 343 (W.D. Ky. 2012) (emphasis added); see also *Franco v. Conn. Gen. Life Ins. Co.*, 289 F.R.D. 121, 139-40 (D.N.J. 2013) ("The Supreme Court's opinion in *Dukes* makes clear that" proving classwide entitlement to relief in ERISA class action "cannot be achieved at the expense of precision or of actual proof of an individual class member's legal right to a damages award" under the Rules Enabling Act.). Because the decision below permitted a finding of liability without allowing Dow to refute the element of injury, it cannot be reconciled with the requirements of the Rules Enabling Act.[4]

For all of these reasons – and particularly in light of the eye-popping judgment in excess of $1 billion, see, *e.g.*, *United States v. Mitchell*, 463 U.S. 206, 211 & n.7 (1983) (case raised issues of "substantial importance" in light of potential liability of $100 million) – the Court should grant certiorari and resolve the lower courts' split by holding that a presumption of

[4] The approach sanctioned by the Tenth Circuit poses an additional problem. By certifying a class based on a presumption of classwide injury despite evidence of individual negotiations, a court is in effect approving a trial of claims on behalf of a class that includes both injured and uninjured class members. In doing so, the court ties the fate of the claims of all class members who actually experienced a price increase to the rest of the class, posing the risk that a favorable judgment for the defendant would extinguish the claims of class members who might have had a better chance of prevailing on the merits in individual actions. See Ian Simmons et al., *Without Presumptions: Rigorous Analysis in Class Certification Proceedings*, 21 Antitrust ABA 61, 61, 66 (Summer 2007) ("if the court or jury rejects the claim based on evidence that some class members were not injured, the claims of the remaining class members who did suffer injury will be extinguished and subject to res judicata").

injury in improper where there is evidence of individual negotiations in price-fixing cases.

II. The Rule Followed By The Tenth Circuit, The Third Circuit And Many District Courts Is Damaging To American Business.

The Court should also grant certiorari and reverse the decision below because unbending presumptions like the one applied here lead to abusive settlements and create an unfair drag on the economy.

As numerous commentators have recognized, a low bar to class treatment exponentially raises the stakes of litigation and the risk of gargantuan verdicts – not to mention bankruptcy. Mark Moller, *The Anti-Constitutional Culture of Class Action Law,* Regulation 50, 53 (Summer 2007). As a result, "[f]ollowing certification, class actions often head straight down the settlement path because of the very high cost for everybody concerned, courts, defendants, plaintiffs of litigating a class action . . . ." Bruce Hoffman, Remarks, *Panel 7: Class Actions as an Alternative to Regulation: The Unique Challenges Presented by Multiple Enforcers and Follow-On Lawsuits*, 18 Geo. J. Legal Ethics 1311, 1329 (2005) (panel discussion statement of Bruce Hoffman, then Deputy Director of the Federal Trade Commission's Bureau of Competition).

The promise of loose certification standards followed by near-certain settlement distorts the judicial process by rendering the merits of the case relatively meaningless "because the expense of litigating the claim and the potentially high verdict in the event of loss can give the plaintiffs' attorneys a very strong hand despite their weak legal position." Sarah Rajski, *In re Hydrogen Peroxide: Reinforcing Rigor-*

ous Analysis for Class Action Certification, 34 Seattle U. L. Rev. 577, 603, 607 (2011); Kristen L. Wenger, *The Class Action Fairness Act of 2005: The Limits of Its Text and the Need for Legislative Clarification, Not Judicial Interpretation*, 38 Fla. St. U. L. Rev. 679, 688 (2011) ("Critics of class action litigation have also pointed out that the propensity for plaintiffs' lawyers to file allegedly frivolous lawsuits and the potential for massive jury verdicts have generally been sufficient to force corporations into settling unfounded claims or deter otherwise honest corporations from expanding their operations."); see also *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) ("[C]lass certification creates insurmountable pressure on defendants to settle, whereas individual trials would not. The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low.") (citation omitted); *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298-99 (7th Cir. 1995) (noting that the specter of bankruptcy brought on by an adverse class verdict imposes "intense pressure" on companies to settle after certification). Indeed, this Court has noted that "even a small chance of a devastating loss" inherent in most decisions to certify a class produces an "in terrorem" effect that often forces settlement independent of the merits of a case. See *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1752 (2011).

For this reason, commentators have remarked that "certification of an antitrust class is often tantamount to a summary judgment motion." See Paul E. Godek & Janusz A. Ordover, *Economic Analysis in Antitrust Class Certification: Hydrogen Peroxide*, 24 Antitrust ABA 62, 65 (Fall 2009). That commentary was largely confirmed in this case, given that all the

defendants except Dow settled after the Tenth Circuit denied their petition for interlocutory review under Rule 23(f). Pet. at 7.

Given these realities, the approach advanced by the Tenth Circuit in this case sets the stage for class action abuse. Indeed, its endorsement of a presumption that was contrary to the evidence mirrors the maneuvers employed by state courts to liberalize class certification prior to Congress's enactment of the Class Action Fairness Act of 2005. See generally Ian Simmons & Charles E. Borden, *The Defense Perspective: The Class Action Fairness Act of 2005 and State Law Antitrust Actions*, 20 Antitrust ABA 19, 22 (Fall 2005) (noting that, prior to CAFA, states that employed presumptions of antitrust impact were more likely to certify class actions in antitrust cases). Thus, it is reasonable to expect that, absent review by this Court, the Tenth Circuit's approach will significantly expand class action exposure for manufacturers, particularly those doing business within the boundaries of the Tenth Circuit. Indeed, left unchecked, the Tenth Circuit's endorsement of presumptions to facilitate class certification could very well influence other class-action litigation, such as consumer-fraud cases, in which some courts have applied presumptions of reliance, further expanding the risks posed by meritless class-action litigation to American businesses.

Nor is there any corresponding public-policy benefit that justifies the dilution of class certification requirements through knee-jerk presumptions of injury. In the context of this case, for example, the plaintiffs did not lack the financial means or incentive to pursue individual claims that are sometimes used to justify class treatment. To the contrary,

many are sophisticated purchasers capable of filing suit to vindicate their business disputes – and, in fact, some class members did opt out to file their own individual suits seeking treble damages.

Moreover, the increased burden of these frivolous class action lawsuits on American manufacturers would have adverse consequences on American consumers. After all, the increased cost of defending against more meritless class actions will inevitably be passed on to industrial purchasers and consumers in the form of higher prices in the marketplace. See Lisa Litwiller, *Why Amendments to Rule 23 Are Not Enough: A Case for the Federalization of Class Actions*, 7 Chap. L. Rev. 201, 202 (2004) ("Businesses spend millions of dollars each year to defend against the filing and even the threat of frivolous class action lawsuits. Those costs, which could otherwise be used to expand business, create jobs, and develop new products, instead are being passed on to consumers in the form of higher prices.") (internal quotation marks and citation omitted).

For these reasons too, the Court should grant certiorari.

CONCLUSION

For the foregoing reasons, and those stated by petitioner The Dow Chemical Company, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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April 8, 2015

APPENDIX A

Corporate Members Of The Product Liability Advisory Council

3M
Altec, Inc.
Altria Client Services Inc.
Ansell Healthcare Products LLC
Astec Industries
Bayer Corporation
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
The Boeing Company
Bombardier Recreational Products, Inc.
Boston Scientific Corporation
Bridgestone Americas, Inc.
C.R. Bard, Inc.
Caterpillar Inc.
CC Industries, Inc.
Celgene Corporation
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Cirrus Design Corporation
Continental Tire the Americas LLC
Cooper Tire & Rubber Company
Crane Co.
Crown Cork & Seal Company, Inc.
Crown Equipment Corporation
Daimler Trucks North America LLC
Deere & Company
Delphi Automotive Systems
Discount Tire
The Dow Chemical Company
E.I. duPont de Nemours and Company
Eisai Inc.

Emerson Electric Co.
Endo Pharmaceuticals, Inc.
Exxon Mobil Corporation
Ford Motor Company
Fresenius Kabi USA, LLC
General Electric Company
General Motors LLC
Georgia-Pacific Corporation
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
The Home Depot
Honda North America, Inc.
Hyundai Motor America
Illinois Tool Works Inc.
Isuzu North America Corporation
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Johnson Controls, Inc.
Kawasaki Motors Corp., U.S.A.
KBR, Inc.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Lincoln Electric Company
Lorillard Tobacco Co.
Magna International Inc.
Mazak Corporation
Mazda Motor of America, Inc.
Medtronic, Inc.
Merck & Co., Inc.
Meritor WABCO
Michelin North America, Inc.
Microsoft Corporation

Mine Safety Appliances Company
Mitsubishi Motors North America, Inc.
Mueller Water Products
Novartis Pharmaceuticals Corporation
Novo Nordisk, Inc.
NuVasive, Inc.
Pella Corporation
Pfizer Inc.
Pirelli Tire, LLC
Polaris Industries, Inc.
Porsche Cars North America, Inc.
RJ Reynolds Tobacco Company
Robert Bosch LLC
SABMiller Plc
SCM Group USA Inc.
Shell Oil Company
The Sherwin-Williams Company
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Takeda Pharmaceuticals U.S.A., Inc.
TAMKO Building Products, Inc.
TASER International, Inc.
Techtronic Industries North America, Inc.
Teva Pharmaceuticals USA, Inc.
TK Holdings Inc.
Toyota Motor Sales, USA, Inc.
TRW Automotive
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen Group of America, Inc.
Volvo Cars of North America, Inc.
Wal-Mart Stores, Inc.
Western Digital Corporation
Whirlpool Corporation

Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.