

No. SC-2025-0918

IN THE SUPREME COURT OF ALABAMA

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EX PARTE STATE FARM FIRE AND CASUALTY COMPANY,  
Petitioner,

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(In re: James M. Foor and Krystina Foor  
Plaintiffs/Respondents,

v.

State Farm Fire and Casualty Company,  
Defendant/Petitioner.)

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FROM THE CIRCUIT COURT OF BULLOCK COUNTY  
CASE NO. CV-2025-900001

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*AMICUS CURIAE* BRIEF ON BEHALF OF  
THE ALABAMA FREE AND FAIR ENTERPRISE INSTITUTE  
IN SUPPORT OF  
STATE FARM FIRE AND CASUALTY COMPANY

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## **STATEMENT OF INTEREST**

The Alabama Free and Fair Enterprise Institute (“AFFEI”) is a non-partisan, statewide business league that promotes the common business interests of its members and seeks to foster a positive business and legal climate in the State of Alabama that is conducive to free enterprise, fair competition, and the rule of law. AFFEI’s members are vitally interested in court decisions affecting competitive enterprise, properly functioning law enforcement, and efficient government. America’s system of free enterprise has produced an economy, standard of living, military, and law enforcement climate that are the envy of the world. This economic engine would not function without the rule of law which ensures that statutes and contracts are enforced as written so that commercial transactions and investments can occur with a reasonable degree of certainty, and which supports properly performing law enforcement that protects property and families. AFFEI supports well-functioning courts, a predictable system of law, efficient governance, and positive law enforcement throughout the State of Alabama.

Facilitating the transfer of a defendant’s discovery information in one case for use by plaintiffs’ lawyers in other cases will make it nearly

impossible for defendants to protect confidential information during litigation, or for courts to reliably enforce protective orders, which directly impacts a free and fair enterprise system. AFFEI strongly opposes exchanges of discovery for the purpose of making it easier to sue businesses in Alabama and beyond.

### **SUMMARY OF THE ARGUMENT**

Although this Court has not directly ruled on the propriety of so-called “upfront sharing provisions,” the Alabama Rules of Civil Procedure and of Evidence make clear that a party is entitled to have its confidential information protected. *See* Ala. R. Civ. P. 26(c); Ala. R. Evid. 507. Further, courts across the country have held that – with very limited exceptions not presented here – “upfront sharing provisions” do not adequately protect a party's confidential information.

To protect both the integrity of the discovery process and a party's interest in protecting its own information – an interest enshrined in Alabama's rules and case law – this Court should issue the writ and direct the trial court to enter a protective order that prohibits the sharing of State Farm's confidential information.

## ARGUMENT

### **I. This Court Should Not Facilitate Plaintiffs’ Lawyers “Sharing” of Defendants’ Confidential Business Information.**

#### **A. Defendants Have No Duty to “Share” Their Confidential Information with Non-Parties, or Make It Easier for Plaintiffs’ Lawyers to Sue Them.**

A defendant is under no duty, constitutional or otherwise, to assist non-parties in suing the defendant, or to assist plaintiffs’ counsel in spreading its internal information. And while this Court has not squarely confronted this issue, a number of courts, “particularly in the federal system,<sup>1</sup> have been hostile to upfront sharing provisions.” *Clippard v. Yamaha Motor Corp.*, No. 5:14-CV-83-R, 2015 WL 1208551, \*2 (W.D. Ky. Mar. 17, 2015) (citation omitted).

There is, however, another interest that the plaintiffs’ bar believes is furthered through unchecked trafficking in a company’s confidential information: money. A number of “information sharing networks” have

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<sup>1</sup> “Because the Alabama Rules of Civil Procedure were patterned after the Federal Rules of Civil Procedure, cases construing the federal rules are considered authoritative in construing the Alabama rules.” *Reynolds Metals Co. v. Hill*, 825 So. 2d 100, 104 n.1 (Ala. 2002) (citation omitted).

been set up across the country by the plaintiffs' bar to "share" confidential defendant information. See, e.g., Richard P. Campbell, *The Protective Order in Products Liability Litigation: Safeguard or Misnomer?*, 31 Boston Coll. L. Rev. 771, 822 n.243 (1990) ("[The] ATLA Exchange, which [is a] centralized data bank[] where discovered information is collected and made available to members. Litigants almost always must pay for the information, and the price is sometimes set at a level that ensures a profit for the discovering party's attorney.") One of the more prominent plaintiffs' databases is the Attorney Information Exchange Group ("AIEG"), based in Birmingham, Alabama.

**B. Because of Latent Dangers, Such as Those Exposed by the Attorney Information Exchange Group, a Number of Courts Across the Country Limit Discovery Sharing to Highly Unusual Circumstances.**

Affiliated with the American Association for Justice (formerly the "American Trial Lawyers Association"), the AIEG runs one of the largest databases for "sharing" information of past-, current-, and potentially-future-defendants in the country.<sup>2</sup> It was incorporated in Jefferson

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<sup>2</sup> See Lana Olson & Nikaa Jordan, *Attorney Information Exchange Group ("AIEG"): What It Is, What It Does, and How to Mitigate Its Effect*,

County, Alabama in 1988 (see App. 2 –AIEG Articles of Incorporation, p.1), and includes a number of databases for similar types of litigation, including a database that includes “Internal Documents” of corporate defendants acquired through discovery. (See App. 3—Hare Aff., pp. 11-12, ¶¶ IV(B) (2) & (3).)<sup>3</sup>

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(March 2015) at 269, *available at* <https://www.lightfootlaw.com/wp-content/uploads/2015/09/Nikaa-Jordan.pdf> (Attached as App. 1.)

<sup>3</sup> This Court may take judicial notice of the AIEG Documents in Appendices 2-3 and the federal court documents in Appendices 4 and 5 because they are already part of this Court’s records in an *amicus* brief authored by the undersigned in another case—*Ex parte Industrial Warehouse Services, Inc.*, 262 So. 3d 1180 (Ala. 2018). See *Griggs v. NHS Mgt., LLC*, 419 So. 3d 12, 18 n.1 (Ala. 2024) (“ [T]his court takes judicial knowledge of its own records.”) (internal quotation marks and citation omitted). See also Reagan W. Simpson & Mary R. Vasaly, *The Amicus Brief: Answering the Ten Most Important Questions About Amicus Practice* 25 (ABA 4th ed. 2015) (“The facts an amicus presents may not be contained in the record of the case, and may extend beyond the facts of the particular case at issue.”); Ruth Bader Ginsburg, *Brown v. Board of Education in International Context* (Feb. 7, 2006), *available at* [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_02-07a-06.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_02-07a-06.html) (“[A]n amicus brief for the United States filed in *Brown*, . . . [that] included a letter from Secretary of State Dean Acheson on the negative impact of race discrimination upon the conduct of U.S. foreign relations.”); *Amicus* Brief filed by the United States in *Brown v. Board of Education*, 347 U.S. 483 (1954), *available at* 1952 WL 82045 (1952). The table of contents of the United States’ *Amicus* Brief, at page ii, lists the letter, dated December 2, 1952 – the year after the record closed in the trial court, see *Brown v. Board of Educ.*, 98 F. Supp. 797 (D. Kan. 1951)). This is consistent with Ala. R. Evid. 201(f) (“Judicial notice may be taken at any stage of the proceeding.”).

The AIEG allows its plaintiff attorney members to deposit “Internal Documents” that they obtain from defendants through the discovery process into a data bank at AIEG. (See App. 2—AIEG Bylaws, at pp. 11, 14, ¶¶ IV(B) (2) & (D) (1).) When an AIEG member submits a description of his case to the AIEG, the AIEG prepares a list of documents in the database that may be relevant to his case. The AIEG member then selects which documents he wishes to receive. (See App. 3.b – AIEG Bylaws, at p. 9, Art. V(4)(m).) In short, unlike other plaintiffs’ bar clearinghouses that openly sell defendant information (see Campbell, *supra*, at n. 243), AIEG members do not sell discovery materials for cash, but for in-kind access to other members’ discovery information. Any sharing of fees can then be arranged outside of the AIEG.

While AIEG’s bylaws state that it will not accept documents about companies in violation of a protective order (See App. 3.b — AIEG Bylaws, p. 6, Art. V(3)(a); App. 3.d – AIEG Document Deposit Agreement, pp. 6-7, ¶¶ 1 (2) & (7)), AIEG’s attempts to self-police are not always effective. Once confidential discovery material is delivered to the AIEG or one of its members, history shows it can end up in other plaintiffs’ attorneys’ hands regardless of any protective orders. For example, in

2012, the U.S. Court of Appeals for the Fifth Circuit sanctioned a plaintiff's lawyer member of the AIEG for handing out confidential discovery materials to a conference of lawyers sponsored by the AIEG:

[Plaintiff's counsel] Hugh N. Smith represented the Trenado family in a products liability suit against Appellee Cooper Tire & Rubber Company. . . . Prior to trial, the district court entered an Amended Protective Order of Confidentiality pursuant to Fed. R. Civ. P. 26(c) to protect Cooper's trade secrets and confidential information produced during discovery. . . . In August 2010, Smith and his firm **inadvertently disseminated Cooper's trade secrets** and confidential information to a number of personal injury lawyers during a conference sponsored by **Attorneys Information Exchange Group, Inc.** about obtaining discovery from Cooper.

*Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 487 (5th Cir. 2012) (emphases added).

The same AIEG member/plaintiffs' lawyer violated another federal court protective order by giving documents to AIEG's co-chair. *See Smith & Fuller, P.A.*, 685 F.3d at 488 n.2 ("Smith was sanctioned for willfully violating a protective order in another case against Cooper by providing confidential material to an attorney in Arizona. *See McDonald v. Cooper Tire & Rubber Co.*, No. 801CV1306T27TGW, 2005 U.S. Dist. LEXIS 34137, 2005 WL 3372855, at \*1 (M.D. Fla. Dec. 12, 2005) (unpublished)."). The PACER docket sheet for *Smith & Fuller* contains

Cooper Tire's motion for sanctions with exhibits from the *McDonald* case, including a U.S. District Court order, stating:

The undisputed material facts are that on May 2, 2002, a protective order of confidentiality was entered. . . . In November 2003, Smith furnished excerpts of Feezer's deposition, which had been designated as confidential material by Cooper, to attorney Dasse.[] In a court filing in a case pending in the Superior Court of Arizona, Dasse quoted from certain pages of Feezer's depositions which had been designated confidential, specifically, pages 35-36, 72, and 82-84. (Dkt. 325, Exh.F). . . Dasse serves as co-chair of the Attorney's Information Exchange Group (AIEG), in which Smith is an active member. (Dkt. 325, Exh. E).

(App. 4—*McDonald* PACER Documents.) The Eleventh Circuit affirmed sanctions against Mr. Smith. (See generally App. 5 11th Circuit Affirmance of Sanctions (panel included Wm. Pryor, J.).)

In short, once sharing of a company's confidential information obtained through discovery is permitted in any form, history demonstrates that it is difficult (if not impossible) to control the flow of that information, protective order or not. And this is precisely why courts across the country have taken a dim view of sharing confidential information obtained through discovery in all but highly unusual circumstances. See *Clippard*, 2015 WL 1208551 at \*2-3.

The Ohio Court of Appeals in a wrongful death suit against a trucking company, for instance, ordered a trial court to fashion a protective order that contained stronger non-sharing provisions, stating:

[D]isclosure to collateral litigants increases the risk of harm from the disclosure of confidential information. The more entities that have access to the information, the greater the risk of harm. And as Professor Arthur Miller has pointed out, on a system-wide level, the care with which courts guard confidential information will impact the willingness of parties to lawsuits to produce information. *See Miller, Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 477 (1991).

*Byrd v. U.S. Xpress, Inc.*, 26 N.E.3d 858, 864 (Ohio App. 2014).

Going further, the *Byrd* Court noted that without tightly controlling how a plaintiff could share confidential discovery information “the plaintiffs [have] the sole discretion to determine with whom they share information. . . . **[B]y leaving it up to the plaintiffs to decide with whom to share confidential information ... the traditional protections for producing parties in the discovery process are eviscerated.**” *Id.* at 866 (emphasis added); *see also Harris v. Kellogg, Brown & Root Services, Inc.*, No. 08-563, 2008 WL 5246017, \*3 (W.D. Pa. Dec. 15, 2008) (“**[T]he Court declines to cede control of Defendant’s confidential information in this action to Plaintiffs, which would**

be the ultimate effect of the [sharing provision].”) (emphasis added).

Other courts to consider this issue have reached very similar conclusions. *See, e.g., Harris*, 2008 WL 5246017 at \*4 (collecting authorities from around the country); *Biazari v. DB Industries, LLC*, No. 5:16-cv-49, 2017 WL 1498122, \*3 (W.D. Va. Apr. 26, 2017) (noting that “upfront sharing provisions” are generally disfavored, and collecting authorities from around the country).<sup>4</sup>

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<sup>4</sup> *Biazari*, 2017 WL 1498122, \*3, cites the following cases for the proposition that sharing confidential information should not be allowed:

*Clippard ex rel. Clippard v. Yamaha Motor Corp.*, No. 5:14-CV-83-R, 2015 WL 1208551, at \*2 (W.D. Ky. Mar. 17, 2015) (citing *Long v. TRW Vehicle Safety Sys., Inc.*, No. CV-09-2209, 2010 WL 1740831, at \*1 (D. Ariz. Apr. 29, 2010)); *see also Harris v. Kellogg, Brown & Root Servs., Inc.*, No. 08-563, 2008 WL 5246017, at \*3-6 (W.D. Pa. Dec. 15, 2008) (explaining reasons for denying plaintiff’s request for a broad upfront sharing provision, including that it would cede control of defendant’s proprietary information entirely to plaintiff); *Massachusetts v. Mylan Labs., Inc.*, 246 F.R.D. 87, 90-91 (D. Mass. 2007) (rejecting provision that would allow sharing with other law enforcement entities because “such broad disclosure would eviscerate the effectiveness of the protective order”); *Gil v. Ford Motor Co.*, No. 1:06cv122, 2007 WL 2580792, at \*4-6 (N.D. W. Va. Sept. 4, 2007) (finding that caselaw did not support plaintiff’s assertion that upfront sharing provisions were favored by a majority of courts); *Culinary Foods [Inc. v. Raychem Corp.]*, 151 F.R.D. [297,] 306-07 [(N.D. Ill. 1993)] (rejecting plaintiff’s request to share

By citing the above cases, AFFEI does not mean to imply that plaintiffs' counsel in this case would intentionally violate a protective order. However, once confidential information is outside the control of the court, there is no limit as to how the information could be used by others. AFFEI is unaware of whether plaintiffs' counsel intends to share State Farm's confidential/trade secret information via the AIEG, by some other means, or to use this information in other cases themselves. What AFFEI does know for certain is that a company's proprietary information remains proprietary even during the course of litigation and this Court should "decline[] to cede control of Defendant's confidential information in this action to Plaintiffs, which would be the ultimate effect of the [sharing provision]." *Harris*, 2008 WL 5246017 at \*3.

Oddly enough, for all of plaintiffs' demand to "share" defendant's information, when it comes to the information stored in a plaintiffs'

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confidential information with collateral litigants because doing so "would unduly raise the risk that Raychem's competitors will obtain access to this confidential information").

On the other side, *Biazari*, at \*3, cites *Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653-55 (D. Md. 1987), and *Burlington City Bd. of Educ. v. U.S. Mineral Prods. Co.*, 115 F.R.D. 188, 190-91 (M.D.N.C. 1987).

database, there is no sharing at all. AIEG demands absolute privacy for *its* documents. In fact, an AIEG member must agree to fight any discovery request against AIEG or his **membership in AIEG is terminated**. (See App. 3.c.—AIEG Membership Agreement, p.4 ¶ (b).) And if a member of AIEG receives a court order to turn over material from AIEG’s Work Product Document Banking System (“WPDBS”), instead of submitting a privilege log and allowing a court to review materials *in camera* to determine if any privilege applies, the plaintiff lawyer’s **access to AIEG documents is revoked**:

(4) In no event shall the Document Bank or any Member Attorney have authority to disclose the identity or contents of Privilege Documents to any person in response to a discovery request in connection with a product defect case or any other type of litigation. The submission by a Member Attorney of a request for information in order to respond to a discovery inquiry which seeks the disclosure of the identity or contents of materials in an AIEG WPDBS which includes Privilege Documents shall be deemed an **automatic revocation of this Agreement** and shall affect an immediate withdrawal by the Document Owner of any and all Privilege Documents in the WPDBS that is the subject of any such agreement or court order.

(App. 3.d.—Document Deposit Agreement, p.7, ¶ 4) (emphasis added).

Instead of helping facilitate an un-policed plaintiffs’ market in defendants’ confidential business information where compliance with

protective orders may not be consistent, this Court should require that discovery be governed by courts under the Rules of Civil Procedure for each individual case.

### **CONCLUSION**

None of State Farm's confidential or trade secret information should be used for any purpose outside of this case—no sharing for cash or for exchange rights to other companies' confidential information; no storing on a computer database for future use in different cases; no distribution at conferences; and no direct or indirect transferring to anyone else in any other way. To hold otherwise would “cede control of Defendant's confidential information in this action to Plaintiffs,” *Harris*, 2008 WL 5246017 at \*3.

Respectfully submitted,

/s/ Ed R. Haden

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## **CERTIFICATE OF COMPLIANCE**

I certify that this Brief complies with the word limitations set forth in Ala. R. App. P. 29(c) and 28(b) and (j) (i.e., 14,000 words for an *amicus* brief). According to the word-count function of Microsoft Word, this Brief contains 2,793 words. I further certify that this Brief, prepared in Century Schoolbook font using 14-point type, complies with the font requirements set forth in Ala. R. App. P. 32(a)(7). See Ala. R. App. P. 32(d) (certificate of compliance).

*/s/ Ed R. Haden*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, electronically filed on February 12, 2026, will be served upon the following by regular U.S. Mail, properly addressed and postage prepaid, or by email under Rule 57(h)(5), Ala. R. App. P., where indicated:

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# Appendix 1

Nikaa Jordan, AIEG What it Is  
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# Attorney Information Exchange Group (“AIEG”):

*What It Is, What It Does, and How  
to Mitigate Its Effect*

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LANA A. OLSON is a partner with the litigation-only boutique firm, Lightfoot, Franklin & White, LLC in Birmingham, Alabama. The first case that she ever handled as a lawyer nearly 17 years ago was toxic tort case that multiplied into hundreds of cases in multiple states and which lasted for eight years. Her practice today has expanded into general civil defense litigation, with an emphasis on environmental and toxic torts, product liability, class actions, drug and medical device litigation, employment litigation, and business disputes. She was the chair of the 2014 DRI Toxic Torts and Environmental Law Seminar and is an active member of the DRI Toxic Torts and Environmental Law Committee. She is currently the chair of the DRI Women in the Law Committee.

NIKAA B. JORDAN'S practice is devoted to brief writing at all phases of litigation. The focus of her trial-level work is the exclusion of expert testimony and complex dispositive motions. Ms. Jordan has written briefs in support of excluding a host of expert witnesses, including physicians, toxicologists, economists, and alternative design theorists. Her case-dispositive practice raises a host of issues under state and federal law for a broad spectrum of clients. Her work in this regard has ranged from cases alleging simple claims of fraud to class actions based on antitrust law.

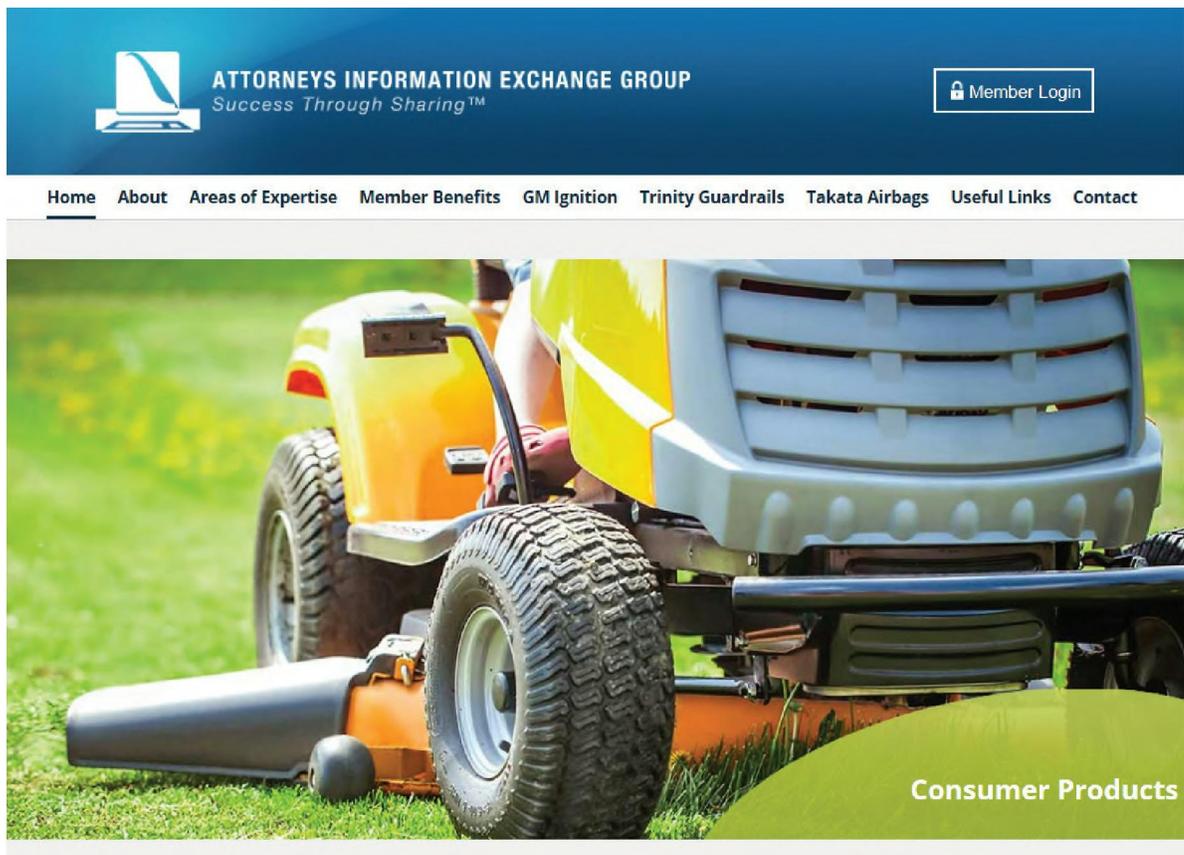
# Attorney Information Exchange Group (“AIEG”): *What It Is, What It Does, and How to Mitigate Its Effect*

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# Attorney Information Exchange Group (“AIEG”):

*What It Is, What It Does, and How to Mitigate Its Effect*



## I. What Is AIEG?

AIEG stands for Attorney Information Exchange Group. It is a nationwide litigation support group founded in Birmingham, Alabama, for the sole purpose of allowing plaintiffs’ attorneys to share information about similar cases among themselves. Widely known as the most significant group of its type, it was founded in the mid-1970s by Francis H. Hare, Jr., a noted national plaintiffs’ attorney from Birmingham.

AIEG’s bylaws recite that it was founded for the following purposes: (i) to assist its member attorneys handling similar cases to properly prepare and fairly resolve product defect cases; (ii) to reduce the time and expense required to properly prepare and fairly resolve product defect cases; (iii) to offset the inherent advantages favoring defendants in defective product litigation; and (iv) to overcome the obstacles that unjustly impede the victims of defective products in the exercise of their right to seek legal redress.

AIEG quickly became actively involved in mass litigation in federal and state courts across the country—either as counsel for mass tort plaintiffs, as an amicus advocating pro-plaintiff causes, or as a third-party repository of technical information germane to mass torts. AIEG has in excess of 600 members and has been involved in a number of watershed mass tort cases, including the Ford Pinto litigation, the GM side saddle fuel tank litigation, the Toyota sudden acceleration litigation, the Ford Firestone tire litigation, and varying species of the tobacco litigation.

## **II. How Does It Work?**

AIEG administers a number of discrete litigation support groups; each deals with a different alleged product defect design in a particular product that is the subject matter of individual product liability cases pending in state and federal courts around the country. AIEG allows its plaintiff attorney members to place materials obtained from defendants through discovery into a data bank at AIEG. When an AIEG member submits a description of his case to AIEG, the AIEG prepares a list of documents in the database that may be on topic. The AIEG member then selects which documents he wants. AIEG members do not sell material; it is paid for in kind.

AIEG's membership is limited to ATLA members. Its website has only a place for entry of a user I.D. and password with no descriptive information whatsoever. AIEG Members are required to agree not to divulge AIEG documents to non-AIEG members. If a court orders an AIEG member to produce an AIEG document, that attorney's membership in AIEG is automatically terminated.

## **III. Where Does It Fit Among the Plaintiffs' Bar?**

AIEG represents itself as a necessary resource to plaintiffs' counsel in mass tort litigation involving allegations of product defect. It points to cooperation among the defense bar and contends to the plaintiffs' bar that the failure to take advantage of its corroborative sharing mechanism constitutes legal malpractice. AIEG considers the type of sharing it does as its "civil responsibility to the judicial system" and its member attorneys have noted that it is their "custom and practice." AIEG member attorneys often, as a matter of custom and routine, will not agree to a stipulated protective order prohibiting sharing.

## **IV. What Are the Typical Types of Materials That AIEG Members Can Access?**

Among the materials commonly shared among AIEG members: expert reports, trial testimony, deposition testimony, corporate representative deposition testimony, "hot docs," technical product design information, and internal corporate documents produced during discovery.

AIEG members also have access to legal memoranda and attorney work product prepared by fellow AIEG members containing legal analyses, opinions, mental impressions, and conclusions. "Providing Member Attorneys" are to aid AIEG members in their case preparation activities and facilitate the desire of AIEG members handling similar cases to participate in "a cooperative effort to achieve the common interest of properly preparing and fairly resolving individual cases."

## **V. Why Should You Worry About AIEG?**

AIEG poses a multi-layered threat to a corporate defendant sued in any jurisdiction in the nation. First, the mere proliferation of sensitive corporate documents among plaintiffs' attorneys not only increases the likelihood of suit in the first place, but also increases the likelihood that a corporate representative or defense expert will be ambushed at deposition with "hot docs" or other incendiary materials obtained from the AIEG exchange.

In addition, AIEG frequently appears as an amicus to oppose a corporate defendant's efforts to prevent or inhibit dissemination of documents and information obtained by plaintiffs during pretrial discovery. And AIEG has appeared as an amicus to support other plaintiff-friendly causes, such as the survival of com-

mon law tort claims amidst a highly regulatory federal framework and an overly lax application of Rule 702 of the Federal Rules of Evidence.

Although AIEG's by-laws state that it will not share material in violation of a protective order, it has been known to do so on a number of occasions. See *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 487 (5th Cir. 2012), *McDonald v. Cooper Tire & Rubber Co.*, 2005 W.L. 3372855, at \*1 (M.D. Fla. Dec. 12, 2005).

## VI. What Can You Do to Protect Your Client from AIEG?

### A. Negotiate a Strong Protective Order

*First, do your part to prevent AIEG from obtaining sensitive information in the first place by negotiating for a strongly worded protective order and acting vigorously at all times to ensure that it is adhered to.*

#### 1. Hallmarks of a Strong Protective Order

What are the characteristics of a strong protective order? A strong protective order allows certain materials to be designated as confidential, sensitive, or proprietary. It limits the universe of people who can access those documents and the uses to which they may be put. As broad a definition of protected information as possible should be urged; this definition should span beyond trade secrets and proprietary information and reach any type of information that a court could conclude lies within a zone of privacy. For example:

**Protected Material:** all information, regardless of the manner in which it is generated or maintained (including without limitation any deposition or other testimony, transcripts, or tangible things), that is protected under state or federal law as confidential business information, trade secrets, or as being within the zone of privacy of an individual or entity.

And because courts will be more inclined to enforce protective orders that are specifically bargained for, include a recital that makes plain the intended purpose of the protective order. In other words, make an express statement that the protective order is being stipulated to for the specific purpose of protecting confidential information from disclosure to unauthorized individuals or groups. For example:

**Basic Principles.** All protected material shall be used solely for this case or any related appellate proceeding, and not for any other purpose whatsoever, including without limitation any other litigation, contemplated litigation, any business or competitive purpose or function, or any communication or dissemination to the public, the media, or any information exchange groups in any form. Protected Material shall not be distributed, disclosed or made available to anyone except as expressly provided in this Order.

After defining what type of content should be subject to a protective order, the universe of people who can access that type of content should be sharply circumscribed. For example: disclosure should be limited to “authorized persons, solely in the performance of their duties in connection with the trial preparation of this case.” Such “authorized persons” should further be defined as counsel of record for the parties to the case at hand who have consented to and signed the protective order, their support staff, and outside experts they have retained. A provision allowing for access outside the definition of authorized person upon agreement of counsel should be included and each authorized person should agree to subject himself or herself to the jurisdiction of the court entering the protective order.

Authorized persons should be expressly defined to exclude AIEG and like groups. For example:

**Authorized persons** shall not include any organization or entity that regularly maintains or disseminates documents or information regarding documents, including abstracts or summaries, or any other records as a service to its members, subscribers, or others, or the representative of such an organization or entity.

It is critically important to ensure very specific compliance with all the terms of the protective order to avoid an argument that its protections were somehow waived. In addition, a safeguard for inadvertent disclosure should be included and whatever steps are outlined there followed in such an event.

## **2. Courts Are More Likely to Enforce a Negotiated Protective Order and to Impose Sanctions for Its Violation**

There is general unanimity that a negotiated protective order can only be changed upon the moving party's showing of "good cause." *See, e.g., Jochims v. Isuzu Motors, Ltd.*, 145 F.R.D. 499 (S.D. Ia. 1992) (citing cases). The rationale is that a party which in good faith negotiates a stipulated protective order and then proceeds to produce documents pursuant to that protective order is entitled to "the benefit of its bargain; namely, to rely upon the terms of the stipulated protective order." *See, e.g., Omega Homes, Inc. v. Citicorp Acceptance Co.*, 656 F. Supp. 393, 403 (W.D. Va. 1987).

In addition, efforts toward securing a strongly worded protective order and to vigilantly police its enforcement weigh toward imposing sanctions for its violation. *See, e.g., Rodriguez Trenado v. Cooper Tire & Rubber Co.*, 2011 WL 79525 (Jan. 6, 2011) (sanctioning attorney who provided documents to AIEG in contravention of protective order).

### **B. If Negotiating for an Order Fails, Advocate for an Order That Prevents Information Sharing**

*If you cannot negotiate a strong protective order that prohibits sharing and protects confidentiality, advocate for the entry of a protective order having that same effect.*

If plaintiff's counsel refuses to negotiate a protective order that protects confidentiality and prevents sharing, it can be an uphill battle to persuade a court to include a non-sharing provision in a protective order. In fact, the sharing mechanism that AIEG promotes and that AIEG members facilitate has been lauded by some courts as an aid to efficient mass tort litigation. Federal courts in particular have been very open to the sharing practice that AIEG promotes. *See, e.g., Wilk v. American Medical Ass'n*, 635 F.2d 1295, 1299 (7th Cir. 1980). Soon after AIEG came on the scene in the Ford Pinto litigation, one court adjudicating those claims observed:

If, as asserted, a single design defect is the cause of hundreds of injuries, then the evidentiary facts to prove it must be identical, or nearly so, in all the cases. Each plaintiff should not have to undertake to discover anew the basic evidence that other plaintiffs have uncovered. To so require would be tantamount to holding that each litigant who wishes to ride a taxi to court must undertake the expense of inventing the wheel. Efficient administration of justice requires that courts encourage, not hamstring, information exchanges such as that here involved.

*See Ward v. Ford Motor Co.*, 93 F.R.D. 579 (D. Colo. 1982).

Not only courts, but commentators, have praised AIEG's sharing model. AIEG attorneys often cite these materials in negotiating for sharing provisions. Members of the firm founded by the founder of AIEG have been known to tout that they have been litigating product liability cases for nearly 40 years, and cannot

recall ever losing a court ruling on the issue of plaintiffs' information sharing. They reference trial journals, *see* George E. McLaughlin and William J. Hansen, *Mining Discovery In Other Cases*, 43 *Trial* 32, 34 (Nov. 2007) ("Many defendants in product liability cases use obstructive tactics—such as seeking wide-ranging protective orders—to restrict information-sharing among plaintiff counsel in related cases. Their aim is to make each plaintiff lawyer reinvent the wheel in every case. But with few exceptions, courts have embraced information-sharing among counsel in related cases, to avoid duplication of discovery; ensure full, fair, and consistent disclosure by defendants; improve efficiency and consistency; and keep costs down."), as well as litigation texts and treatises. *See* Roxanne Barton Conlin & Gregory S. Cuisimano, *Litigating Tort Cases* §14.44. ("Sharing information among plaintiffs' counsel furthers the objectives of the Rules of Civil Procedure—namely, just resolution of cases by 'eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice. In sharp contrast, the effect of restrictive confidentiality orders conflicts with each of these objectives. The authorities are virtually unanimous in recognizing the value in information sharing.").

Likewise, AIEG and groups like it have been praised for having "a sunlight as a disinfectant" effect. *See Wilk v. American Medical Ass'n*, 635 F.2d 1295 (7th Cir. 1980). (In fact, AIEG invokes state sunshine in litigation laws to argue against confidentiality protections.). In a related vein, there is a presumption that, absent a good reason, pre-trial discovery is to be conducted in public. *See* Federal Rule of Civil Procedure 26(c) ("good cause" required for the issuance of a protective order). *See also Public Citizen v. Liggett Group, Inc.*, 858 F.2d 533, 557 (1st Cir. 1988).

There is authority supporting the contrary view, *i.e.*, that there is no right to access the discovery materials in a related case. *See, e.g., Rhinehart v. Seattle Times Co.*, 654 P.2d 673, 679 (1982) (holding protective order was not subject to a First Amendment challenge and stating that "the effective administration of justice does not require dissemination beyond that which is needed for litigation of the case. It was the needs of litigation and only those needs for which the courts adopted [Rule 26]..."), *aff'd*, 467 U.S. 20, 33 (1984). *See also In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 255 (11<sup>th</sup> Cir. 1987) ("[A]ppellants' common law right of access does not extend to information collected through discovery which is not a matter of public record.").

There are, however, several good bases on which to oppose the entry of a protective order that contains a sharing provision. As an initial matter, consider whether the case or claims even give rise to some basis for sharing. Unless there are other lawsuits regarding the same product and making the same allegations, there really should be no reason to share the information with anyone. A plaintiff's attorney who urges for a sharing provision in a unique litigation setting is more than likely trying to build the arsenal of information that AIEG and groups like it have against corporate defendants. And the case law recognizes that the efficiency and cost savings benefits of shared discovery are entirely speculative when there is no specific plaintiff involved in a lawsuit that would benefit. *See, e.g., Memendez v. Wal-Mart Stores*, 2012 WL 90140 (N.D. Ind. Jan. 11, 2012) (plaintiff could not identify collateral lawsuits for purported sharing benefit), *Gil v. Ford Motor Co.*, 2007 WL 2580792 (N.D. W. Va. Sep. 4, 2007) (court rejecting hypothetical benefit and issuing protective order against disclosure of confidential information).

In addition, there is support for the argument that a sharing provision should not be used to do an end run around discovery rules in collateral litigation. For example, permitting sharing when the information would not be discoverable in collateral litigation has been frowned upon. *See Gil, supra*, at \*5. *See also AT&T Corp. v. Sprint Corp.*, 407 F.3d 560 (2d Cir. 2005) (denying modification of protective order because it was sought to circumvent the close of discovery in collateral litigation), 8A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, §2044.1 (3d ed. 2013) (sharing of discovery should be denied where it would subvert the discovery limitations in the collateral litigation).

Also argue the relative prejudice to the parties if sharing is allowed. In *Massachusetts v. Mylan Labs, Inc.*, 246 F.R.D. 87 (D. Mass. 2007), a sharing provision was disallowed because the plaintiff in that case would get the documents at issue, just be prevented from sharing them with parties not before the court. A corporate defendant, by contrast, can be seen its commercial interests substantially harmed if confidential or sensitive information is made widely available. Moreover, it has taken steps and expended sums to shield that information from public view for years. See *Williams v. Taser Int'l, Inc.*, 2006 WL 1835437 at \*1 (N.D. Ga. 2006) (noting the risk to defendant by release of confidential information and difficulty enforcing protective order when documents were shared outweighed the plaintiff's interests in sharing that information).

Another strategy is to argue to the court that a sharing provision will create a "side show" whereby the parties will just come running back to court to hash out what can and cannot be shared. Explain to the court that a sharing provision will unduly burden it with controversies that are completely collateral to the case at hand. Moreover, those controversies could continue to arise long after the case before the court is concluded. In particular, warn the court of the everlasting risk that parties in collateral litigation will come before it to intervene to have the protective order modified. See, e.g., *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) ("[W]here an appropriate modification of a protective order can place private litigants in a position they would otherwise reach only after repetition of another's discovery, such modification can be denied only where it would tangibly prejudice substantial rights of the party opposing modification.").

## **VII. Can You Prevent Your Witnesses from Being Ambushed by the Type of Material That AIEG Supplies to the Plaintiffs' Bar?**

You can take steps to avoid having a witness being ambushed by materials gathered from AIEG or a similar database. The first step is attempting to determine what materials the plaintiff may have gotten from AIEG or a similar entity. Targeted interrogatories aimed at identifying materials drawn from the AIEG database can be effective. For example:

Please identify the following information for each and every document obtained by Plaintiff or Plaintiff's counsel from the Attorney's Information Exchange Group ("AIEG") that is relevant to this case:

- a. A description of the document;
- b. The source of the original document;
- c. The date upon which the document was originally obtained;
- d. The date upon which the document was added to the AIEG database;
- e. When the document was retrieved by Plaintiff from the AIEG database; and
- f. Any identifying bates labels on the document.

And in order to cast as broad a net as possible, it is helpful to inquire beyond the AIEG database:

Please identify each and every database or website to which Plaintiff or Plaintiff's counsel has access to which contains documents responsive to these requests, any of Defendants' previous requests, or any of Plaintiff's requests directed to Defendant.

Note, however, that AIEG is generally treated just like any other agent assisting counsel in preparing a case. For this reason, materials selected from AIEG by a plaintiff's attorney have been held subject to the work product doctrine, as they could give away his strategy in preparing the case for trial. See *McDaniel v. Freightliner Corp.*, 2000 WL 303293 (S.D. N.Y. 2000).

## VIII. What Can You Do if Your Corporate Representative Is Confronted with an AIEG-Provided Document in a Deposition?

Assume that you are putting your corporate representative up for deposition and she is confronted with a facially-inflammatory corporate document. What should you do? First: stay as calm as possible. Deposition is not trial, which is where the admissibility of the document will be determined.

At deposition, it is important to build your arsenal for arguing that the document should be excluded from evidence. Depending on your facts and your rep's personal knowledge, establish whether the document can even be authenticated. Has your witness seen it before? Have personal knowledge of its contents? Did it pre-date or post-date his or her time at the corporation?

Can your witness provide testimony to make it difficult for the document to circumvent the hearsay rule? For example, if the author of the document (if even known) was not authorized to speak on behalf of the corporation, then establish as much. And if the author is unknown, establish that much as well.

Do the matters or incidents in the document even have any bearing on the issues in your case? If different products, product models/designs, or manufacturing timeframes are at issue, then testimony to that effect will go a long way toward a motion *in limine* to exclude the document as irrelevant and to opposing your opponent's argument that "other similar incidents" exception for Rule 404(b) is satisfied.

The most important thing that you can do is to build a record to support your arguments for excluding the document. Depending on your relationship with opposing counsel, you may request that the deposition be adjourned until your witness can familiarize himself with the document. But, if the witness truly has no personal knowledge regarding the documents or the matters it deals with, you are probably better off building a record demonstrating he or she was ambushed and that the document should be excluded.

# **Appendix 2**

AIEG Articles of Incorporation

Jim Bennett  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Jim Bennett, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

as appears on file and of record in this office, the pages hereto attached, contain a true, accurate, and literal copy of the Articles of Formation filed on behalf of Attorneys Information Exchange Group, Inc., as received and filed in the Office of the Secretary of State on 02/09/1988.



20131117000000464

**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.**

11/17/2013

Date

**Jim Bennett**

**Secretary of State**

002508

066-155

STATE OF ALA. JEFFERSON CO.  
I CERTIFY THIS INSTRUMENT  
WAS FILED IN

1988 FEB -9 PM 3:51

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

RECORDED IN BOOK NO. \_\_\_\_\_ PAGE NO. \_\_\_\_\_  
PROPERTY TAX HAS BEEN PAID ON THIS INSTRUMENT.

*O. H. Johnson*  
JUDGE OF PROBATE

This Instrument Prepared By:  
Edgar C. Gentle, III, Esq.  
Third Floor Watts Building  
Birmingham, Alabama 35203

ARTICLES OF INCORPORATION

OF

ATTORNEYS INFORMATION EXCHANGE GROUP, INC.  
A NONPROFIT CORPORATION

The undersigned incorporator hereby adopts the following  
Articles of Incorporation.

ARTICLE I

NAME OF NONPROFIT CORPORATION

The name of the nonprofit corporation shall be  
Attorneys Information Exchange Group, Inc.

RECEIVED  
FEB 17 1988  
SECRETARY  
OF STATE

ARTICLE II

PERIOD OF DURATION

The period of duration of the nonprofit corporation  
shall be unlimited and perpetual.

ARTICLE III

OBJECTS, PURPOSES AND POWERS

(a) The objects and purposes for which the nonprofit  
corporation is formed are: The scientific, educational and  
charitable objects and purposes of (i) sponsoring scientific  
and technical research pertaining to products safety; (ii)  
organizing and providing educational lectures, symposia,  
seminars and workshops, with the lectures, symposia, seminars  
and workshops to address products safety litigation law and  
trial techniques; and (iii) providing a law library to  
facilitate access by members to legal journals and  
publications, and a document bank and clearinghouse for the

deposit and storage by members of their documents, deposition and trial transcripts, briefs, research memoranda, pleadings, data and studies pertaining to products safety, with the accessibility of the materials in the bank to other members to be determined by the lawyer-owner of such materials. The foregoing objects and purposes will reduce the litigation costs to clients of members, help members to make the fullest and fairest presentation of the merits of their clients' cases, and improve the legal profession and the American judicial system by (i) expanding scientific and technical knowledge pertaining to products safety; (ii) improving the ability of members to represent clients in litigation pertaining to products safety; (iii) facilitating the just, speedy and inexpensive determination of products safety legal actions; (iv) improving access of members to legal journals and publications; and (v) providing for a sharing of information on a cooperative basis between and among members handling products safety cases.

(b) The nonprofit corporation shall have the following additional powers:

(1) To sue and be sued, complain and defend, in its corporate name.

(2) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(3) With the exclusion of documents in the document bank and clearinghouse, the ownership of such documents being retained by depositing members, to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, tangible and intangible, or any interest therein, wherever situated.

(4) With the exclusion of documents in the document bank and clearinghouse, the ownership of such documents being retained by depositing members, to sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(5) To lend money to its employees other than its officers and directors and otherwise assist its employees, officers and directors.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and

otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(7) To make contracts, guarantees, and indemnity agreements and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage, pledge of, or creation of security interests in, all or any of its property, franchises, or income, or any interest therein, not inconsistent with the provisions of the Constitution of Alabama as the same may be amended from time to time.

(8) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(9) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

(10) To elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of Alabama, for the administration and regulation of the affairs of the corporation.

(12) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid to war activities.

(13) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be

adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty; and to make any other indemnification that shall be authorized by the articles of incorporation or bylaws, vote of the board of directors, or resolution adopted after notice by the members entitled to vote.

(14) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees.

(15) To cease its corporation activities and surrender its corporation franchise.

(16) To have and exercise all powers necessary or convenient to effect any or all of the objects and purposes for which the corporation is organized.

In order that these Articles of Incorporation express unambiguous and consistent objects, purposes and powers, be it known that thousands of consumers are tragically injured, maimed or killed each year by defective products. In addition, experience has shown that the most effective protection for the individual rights of injured consumers of defective products is the American judicial system where the search for the truth is the ultimate product of a democratic government. The experience of the founders and initial Board of Directors of this group has shown that, in connection with products safety cases, some product manufacturers have not and do not comply fully with the letter and spirit of the rules of discovery on the state or federal level. Moreover, the victims of defective products seeking judicial redress have no effective voice without fully informed and competent legal counsel. This corporation is being formed, therefore, to help provide an effective voice for such product defect victims by facilitating the exchange of pertinent information among attorneys representing such product defect victims. Therefore, the membership of this corporation shall consist of product defect plaintiffs' attorneys in good standing with their respective state bar associations, acting as officers of the court, and dedicated to the accumulation of such information and to sharing the information with fellow members of the corporation.

ARTICLE IV

LOCATION OF  
INITIAL REGISTERED OFFICE AND  
INITIAL REGISTERED AGENT

The location and mailing address of the initial registered office of the nonprofit corporation in the State of Alabama shall be 700 City Federal Building, Birmingham, Alabama 35203, and the corporation's initial registered agent at such address shall be Francis H. Hare, Jr.

ARTICLE V

BOARD OF DIRECTORS

The number of directors constituting the initial Board of Directors of the nonprofit corporation is twenty-three (23), and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and shall qualify are as follows:

<u>NAME</u>	<u>ADDRESS</u>
James L. Gilbert	12189 Ralston Road Arvada, CO 80004
Francis H. Hare, Jr.	700 City Federal Building Birmingham, AL 35203
David Easton	Suite 565 Anchor Building 25 West Main Street Madison, WI 55703
Scott Baldwin, Sr.	115 North Wellington Marshall, TX 75671
R. Ben Hogan, III	1000 City Federal Building Birmingham, AL 35203
Thomas F. Londrigan	1227 South 7th Street Springfield, IL 62703
David L. Perry	2300 Texas Commerce Plaza 802 N. Carancahua Corpus Christi, TX 78403
D. Leon Ashford	700 City Federal Building Birmingham, AL 35203

Foy R. Devine	2931 Piedmont Road, NE Atlanta, GA 30305
Darrell Peters	1394 East Jefferson Detroit, MI 48207
James R. Pratt, III	1000 City Federal Building Birmingham, AL 35203
Larry E. Coben	Fifth Floor 210 West Washington Square Philadelphia, PA 19106
Ronald R. Coles	27 Main Street Ogunquit, ME 03907
Jay W. Dankner	100 Church Street New York, NY 10007
Bertram M. Goldstein	222 Blaustein Building One North Charles Street Baltimore, MD 21201-3710
Joe R. McCray	433 Turk Street San Francisco, CA 94102
Edward M. Ricci	Florida National Bank Tower 1645 Palm Beach Lakes Boulevard West Palm Beach, FL 33402
Mark Robinson, Jr.	Suite 600 600 W. Santa Ana Boulevard Santa Ana, CA 92701
Louis A. Veronica	100 Grove Street Haddonfield, NJ 08033
Alva C. Caine	700 City Federal Building Birmingham, AL 35203
Peter Chase Neumann	136 Ridge Street Reno, NV 89504
John Overchuck	Suite 200 90 East Livingston Street Orlando, FL 32801
Donald M. Slavik	Suite 2200 First Wisconsin Center 777 East Wisconsin Avenue Milwaukee, WI 53202

ARTICLE VI

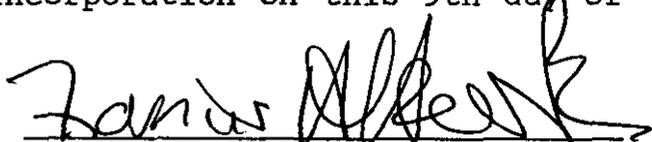
INCORPORATOR

The name and address of the incorporator is as follows:

Francis H. Hare, Jr.

700 City Federal Building  
Birmingham, AL 35203

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation on this 9th day of February, 1988.

  
FRANCIS H. HARE, JR.

STATE OF ALABAMA     )  
                                  )  
COUNTY OF JEFFERSON )

I, the undersigned Notary Public for the State of Alabama, County of Jefferson, hereby certify that Francis H. Hare, Jr., whose name is signed to the foregoing Articles of Incorporation, and who is known to me, acknowledged before me on this day, that being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office the day and year aforesaid.

[SEAL]

  
Notary Public

My Commission Expires: 11-26-90



# STATE OF ALABAMA

I, Glen Browder, Secretary of State, of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Section 10-2A-26, Code of Alabama 1975, the corporate name Attorneys Information Exchange Group, Inc. is reserved

as available based only upon an examination of the corporation records on file in this office for the exclusive use of Attorneys Information Exchange Group, Inc.

for a period of one hundred twenty days from this date. In the case of a domestic corporation, the name of the county in which the corporation was or is proposed to be incorporated is Jefferson.

I further certify that as set out in the application for reservation of corporate name, the Secretary of State's office does not assume any responsibility for the availability of the corporate name requested nor for any duplication which might occur.



In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

November 25, 1987 - expires 3-25-88

Date Glen Browder

Glen Browder

Secretary of State

**State of Alabama**  
**Jefferson County**

**I, the Undersigned, as Judge of the Court of Probate,**  
**in and for said County, in said State, hereby certify that**  
**the foregoing is a full, true and correct copy of the instru-**  
**ment with the filing of same as appears of record in this**  
office in Vol. 3329 Record of \_\_\_\_\_  
on page 409

Given under my hand and official seal, this the 9th  
day of Feb 1988.

O. H. Florence  
Judge of Probate

State Of Alabama  
Jefferson County

CERTIFICATE OF INCORPORATION

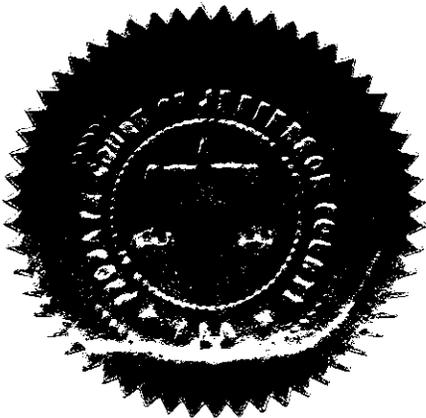
OF

ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

The undersigned, as Judge of Probate of Jefferson County, State of Alabama, hereby certifies that duplicate originals of Articles of Incorporation for the incorporation of ATTORNEYS INFORMATION EXCHANGE GROUP, INC., duly signed pursuant to the provisions of Section 32 of the Alabama Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation of ATTORNEYS INFORMATION EXCHANGE GROUP, INC., and attaches hereto a duplicate original of the Articles of Incorporation.

GIVEN Under My Hand and Official Seal on this the 9th day of February, 19 88.



*O. H. Florence*

Judge of Probate

Jim Bennett  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Jim Bennett, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

as appears on file and of record in this office, the pages hereto attached, contain a true, accurate, and literal copy of the Registered Agent Change filed on behalf of Attorneys Information Exchange Group, Inc., as received and filed in the Office of the Secretary of State on 05/31/1989.

**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.**



11/17/2013

Date

20131117000000464

**Jim Bennett**

**Secretary of State**

066155

002508 NP

3614 PAGE 218

STATE OF ALA. JEFFERSON CO.  
I CERTIFY THIS INSTRUMENT  
WAS FILED ON

89 MAY 31 PM 4:07

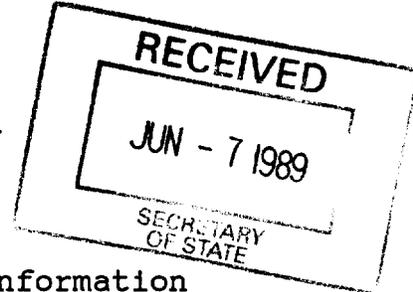
This Instrument Prepared By:  
Edgar C. Gentle, III, Esq.  
Schoel, Ogle, Benton, Gentle & Centeno  
2008 Third Avenue N. - 300 Watts Bldg.  
Birmingham, Alabama 35203

RECORDED & \_\_\_\_\_ MTG. TAX  
& \_\_\_\_\_ DEED TAX HAS BEEN  
PAID ON THIS INSTRUMENT

*[Signature]*  
JUDGE OF PROBATE

STATE OF ALABAMA )  
COUNTY OF JEFFERSON)

FIRST ARTICLES OF AMENDMENT OF  
ATTORNEYS INFORMATION EXCHANGE GROUP, INC.,  
A NON-PROFIT CORPORATION



The Articles of Incorporation of Attorneys Information Exchange Group, Inc., a non-profit corporation (the "Corporation") recorded in the Office of the Judge of Probate of Jefferson County, Alabama at Real 3329, Page 409, are hereby amended in accordance with Code of Alabama 1975, Section 10-3A-82, as follows:

(1) The name of the Corporation is:

Attorneys Information Exchange Group, Inc.;

(2) The amendment adopted is the amendment of ARTICLE IV so as to read as follows:

"ARTICLE IV

LOCATION OF  
REGISTERED OFFICE AND REGISTERED AGENT

The location and mailing address of its then registered office of the non-profit corporation in the State of Alabama shall be Suite 104, 601 Beacon Parkway West, Birmingham, Alabama 35209, and the non-profit corporation's then registered agent at such address shall be Francis H. Hare, Jr."

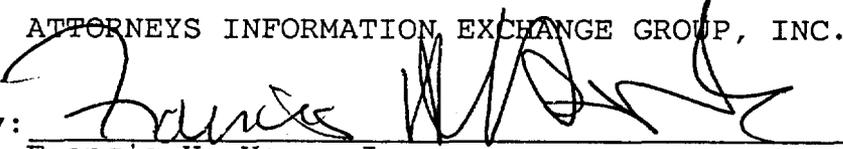
(3) There are no members entitled to vote on the foregoing amendment. The amendment was approved by the vote of the majority of the Directors of the Corporation then in office on April 7, 1989.

(4) The total number of Directors of the Corporation as of the time of approval of said amendment was twenty-eight (28).

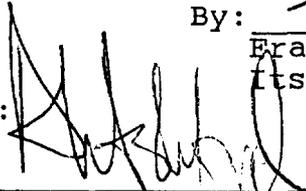
(5) The amendment was approved by a majority of the Board of Directors of the Corporation, sixteen Directors voting for the amendment, zero Directors voting against it, and twelve Directors being absent or abstaining.

IN WITNESS WHEREOF, Attorneys Information Exchange Group, Inc., has executed this instrument by and through its Vice President and Secretary as of April 8, 1989.

ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

By: 

Francis H. Hare, Jr.  
Its: Vice President

ATTEST: 

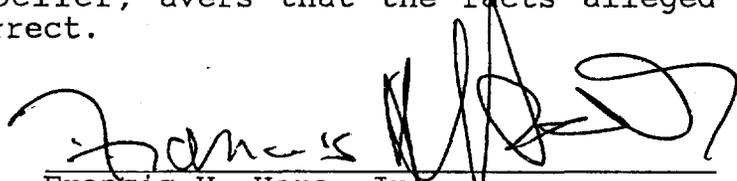
By: \_\_\_\_\_

D. Leon Ashford  
Its: Secretary

[CORPORATE SEAL]

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public for the State of Alabama, County of Jefferson, personally appeared Francis H. Hare, Jr., who, being first duly sworn, makes oath that he is Vice President of Attorneys Information Exchange Group, Inc., a non-profit corporation, and duly authorized to make this verification, he has read the foregoing First Articles of Amendment of said non-profit corporation, and knows the contents thereof, and he is informed and believes, and upon such information and belief, avers that the facts alleged therein are true and correct.

  
\_\_\_\_\_  
Francis H. Hare, Jr.  
Vice President and Affiant

GIVEN under my hand and seal of office this 8 day of  
April, 1989.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2-12-92

[NOTARIAL SEAL]

**State of Alabama**  
**Jefferson County**

CERTIFICATE OF AMENDMENT

OF

ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

The undersigned, as Judge of Probate of Jefferson County, State of Alabama, hereby certifies that \_\_\_\_\_ Articles of

AMENDMENT

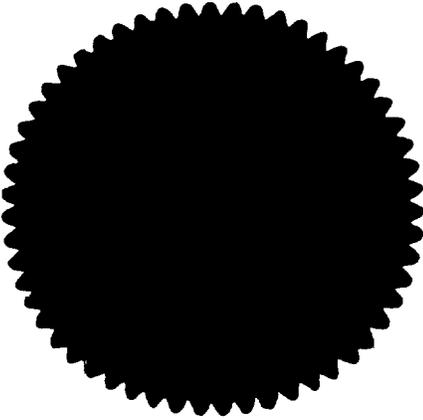
duly signed and verified pursuant to the provisions of Alabama \_\_\_\_\_  
NONPROFIT Corporation Act, have been received in this office and are found to conform to law.

Accordingly the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby, issues this Certificate of \_\_\_\_\_  
AMENDMENT

of \_\_\_\_\_  
ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

and attaches hereto a copy of the \_\_\_\_\_ Articles of  
AMENDMENT

Given Under My Hand and Official Seal on this the \_\_\_\_\_ 31  
day of MAY, 19 89.



*George A. Reynolds*  
\_\_\_\_\_  
Judge of Probate

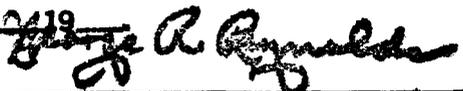
State of Alabama

Lawson County

I, the Undersigned, as Judge of the Court of Probate,  
in and for said County, in said State, hereby certify that  
the foregoing is a full, true and correct copy of the  
instrument with the filing of same as appears of  
record in this office in Vol.....Record of  
.....on page.....

Given under my hand and official seal, this the \_\_\_\_\_

day of \_\_\_\_\_



Judge of Probate

Jim Bennett  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Jim Bennett, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

as appears on file and of record in this office, the pages hereto attached, contain a true, accurate, and literal copy of the Registered Agent Change filed on behalf of Attorneys Information Exchange Group, Inc., as received and filed in the Office of the Secretary of State on 05/06/1991.



20131117000000464

**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.**

11/17/2013

Date

**Jim Bennett**

**Secretary of State**

066-155

002508NP

STATE OF ALA. JEFFERSON CO.  
I CERTIFY THIS INSTRUMENT  
WAS FILED ON

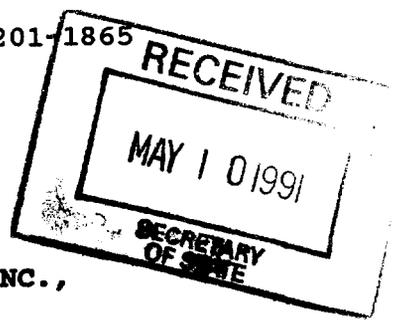
1991 MAY -6 PM 3:55

RECORDED & INDEXED  
DEED TAX HAS BEEN PD. ON THIS INSTRUMENT

*George R. Reynolds*  
JUDGE OF PROBATE

STATE OF ALABAMA )  
COUNTY OF JEFFERSON)

This Instrument Prepared By:  
Edgar C. Gentle, III, Esq.  
Schoel, Ogle, Benton, Gentle & Centeno  
600 Financial Center  
P. O. Box 1865  
Birmingham, Alabama 35201-1865



**SECOND ARTICLES OF AMENDMENT OF  
ATTORNEYS INFORMATION EXCHANGE GROUP, INC.,  
A NON-PROFIT CORPORATION**

The Articles of Incorporation of Attorneys Information Exchange Group, Inc., a non-profit corporation (the "Corporation") recorded in the Office of the Judge of Probate of Jefferson County, Alabama at Real 3329, Page 409, as amended by First Articles of Amendment recorded in the Office of the Judge of Probate of Jefferson County, Alabama, at Real 3614, Page 218, are hereby amended in accordance with Code of Alabama 1975, §10-3A-82, as follows:

(1) The name of the Corporation is:

Attorneys Information Exchange Group, Inc.;

(2) The amendment adopted is the amendment of ARTICLE IV so as to read as follows:

"ARTICLE IV

LOCATION OF  
REGISTERED OFFICE AND REGISTERED AGENT

The location and mailing address of its then registered office of the non-profit corporation in the State of Alabama shall be Suite 115, 651 Beacon Parkway West, Birmingham, Alabama 35209, and the non-profit corporation's then registered agent at such address shall be Francis H. Hare, Jr."

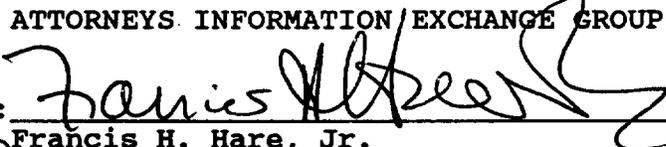
(3) There are no members entitled to vote on the foregoing amendment. The amendment was approved by the vote of the majority of the Directors of the Corporation then in office on April 20, 1991.

(4) The total number of Directors of the Corporation as of the time of approval of said amendment was thirty-three (33).

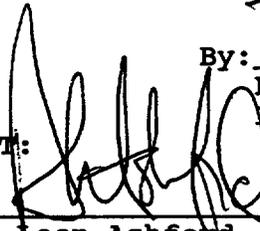
(5) The amendment was approved by a majority of the Board of Directors of the Corporation, thirty-one (31) Directors voting for the amendment, zero Directors voting against it, and two (2) Directors being absent or abstaining.

**IN WITNESS WHEREOF**, Attorneys Information Exchange Group, Inc., has executed this instrument by and through its Vice President and Secretary as of April 20, 1991.

ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

By: 

Francis H. Hare, Jr.  
Its: Vice President

ATTEST: 

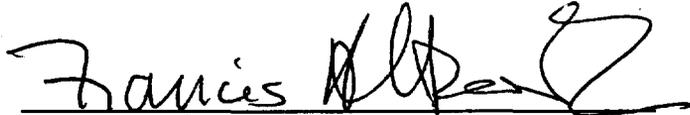
By: \_\_\_\_\_

D. Leon Ashford  
Its: Secretary

[CORPORATE SEAL]

STATE OF ALABAMA )  
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public for the State of Alabama, County of Jefferson, personally appeared Francis H. Hare, Jr., who, being first duly sworn, makes oath that he is Vice President of Attorneys Information Exchange Group, Inc., a non-profit corporation, and duly authorized to make this verification, he has read the foregoing Second Articles of Amendment of said non-profit corporation, and knows the contents thereof, and he is informed and believes, and upon such information and belief, avers that the facts alleged therein are true and correct.



Francis H. Hare, Jr.  
Vice President and Affiant

GIVEN under my hand and seal of office this 1st day of May, 1991.



Notary Public

My Commission Expires: 2-12-92

[NOTARIAL SEAL]

NOTARIAL SEAL

Notary Public for the State of Alabama  
Sharon Clements

My Commission Expires

2-12-92



**State of Alabama**  
**Jefferson County**

I, the Undersigned, as Judge of the Court of Probate,  
in and for said County, in said State, hereby certify that  
the foregoing is a full, true and correct copy of the instru-  
ment with the filing of same as appears of record in this  
office in Vol. 4021 Record of \_\_\_\_\_

on page 062

Given under my hand and official seal, this the 6th

day of May 1896

*George A. Reynolds*

**Judge of Probate**

# **Appendix 3**

Affidavit of Frances Hare

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

	)	
	)	
ANDREA SOMERVILLE	)	
AND	)	
DONALD SOMERVILLE	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
GENERAL MOTORS CORPORATION,	)	
ET AL	)	Case No. 97 CIV 7366 (JS) (ETB)
	)	
DEFENDANT	)	
	)	
	)	
	)	

AFFIDAVIT OF FRANCIS H. HARE, JR.

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Francis H. Hare, Jr., being duly sworn do depose and state as follows:

I. IDENTITY OF AFFIANT

A. I am a citizen of the United States and a resident of Jefferson County, Alabama. I am an attorney licensed to practice law in the State of Alabama and have been so licensed since 1959. I am a member in good standing of the State Bar of Alabama.

B. I am the Chief Legal Officer of the Attorneys Information Exchange Group, Inc., ("AIEG") and have served in that capacity since April of 1987. AIEG's corporate headquarters are located in Birmingham, Alabama. I was one of the founding members of AIEG at its organizational meeting in Phoenix, Arizona in April, 1980..

C. In addition to service with AIEG I have been actively practicing law representing plaintiffs in defective product cases for over 40 years. I have been active in the handling of a number of multi-jurisdictional defective design product cases. I have served as Liaison Counsel in the "Breast Implant Litigation" and the "Tobacco Litigation". I have been appointed Select Counsel for certain beneficiaries in the "Fiberboard Asbestos Litigation". I was a trustee of the Johns-Manville Settlement Trust. I have served on the Steering Committee of the "Bronco II Litigation", the "Swine Flu Litigation", the "Dalcon Shield Litigation", and the "MER/29 Litigation". I was active in the handling of the "Firestone 500 Litigation", the "Fuel System Integrity Litigation" as well as a number of drug cases and defective design cases involving other types of mechanical products.

## II. BACKGROUND OF THE ATTORNEYS INFORMATION EXCHANGE GROUP, INC.

A. AIEG is a not-for-profit corporation that administers the activities of a number of plaintiff litigation support groups. Each of these litigation support groups consists of plaintiff's attorneys who share a common interest in properly preparing individual cases each of which involve the same product defect, the same issues of technology, the same technical information, common issues of law and fact and identical strategic considerations. AIEG was originally formed by a group of plaintiffs attorneys with experience in handling defective product cases. The founding members recognized the great and growing need to provide plaintiffs

counsel with access to an information sharing mechanism somewhat similar to the collaborative mechanism available to local defense counsel. The founding members recognized that local defense counsel in individual product cases had access to and enjoyed the benefits of a sophisticated and very effective collaborative mechanism typically organized and implemented by corporate defendants In-House Counsel or by outside National Counsel. One of the main reasons for creating AIEG was to provide plaintiffs counsel handling similar product defect cases with access to the benefits of information sharing to offset the relative disparity of resources available to the plaintiff as compared to the resources available to the corporate defendant and its local defense counsel. AIEG's corporate objectives are set forth in Article I of its Bylaws, relevant portions of which are attached as Exhibit A. AIEG seeks to achieve these objectives in part through the operation of litigation support groups consisting solely of Member Attorneys representing plaintiffs in cases involving the same defect in the design of a mechanical product. AIEG currently oversees the operation of thirteen litigation support groups.

B. Although all of AIEG's Member Attorneys are also members of the Association of Trial Lawyers of America (ATLA), AIEG is a separate and independent entity with its own Officers and Directors and subject to its own governance. An ATLA member does not have access to AIEG materials or services unless he or she is also a Member Attorney of AIEG.

C. Membership in the AIEG affords opportunities for the exchange of information, ideas and experiences with other plaintiffs attorneys handling similar defective design product cases. The four main areas of activity conducted by AIEG are: (1) networking of Member Attorneys handling similar cases, (2) publication of a newsletter covering issues and events of interest to Member Attorneys, (3) conducting seminars which explore the critical issues pertaining to the various plaintiff litigation support groups which AIEG oversees, (4) maintaining the databases which are described in this affidavit.

### III. AIEG'S DATABASES

As Chief Legal Officer, I am responsible for, among other things, supervising the maintenance and operation of AIEG's databases. AIEG maintains five databases which are described in subparagraphs A through E, infra.

#### A. DATABASE OF TECHNICAL MATERIALS FROM PUBLIC DOMAIN

##### 1. Description of Contents

This database consists of articles from technical and/or trade journals, selections from learned treatises, technical papers and the like. All items in this database are copies of literature that has been published and are generally available to the public, e.g. in libraries or on file with regulatory agencies.

2. Member Access

There are no restrictions on access to the contents of this database or to the index of materials in this database. Member Attorneys have access to the complete index of materials in this database and to any or all materials in this database.

It should be noted that certain articles from this database may be selected by Member Attorneys for inclusion in AIEG's Work Product Document Banking System (WPDBS) database. See Paragraph B.

DATABASE OF LEGAL MATERIAL (LAW DATA FILING SYSTEM)

1. Description of Contents

The contents of this database include such things as pleadings, discovery requests, motions, briefs and court orders pertaining to a variety of legal issues of interest to Member Attorneys.

2. Member Access

Except in the instance where certain documents, have been filed under a protective order, Member Attorneys have unlimited access to the index of and the materials in this database.

C. DATABASE OF PRIOR TESTIMONY

1. Description of Contents

This database consists of testimony including both depositions and trial transcripts given by witnesses in cases involving issues of interest to Member Attorneys.

## 2. Member Access

In most instances there are no restrictions on access to the contents of or the index to this database. Occasionally a Member Attorney will furnish AIEG with a transcript all or portions of which are subject to a protective order with which AIEG complies.

It should be noted that certain portions of this database may be selected by Member Attorneys for inclusion in AIEG's Work Product Document Banking System (WPDBS) database. See Paragraph IV.

### D. COURT ESTABLISHED CLEARINGHOUSE

#### 1. Description of Contents

On a number of occasions a court has designated AIEG as a clearinghouse to administer the provisions of a protective order establishing an information sharing mechanism among plaintiffs with similar cases concerning discovery materials produced by the defendant in a particular case. On these occasions, AIEG sets up a separate clearinghouse system to disseminate the documents subject to the court's order. AIEG administers these clearinghouse systems in a manner that strictly complies with the terms of the court's order. The documents included in a court established clearinghouse system are not subject to an attorney conducted selection process. The documents in a court established clearinghouse system include all documents subject to the court's order.

#### 2. Member Access

Access to documents in a court established clearinghouse system is not limited to AIEG Member Attorneys. AIEG will and does respond to any request for documents maintained in a court

established clearinghouse system so long as the request in every other respect complies with the terms and provisions of the court's order. AIEG's activities in implementing a court established clearinghouse system are conducted totally separate and apart from AIEG's regular activities concerning the maintenance of its four other databases, including AIEG's Work Product Document Banking System (WPDBS) database. AIEG operates a court established clearinghouse system as a separate system in part for the very purpose of maintaining the work product status and confidentiality of the contents of its WPDBS database.

E. WORK PRODUCT DOCUMENT BANKING SYSTEM (WPDBS) DATABASE AND COMPUTERIZED INDEX

NOTE: Unless specifically indicated to the contrary, the remainder of this affidavit deals with the WPDBS database maintained for the *Occupant Restraint* Litigation Group and its correlative Computerized Index. The same observations made in this affidavit would apply to the WPDBS database and Computerized Index which AIEG maintains in connection with the other litigation groups which it administers.

Because of the fact that the organization, structure and the very nature of AIEG's WPDBS database is distinctively different from AIEG's other databases, your affiant will return to the Roman Numeral numbering system for the discussion of this particular database and its correlative Computerized Index.

IV. WORK PRODUCT DOCUMENT BANKING SYSTEM (WPDBS) DATABASE AND COMPUTERIZED INDEX

A. GENERAL OBSERVATIONS

1. In a very real sense the Work Product Document Banking System (WPDBS) database and the correlative Computerized Index to the WPDBS database is AIEG's principle asset. It is the very heart of the cooperative information sharing aspect of AIEG's litigation support groups. The preservation of the work product status and confidentiality of both the identity and the contents of the materials contained in or selected from AIEG's WPDBS database and its correlative Computerized Index is essential to the accomplishment of AIEG's corporate objectives.

2. Each of AIEG's litigation support groups involve the same product design defect. Consequently, each support group involves the same technological issues and the same technical materials. These materials typically pertain to the relative safety or danger associated with the use of a product incorporating the same defective design and the relative safety or danger of alternative designs.

3. All of the materials in the WPDBS database were initially acquired by, selected by and deposited with AIEG by Member Attorneys.

4. AIEG's WPDBS database and the Computerized Index were created by Member Attorneys acting jointly with other Member Attorneys in a cooperative effort to properly prepare individual cases each of which involve the same product design defect, the

same technical issues and material, common issues of law and fact and identical strategic considerations.

5. AIEG's WPDBS database and the Computerized Index were developed by Member Attorneys in anticipation of litigation; that is, solely for the purpose of assisting Member Attorneys in properly preparing his or her client's individual *Occupant Restraint* cases for trial. Thus, the WPDBS database and its Computerized Index were created solely for the purpose of assisting Member Attorneys who share a common interest in working together in a co-operative effort concerning the common issues involved in the *Occupant Restraint Litigation* to properly prepare and present each Member Attorney's case.

6. AIEG Bylaws expressly forbid the sale or other commercial use or disposition of any materials contained in or selected from the AIEG WPDBS database. See AIEG's Bylaws, Article V, Paragraphs (2) (d) and (e) (Exhibit A). Indeed, as will be described herein, access to and disclosure of materials contained in or selected from the AIEG WPDBS database is strictly limited by AIEG'S Corporate Documents.

7. AIEG's WPDBS database does not include any document the dissemination or the disclosure of which is restricted by the terms of any valid and operative protective order.

8. The activities of AIEG's non lawyer staff concerning the WPDBS database and Computerized Index are limited to (a) inserting additional materials in the WPDBS database from time to time on instructions from the Attorney Members of the *Occupant Restraint Litigation Group* and (b) providing assistance in responding to Member Attorneys requests for information in the WPDBS database. These activities are in all respects and at all times conducted under my direct supervision acting in my capacity as the organization's Chief Legal Officer. I supervise these activities precisely for the purpose of preserving the confidentiality and work product protection for the identity and contents of (a) the AIEG WPDBS database and the Computerized Index of materials compiled in the AIEG WPDBS and (b) the specific material selected from the WPDBS database for use by Member Attorneys in preparing a particular case for trial.

B. DESCRIPTION OF THE CONTENTS OF AIEG'S WPDBS DATABASE

1. There are two types or categories of documents in AIEG's WPDBS database. The first is referred to as "Select Documents". Select Documents consist of a compilation of documents selected by Member Attorneys on the basis of their prior experience and their legal evaluation, analysis and understanding of the technical, factual, and legal issues and the strategic considerations which are common to all cases which collectively comprise the *Occupant Restraint Litigation*. Member Attorneys in the

course of handling an individual defective design product case often acquire a relatively large number of documents. Some attorneys have acquired tens of thousands of documents in the course of handling one or more cases involving the same defective design. From this relatively large number of documents, Member Attorneys working together in a cooperative effort to properly prepare the common issues of law and fact involved in all cases involving the same defect, select a comparatively small number of documents to deposit in AIEG's WPDBS database. The resulting compilation of Select Documents in AIEG's WPDBS database is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of these Member Attorneys.

2. Some (but not all) of the Select Documents compiled in AIEG's WPDBS database consist of documents which were originally prepared by or received by the corporate manufacturers who are typically defendants in the *Occupant Restraint* Litigation. Such documents are commonly referred to as the manufacturer's "Internal Documents". This phrase simply refers to the documents which normally come into existence in the usual and ordinary course of a manufacturer's business of designing, testing, manufacturing and distributing its products. The Internal Documents which have been selected for inclusion in the AIEG WPDBS database contain critical evidence pertaining to the issues involved in *Occupant Restraint* Litigation. The Select Documents in AIEG's WPDBS include Internal Documents originally generated by not only the defendant in the present case but most if not all of the manufacturers of similar

products. Further, the Select Documents in AIEG's WPDBS relate to a variety of products and model types each of which possess the same design defect.

3. Some of the Select Documents compiled in AIEG's WPDBS database were acquired in discovery in other similar cases against the corporate manufacturers who are typically defendants in the *Occupant Restraint* Litigation. However, AIEG's WPDBS also includes Select Documents initially acquired by Member Attorneys from their personal investigation; that is, from sources outside the discovery process. Such materials include not only manufacturers Internal Documents but also a number of published articles or technical papers which Member Attorneys have selected as being of particular significance to plaintiffs in the *Occupant Restraint* Litigation.

4. The second type or category of documents in the AIEG WPDBS database is referred to as "Attorney Memos". The phrase refers to memoranda prepared by Member Attorneys representing plaintiffs in other similar cases which not only analyze, evaluate and comment on Select Documents but also analyze, evaluate and comment on the technical, legal and factual issues and the strategic considerations which are common to all cases which collectively comprise the *Occupant Restraint* Litigation. Attorney Memos contain and reflect the legal analysis, opinions, mental impressions, and conclusions concerning not only the selection, organization and use of documents of particular significance but,

in addition, the Member Attorneys' overall strategy and approach to the *Occupant Restraint* Litigation.

5. I affirm that AIEG is obligated to and has in fact taken every reasonable and appropriate action and precaution to preserve and protect the confidentiality and work product status concerning the identity and contents of the materials in the WPDBS database.

C. DESCRIPTION OF THE DEVELOPMENT AND CONTENT OF AIEG'S  
COMPUTERIZED INDEX TO THE WPDBS DATABASE

1. The Computerized Index to AIEG's WPDBS was developed by Member Attorneys working together in a cooperative effort to properly prepare the common issues of law and fact involved in each individual *Occupant Restraint* case.

2. The content, format, organization and structure of the Computerized Index which lists the Attorney Memos and Select Documents compiled in AIEG's WPDBS database is based on the Member Attorneys' professional experience and legal analysis of the technical, legal and factual issues and the strategic considerations which are common to all cases which collectively comprise the *Occupant Restraint* Litigation Group. The content, format, organization and structure (including, but not limited to the fields of search and key words) of AIEG's Computerized Index to the WPDBS is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of the Attorney

Members who developed it for the use and benefit of the *Occupant Restraint* Litigation Group.

3. Disclosure of AIEG's Computerized Index, would, in and of itself, reveal the legal analysis, opinions, and mental impressions of the Member Attorneys who selected and compiled the documents that collectively make up the WPDBS database.

4. I affirm that AIEG is obligated to and has in fact taken every reasonable and appropriate action and precaution to preserve and protect the work product status of the Computerized Index to the WPDBS database.

#### D. DOCUMENT DEPOSIT AGREEMENT

1. AIEG's WPDBS database is appropriately referred to as a "Banking System". Member Attorneys deposit documents in the WPDBS database under the terms and conditions of a Document Deposit Agreement (Exhibit C). Acting in its capacity as a Document Bank, AIEG accepts a Member Attorney's offer of deposit on the terms and conditions spelled out in the Document Deposit Agreement. (See Exhibit C, Paragraph I). The Document Deposit Agreement is intended to protect the security and confidentiality of Privilege Documents which a Member Attorney deposits in the WPDBS database. The Document Deposit Agreement specifically preserves the Member Attorney's legal ownership to and proprietary interest in Privilege Documents deposited in AIEG's WPDBS. Each Member Attorney who deposits documents with AIEG retains the right to withdraw any and all of these documents previously and to have the listing of the documents removed from AIEG's Computerized Index if, at any time,

the confidentiality and security of the Member Attorney's documents is threatened. Indeed, the Document Deposit Agreement specifically provides that if a Member Attorney either agrees to or is compelled by a court order to disclose the identity or contents of materials in an AIEG WPDBS which includes Privilege Documents, such an agreement or court order shall be deemed an automatic revocation of the Document Deposit Agreement and shall effect an immediate withdrawal by the Document Owner of and all documents deposited with AIEG. See Exhibit C, Paragraph II (4).

2. All AIEG Member Attorneys (including Plaintiff's Counsel) agree to be bound by the terms and restrictions in the Document Deposit Agreement concerning access to and the use of Privilege Documents deposited in the WPDBS database.

E. JOINT PROSECUTION AND CONFIDENTIALITY AGREEMENT

1. The identity and contents of the materials contained in the AIEG WPDBS database and listed in the Computerized Index for the WPDBS database are entitled to work product protection for the reasons set forth in Paragraph V, A,B and C, supra. In addition, these materials are subject to a Joint Prosecution And Confidentiality Agreement ("Confidentiality Agreement") (Exhibit D) executed by all Member Attorneys and Plaintiff's Counsel as a necessary condition of access to materials in the AIEG WPDBS database.

2. This Confidentiality Agreement is valid and binding. Under its terms Plaintiff's Counsel is expressly forbidden to disclose the identity or the contents of the specific materials selected for use in preparing the present case except to other members of the *Occupant Restraint* Litigation Group who have mutually agreed to be bound by the same Agreement. See AIEG's Bylaws Article V, Paragraph (2) (c) (Exhibit A) and Paragraph 4 of the Confidentiality Agreement (Exhibit D).

F. MEMBER ATTORNEY'S ACCESS TO MATERIALS CONTAINED IN AIEG'S WPDBS DATABASE AND THE COMPUTERIZED INDEX.

1. The privileges and obligations of Member Attorneys concerning access to and the use of materials in the WPDBS database and to the Computerized Index is governed by the terms and provisions of four Corporate Documents, namely, (a) AIEG's Bylaws (Exhibit A), (b) the Membership Agreement executed by and between AIEG and each individual Member Attorney (Exhibit B), (c) the provisions of the Document Deposit Agreement governing AIEG's acquisition and use of documents placed in its WPDBS (Exhibit C), and (d) the provisions of the Joint Prosecution and Confidentiality Agreement assented to by Member Attorneys as a condition of access to information contained in AIEG's WPDBS database (Exhibit D).

2. AIEG's Corporate Documents expressly forbid Member Attorneys from disclosing information contained in AIEG's WPDBS to anyone other than another Attorney Member of AIEG's *Occupant Restraint* Litigation Group who are likewise subject to the

restrictions concerning the disclosure of Confidential Information set forth in AIEG's Corporate Documents. See, e.g. AIEG's Bylaws, Article V, Paragraph 2 (c). AIEG's Corporate Documents expressly forbid Plaintiff's Counsel and all other Member Attorneys from revealing the identity or contents of the materials contained in AIEG's WPDBS database or listed on the Computerized Index to, inter alia, defendants in defective product cases.

3. AIEG's Corporate Documents expressly provide that Member Attorneys have only limited and restricted access to AIEG's WPDBS database and the Computerized Index. Member Attorneys do not have a right of access to all of the materials in AIEG's WPDBS database or to the complete Computerized Index of all the materials in AIEG's WPDBS database. The Member Attorneys who founded AIEG established this procedure of limited access precisely for the purpose of preserving the confidentiality and work product protection for AIEG's WPDBS database and its Computerized Index. Plaintiff's Counsel in the present case does not presently possess a copy of the Computerized Index. Plaintiff's Counsel has never examined AIEG's Computerized Index of the documents which collectively make up the WPDBS pertaining to the *Occupant Restraint* Litigation. Indeed, as noted, under AIEG's Corporate Documents, no Member Attorney has a right to possess or examine AIEG's Computerized Index of its WPDBS database. Therefore, in so far as the defendant's discovery request seeks to compel Plaintiff's Counsel to produce or identify all the documents in AIEG's WPDBS database or to produce a copy of the complete Computerized Index,

it should be noted that Plaintiff's Counsel has neither the possession, nor custody, nor control nor the right of possession, custody or control of these items.

4. The identity and contents of the specific materials selected from the WPDBS for use by Plaintiffs Counsel in preparing the present case for trial are, themselves, subject to work product protection. See, e.g. AIEG's Bylaws Article V, Paragraph (4) (m) (Exhibit A) and the standard cover letter accompanying AIEG's response to a Member Attorneys request for information contained in an AIEG WPDBS. (Exhibit E).

5. As noted in Paragraph IV E 2, supra, the identity and contents of specific materials selected from the WPDBS for use by Plaintiff's Counsel in preparing the present case for trial are subject to the restrictions of the Confidentiality Agreement executed by Plaintiff's Counsel as a necessary condition of access to these specific materials. See Exhibit D and E.

6. Under AIEG's Corporate Documents, Plaintiff's Counsel is obligated to take whatever legal and other action that is necessary and appropriate to resist any effort to obtain copies of or otherwise to discover the identity or contents of specific material selected from the WPDBS for use by Plaintiff's Counsel in preparing a particular case for trial. See, e.g. AIEG's Bylaws Article V, Paragraph (5) (a) through (d) (Exhibit A). Such action specifically includes assertion of the Member Attorney's entitlement to work product protection and assertion of the terms of the Confidentiality Agreement. It should be noted that a Member

Attorney's membership in AIEG and right to possess materials from the AIEG database is automatically and immediately terminated for violation of the obligations concerning access to and use of materials in the AIEG's WPDBS database. See AIEG's Bylaws Article IV, Paragraph (4) (d) (Exhibit A).

V. THE NATURE OF THE DEFENDANT MANUFACTURERS DISCOVERY REQUEST

A. Your affiant is informed that the defendant in the present case seeks to compel Plaintiff's Counsel to disclose the identity of the companies own corporate documents; i.e., documents originally created by the defendant itself in the ordinary course of its corporate business. As these documents are (or should be) presently in the companies possession, the defendant obviously does not need to acquire them from Plaintiff's Counsel in order to prepare its case. Indeed, it seems clear that the sole object of the defendant's request is merely to determine the status of Plaintiff Counsel's knowledge concerning these documents. The discovery rules do not permit inquiries concerning the knowledge of an attorney representing one of the parties in litigation. The Plaintiff Counsel's knowledge of these documents is not relevant to the defendant's case and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, as noted herein, the identity and contents of materials contained in or selected from an AIEG WPDBS database are entitled to work product

protection and are further protected from disclosure under a valid and binding Confidentiality Agreement.

B. As noted, AIEG currently oversees the operation of a number of litigation support groups for plaintiff lawyers handling cases involving a defect in the design of a product. In my capacity as Chief Legal Officer of AIEG, I have noted in recent years that defendants in product liability litigation are with increasing frequency using the same discovery tactic as the defendant in the present case; i.e., compelling the plaintiff's attorney to disclose his knowledge concerning the identity of the companies own Internal Documents. I am of the opinion that it is unnecessary and, indeed, inappropriate for defendant manufacturers to employ the discovery process to acquire this information from the plaintiff's attorney. I am strongly of the opinion that defendant manufacturers use this tactic primarily for the purpose of impairing the effectiveness of plaintiff litigation support groups. The harmful effects of this tactic are outlined in Paragraph VI, infra. Your affiant notes that the harmful effects of this tactic are the same regardless of the defendant manufacturer's intent or purpose.

#### VI. THE HARM THAT WOULD RESULT FROM DISCLOSURE

A. Disclosure of the identity or contents of materials contained in or selected from AIEG's WPDBS database for the *Occupant Restraint* Litigation Group and/or AIEG's Computerized Index of the materials in the WPDBS database to the defendant in the present case or its Local Defense Counsel would result in great

harm and severe and irreparable prejudice to (1) the Plaintiff and Plaintiff's Counsel in the present case, (2) the Member Attorneys of AIEG's *Occupant Restraint* Litigation Group, (3) other plaintiff's and their counsel in the *Occupant Restraint* Litigation who are not members of AIEG and (4) the AIEG.

B. Disclosure of the identity or contents of the material contained in or selected from AIEG's WPDBS database and/or AIEG's Computerized Index to the defendant would violate Plaintiff's Counsel and other Attorney Members of AIEG's *Occupant Restraint* Litigation Group entitlement to work product protection. Such a disclosure would reveal to the defendant the identity of the particular documents which Plaintiff's Counsel and other AIEG Member Attorneys selected for use in preparation or trial of an *Occupant Restraint* case. Such a disclosure would reveal the legal analysis, opinions, mental impressions and conclusions of Plaintiff's Counsel and other AIEG Member Attorneys who, acting in concert, selected and compiled documents of particular significance to the plaintiff in the preparation and trial of an *Occupant Restraint* case. Such a disclosure would severely and irreparably prejudice the substantial rights of the Plaintiff and Plaintiff's Counsel in the present case and the other AIEG Member Attorneys of the *Occupant Restraint* Litigation Group. Such a disclosure would grant the defendant a great and unjust advantage over the Plaintiff in the present case and over other AIEG Member Attorneys handling other similar *Occupant Restraint* cases.

C. Disclosure of the identity or contents of the materials in AIEG's WPDBS database for the *Occupant Restraint* Litigation Group and/or AIEG's Computerized Index of the materials in the WPDBS to the database and/or the documents selected by Plaintiff's Counsel from AIEG's WPDBS for use in the present case would constitute a violation of a valid and binding Confidentiality Agreement. Such a disclosure would grant the defendant a great and unjust advantage over the Plaintiff and Plaintiff's Counsel in the present case and over other AIEG Member Attorneys handling other similar *Occupant Restraint* cases.

D. Disclosure of the identity or contents of the material contained in or selected from AIEG's WPDBS database and/or AIEG's Computerized Index of the materials in the WPDBS to the defendant would defeat AIEG's ability to achieve its corporate objective to provide plaintiffs in the *Occupant Restraint* Litigation with the benefits of information sharing. Such a disclosure would, however, leave in tact the collaborative mechanism which the defendant provides local defense counsel in each individual *Occupant Restraint* case. The result would therefore grant the defendant and each of its local defense counsel a great and unjust advantage over Plaintiff's Counsel in the present and over other AIEG Member Attorneys handling similar cases. Such a disclosure would totally defeat the principle purpose for which AIEG was organized. Plaintiff lawyers would simply refuse to place documents on deposit with AIEG if they knew that the manufacturer could acquire

access to either the identity or contents of the material contained in or selected from the AIEG's WPDBS database.

E. Disclosure of the identity or contents of the material contained in or selected from AIEG's WPDBS and/or the Computerized Index of materials in the WPDBS to the defendant would have a severely harmful effect on this Court and on the civil justice system in general. Such a disclosure would obviate the enormous juridical benefits that result from the sharing of discovery materials by and between litigants involved in similar litigation. These benefits include (1) substantially reducing the transaction costs associated with preparing and presenting civil litigation, (2) enhancing the quality and efficacy of the discovery process and (3) increasing the likelihood that a just result will be obtained in individual cases. Further, such a disclosure would encourage corporate defendants in defective design product litigation to withhold the production of critical evidence. If the corporate defendant can compel plaintiff's counsel in any individual case to list all the Internal Documents that are known to plaintiff's counsel by virtue of membership in a litigation support group, the defendant can thereafter tailor its discovery responses to avoid revealing any new information to the plaintiff involved in any similar case. Such a disclosure would defeat rather than advance the purpose and objectives of the discovery rules.

Dated this 5<sup>TH</sup> of May, 1999.

Francis A. [Signature]

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Sworn to and subscribed before

me on this the 5<sup>TH</sup> day of  
May, 1999.

Ann C. Elliott

Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Jan. 24, 2001.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

# **Appendix 3.a**

AIEG Work Product Document  
Banking System Memo

## **Attorneys Information Exchange Group, Inc.**

**TO: THE AIEG MEMBER ATTORNEY**

**FROM: RUSS LANGLEY, EXECUTIVE DIRECTOR**

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Enclosed are copies of documents selected from AIEG's Work Product Document Banking System (WPDBS) pertaining to the case you are handling. These documents have been selected for your use in accordance with the process described in the attached memo. These documents were selected solely for the purpose of assisting you in preparing your clients case for trial. Both the identity and contents of these documents are entitled to work product protection. Further, the confidentiality of these documents is protected under the Joint Prosecution and Confidentiality Agreement you executed as a condition precedent to receipt of these documents.

We call your attention to your obligations concerning access to and use of materials contained in or selected from an AIEG WPDBS database. The defendant in your case may well attempt to use the discovery process to force you to disclose either (or both) the identity or the contents of the enclosed documents. Please notify AIEG if this occurs. We will assist you in preserving the confidentiality and work product status of these documents.

We remind you that under AIEG's Bylaws you may disclose confidential information only to (1) those persons who are actively involved in the preparation and presentation of the case(s) in connection with which such Confidential Information was selected, and (2) other Member Attorneys handling similar cases and participating in a cooperative effort to advance their common interest and who are likewise bound by the conditions and restrictions concerning the disclosure of Confidential Information set forth in these Bylaws and the Joint Prosecution and Confidentiality Agreement.

**WHEREAS, the inequality described above can be diminished, although never eliminated, by plaintiff's counsel handling similar cases combining their talents and resources and participating in a cooperative effort to properly prepare and fairly resolve individual cases each of which involve the same product defect, common issues of law and fact, the same technical materials and identical strategic considerations;**

**WHEREAS, in order to properly prepare and fairly resolve the client's case, plaintiff's counsel in a defective product case must have access to a litigation support mechanism similar to the one that is available to local defense counsel;**

**WHEREAS, one of the principle objectives of a plaintiff's litigation support group is to facilitate the sharing of information (including discovery materials) between and among plaintiff's counsel handling similar product defect cases. Such a sharing of information is essential in order to properly prepare a current day defective product case. The cooperative sharing of information is necessary, inter alia, to verify the accuracy of the defendant's response to legitimate discovery requests, to augment the efficacy of the discovery process and to reduce the costs of conducting discovery. The cooperative sharing of discovery materials promotes the purpose of the rules of civil procedure "to secure the just, speedy and inexpensive determination of every action";**

**The Corporation was founded for the following purposes: (i) to assist Member Attorneys handling similar cases to properly prepare and fairly resolve product defect cases; (ii) to reduce the time and expense required to properly prepare and fairly resolve product defect cases; (iii) to offset the inherent advantages favoring defendants in defective product litigation; and (iv) to overcome the obstacles which unjustly impede the victims of defective products in the exercise of their right to seek legal redress.**

**The Corporation intends to achieve its purposes by organizing and administering plaintiff litigation support groups each consisting of plaintiff attorneys handling similar defective product case involving common legal and factual issues, the same technical materials and information, and the identical strategic considerations. Providing Member Attorneys with access to the activities associated with litigation support groups will aid Member Attorneys in their own case preparation activities and facilitate the desire of Member Attorneys handling similar cases to participate in a cooperative effort to achieve the common interest of properly preparing and fairly resolving individual cases.**

# **Appendix 3.b**

## **AIEG Bylaws**

**BYLAWS**  
**OF**  
**ATTORNEYS INFORMATION EXCHANGE GROUP, INC.**  
**A NONPROFIT ORGANIZATION**

**ARTICLE I**

**Purposes of the Corporation**

WHEREAS, the public is subject to a present and growing danger from hazards associated with the exposure to defective products. Indeed, each year thousands of people are killed or injured by defective products. Many of these unfortunate deaths or injuries could have been avoided by the adoption of reasonable safety precautions;

WHEREAS, the American civil justice system is the single most effective stimulus prompting the consideration of safety by manufacturers and others responsible for the condition of defective products. That system provides the victims of defective products legal redress characterized by a fair trial of the full facts;

WHEREAS, it is essential (i) that a victim of defective products be provided open access to court and the truth concerning the merits of his or her claim and (ii) that any unjustified impediment to the fair and effective operation of the American judicial system be eliminated;

WHEREAS, modern product liability litigation is very complex and expensive to handle. A typical case involves complicated facts, esoteric technology and numerous highly technical documents. Plaintiff's counsel must master all three if he or she is to properly prepare the client's case;

WHEREAS, there is a great and growing inequality between the position and state of knowledge of the plaintiff and the defendant in a defective product's case, which impairs the ability of plaintiff's counsel to prepare fairly and adequately his or her client's case. This inequality results, in part, from the following: (i) the defendant enjoys the advantage of significantly greater financial and technical resources; (ii) local defense counsel in each individual case enjoys the benefits of a collaborative mechanism typically organized and implemented by the corporate defendant's house counsel; (iii) defendants in defective product cases often employ the rules of civil procedure in a manner calculated to defeat rather than promote the purpose of the rules; (iv) defendants often fail or refuse to respond fully or fairly to legitimate discovery requests in conformance with the letter and spirit of the rules of civil procedure; and, (v) defendants often employ a variety of tactics to prevent the detection of their suppression of critical evidence;

## **ARTICLE II**

### **Offices**

(1) **PRINCIPAL OFFICE.** The principal office of the Corporation shall be located in Birmingham, Jefferson County, Alabama. The Board of Directors may by resolution change the location of this office from time to time.

(2) **OTHER OFFICES.** The Corporation may have other offices, either within or outside the State of Alabama, at such place or places as the Board of Directors may from time to time appoint or the business of the Corporation may require.

## **ARTICLE III**

### **Seal**

The corporate seal shall be in circular form and shall have inscribed thereon the name of the Corporation, the words "Corporate Seal", and such other word or words, if any, as may be determined by the Board of Directors to be inscribed.

## **ARTICLE IV**

### **Qualifications, Classes, Election and Termination of Member Attorneys**

Note: The terms "member" and "Member Attorney" are interchangeable.

(1) **MEMBER QUALIFICATIONS.**

(a) Membership in the Corporation is limited to plaintiff attorneys handling product liability cases involving the same defect, the same documents and technical materials, common issues of law and fact and identical strategic considerations who desire to aid their own case preparation activities and who are willing to participate in a cooperative effort to assist other attorneys handling similar cases in achieving the common interest of properly preparing and fairly resolving each individual case.

(b) To qualify and to remain a Member Attorney of the Corporation, an individual must apply for membership by completing and signing the Corporation's Membership Agreement and Member Affidavit and comply with the obligations and standards required of Member Attorneys contained in the Corporate Documents (i.e. Bylaws, Document Deposit Agreement, Membership

Agreement and Joint Prosecution and Confidentiality Agreement) and as otherwise determined by the Board of Directors from time to time.

(2) **CLASSES OF MEMBERS.** There shall be two classes of members of the Corporation, sustaining members and regular members. Each member, whether he or she is a sustaining member or a regular member, shall be entitled to one vote at all meetings of members.

(3) **ELECTION OF MEMBERS.** Although any member may run for election as a Director or Officer of the Corporation, only sustaining members may serve as a Director or an Officer of the Corporation, other than Subordinate Officers, described in ARTICLE IX, Paragraph (12), which may be regular members or non-members.

(4) **TERMINATION.**

(a) A Member Attorney may be terminated by the Corporation at any time, with or without cause, by the Chairman of the Board, the President or the Board of Directors.

(b) A Member Attorney who fails to exercise due diligence to assist the Corporation's efforts to achieve its purposes through the administration of plaintiff litigation support groups may have his or her privileges of membership suspended or terminated.

(c) A Member Attorney is subject to suspension or termination either for the unjustified withholding of or for failing to exercise due diligence in offering for deposit materials and information relevant to the common issues involved in litigation support groups consisting of Member Attorneys handling similar cases.

(d) A Member Attorney membership is automatically and immediately terminated for violation of the obligations concerning access to and use of materials in the Corporation's Work Product Document Banking System (WPDBS) databases or a Computerized Index to one of the Corporation's WPDBS databases.

(e) In the event of membership termination, an aliquot portion of the former Member Attorney's then-paid dues shall be refunded to the former Member Attorney to reflect the portion of his or her paid-for membership subscription period remaining as of the time of such termination.

## ARTICLE V

### Privileges, Acknowledgments and Obligations of Member Attorneys

(1) **PRIVILEGES OF MEMBER ATTORNEYS.** A Member Attorney shall be entitled to the following privileges: (i) to receive the newsletter or other publications periodically published by the Corporation concerning factual, legal and technical developments pertaining to the common interest of Member Attorneys; (ii) to attend the Corporation's educational lectures, symposium, seminars and workshops, concerning product safety litigation law and trial techniques; (iii) to access and make use of the Corporation's law database of pleadings, briefs, research memoranda, etc. pertaining to the issues of common interest to Member Attorneys; (iv) to access and make use to the Corporation's database of prior testimony containing deposition and trial transcripts; (v) to access and make use of the Corporation's database of technical materials published in journals, treatise, papers, etc., pertaining to product safety and (vi) to request access to the Corporation's Work Product Document Banking System (WPDBS) database on the terms and conditions expressed in Article V, Sections (4) and (5) of these Bylaws, the Corporation's Document Deposit Agreement, the Joint Prosecution and Confidentiality Agreement and the Membership Agreement which each Member Attorney executes upon joining the Corporation. These four documents are sometimes referred to as the Corporate Documents. The foregoing privileges of membership are typical of the activities associated with a plaintiff litigation support group and aid the Corporation in achieving its aforestated purposes.

### (2) **GENERAL OBLIGATIONS OF MEMBER ATTORNEYS.**

(a) The Member Attorney agrees that he or she will exercise due diligence to assist the Corporation to achieve its purposes through the administration of its plaintiff's litigation support groups.

(b) The Member Attorney agrees to actively participate in a cooperative effort to acquire, develop, analyze, select, offer for deposit and share relevant information with other members of the Corporation's litigation support groups consisting of Member Attorneys handling similar cases involving the same defect, common issues of law and fact, similar technical issues and information and identical strategic considerations. The Member Attorney acknowledges that access to and use of any and all Privilege Documents deposited in one or more of the Corporations WPDBS databases is subject to the terms of the Corporations Document Deposit Agreement and agrees to be bound by and enforce these terms. See Article V, paragraphs (4) and (5), *infra*.

(c) The Member Attorney understands and accepts that by virtue of his or her membership, a Member Attorney only has limited access to Confidential Information in order to select specific materials for the purpose of assisting the Member Attorney in the preparation of a particular case(s) for trial. The phrase "Confidential Information" as used herein includes but is not limited to materials contained in or selected from one of the Corporation's WPDBS databases. The

Member Attorney agrees to disclose Confidential Information only to (i) those persons who are actively involved in the preparation and presentation of the case(s) in connection with which such Confidential Information was selected, and (ii) other Member Attorneys handling similar cases and participating in a cooperative effort to advance their common interest and who are likewise bound by the conditions and restrictions concerning the disclosure of Confidential Information set forth in these Bylaws and the Joint Prosecution and Confidentiality Agreement. The Member Attorney agrees that he or she will not disclose Confidential Information to anyone else, including, but not limited to anyone affiliated directly or indirectly with the defense of a defective product case except where necessary and required in accordance with the rules and practice of a court or a court order concerning the identity of the exhibits to be used at trial.

(d) The Member Attorney agrees that he or she will not sell, barter, exchange, or otherwise dispose of or use for profit or other commercial gain any materials, document or information obtained from the Corporation.

(e) The Member Attorney agrees that he or she will not advertise his or her membership in the Corporation or his or her possession of information obtained from the Corporation in order to acquire or influence the acquisition of new clients or business.

**(3) ACKNOWLEDGMENTS AND OBLIGATIONS OF MEMBER ATTORNEYS CONCERNING PROTECTIVE ORDERS.**

(a) The Member Attorney agrees to honor the terms of any valid protective order which affects the use of information in one of the Corporation's databases or in a court established clearinghouse administered by the Corporation.

(b) The Member Attorney agrees to take whatever action, including legal action that is necessary and appropriate in order to resist the entrance of a Restrictive Protective Order which forbids or unreasonably restricts the sharing of discovery materials between and among the Member Attorney and other plaintiff attorneys attempting to work together in a common effort to properly prepare individual cases each of which involve the same product defect, common issues of law or fact, the same technical materials and identical strategic implications.

(c) The Member Attorney agrees to immediately notify the Corporation if a defendant or any other person seeks to obtain the entrance of a Restrictive Protective Order precluding or unreasonably restricting the sharing of discovery materials between and among the Member Attorney and other attorneys representing plaintiffs in similar product defect cases.. The Member Attorney agrees that such notice will provide the Corporation with a reasonable opportunity to assist the Member Attorney in his or her effort to resist the entrance of any such order.

**(4) ACKNOWLEDGMENTS OF MEMBER ATTORNEYS CONCERNING THE CORPORATION'S WORK PRODUCT DOCUMENT BANKING SYSTEM AND COMPUTERIZED INDEX.**

The Member Attorney acknowledges his or her understanding of the truth and accuracy of each of the following:

(a) The Member Attorney understands that the Corporation administers certain litigation support groups consisting of Member Attorneys who share a common interest in properly preparing individual cases each of which involve the same product defect, the same technical issues and materials and common issues of law and fact and identical strategic considerations. The Member Attorney desires to work jointly and in concert with other Member Attorneys who share this common interest; and,

(b) The Member Attorney understands that each of the Corporation's litigation support groups involving the same product design defect also involve the same technical materials pertaining to the relative safety or danger associated with the use of a product incorporating the same defective design and the relative safety or danger of alternative designs. These common materials include but are not limited to those documents which are commonly referred to as the manufacturer's Internal Documents. The phrase "Internal Documents" refers to documents created or acquired by a corporate manufacturer in the usual and ordinary course of the company's business of designing, testing, manufacturing and distributing products; and,

(c) The Member Attorney understands that the Corporation maintains a database referred to as a Work Product Document Banking System (WPDBS) and a Computerized Index of information in the WPDBS database for the common benefit of Member Attorneys representing plaintiffs involved in similar product defect cases; and,

(d) The Member Attorney understands that the Corporation maintains a WPDBS database and a Computerized Index for each of the litigation support groups which it administers; and,

(e) The Member Attorney understands that each of the Corporation's WPDBS databases includes, inter alia, a compilation of materials selected by Member Attorneys on the basis of these attorneys professional experience and legal evaluation, analysis and understanding of the technical, factual and legal issues and the strategic considerations which are common to all cases which collectively comprise each of the Corporation's litigation support groups. The Member Attorney understands that the selection of particular documents for inclusion in a WPDBS database is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of these Member Attorneys (the documents in a WPDBS database which have been subject to the attorney selection process are referred to as "Select Documents"); and,

(f) The Member Attorney understands that in addition to Select Documents, each of the Corporation's WPDBS databases includes, inter alia, memoranda prepared by Member Attorneys representing plaintiffs in similar cases which not only analyze, evaluate and comment on Select Documents but also analyze, evaluate and comment on the technical, legal, and factual issues and the strategic considerations which are common to all cases which collectively comprise each of the Corporation's litigation support groups (these memoranda are referred to as "Attorney Memos"). The Member Attorney understands that these Attorney Memos contain and reflect the legal analysis, opinions, mental impressions and conclusions of these attorneys; and,

(g) The Member Attorney understands that the content, format, organization and structure of the Computerized Index which lists the Attorney Memos and Select Documents compiled in each of the Corporation's WPDBS' databases was developed by Member Attorneys and is based on these attorneys professional analysis, and evaluation of the technical, legal and factual issues and the strategic considerations which are common to all the cases which collectively comprise each of the Corporation's litigation support groups. The Member Attorney understands that the development of each of these Computerized Indices is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of these Member Attorneys; and,

(h) The Member Attorney understands that the identity and contents of the materials compiled in each one of the Corporation's WPDBS databases and listed on the Computerized Index for each WPDBS database are entitled to immunity from discovery in that they constitute the opinion work product of Member Attorneys; and,

(i) The Member Attorney understands that the identity and contents of the materials compiled in each one of the Corporation's WPDBS databases and listed on the Computerized Index for each WPDBS database are further protected by a Joint Prosecution and Confidentiality Agreement (herein Confidentiality Agreement) by which every Member Attorney agrees to be bound; and,

(j) The Member Attorney understands that the Corporation's Chief Legal Officer, subordinate officers and Member Attorneys are obligated to and do in fact take whatever action (including internal procedures and legal action) that is necessary and appropriate to protect the work product status and to enforce the Confidentiality Agreement concerning [i] the identity and contents of materials in each of the Corporation's WPDBS databases and the Computerized Index for each of AIEG's WPDBS databases; and, [ii] the identity and content of any material selected from one of the Corporations WPDBS databases and furnished to a Member Attorney for use in preparing a particular case for trial.

(k) The Member Attorney understands that the WPDBS databases includes documents deposited under the terms of the Corporation's Document Deposit Agreement. (These documents are referred to as "Privilege Documents"). The Member Attorney understands that the Corporation is obligated to honor and enforce the conditions and restrictions of the Document Deposit Agreement concerning the ownership of, access to and the use of Privilege Documents. The Member Attorney

understands that the Document Owner of Privilege Documents may, in his or her sole discretion, impose other and additional restrictions on the use of or access to Privilege Documents, and, therefore, the Corporation cannot be responsible for the Document Owner's refusal to provide copies of or access to Privilege Documents to the Corporation, the Member Attorney or any other person. The Member Attorney understands that every Privilege Document is legally owned by the Document Owner, who, has deposited the document(s) in the Corporation's WPDBS database in order to further the purposes and accomplish the objectives of the Corporation as set forth in Article I of these Bylaws.

(l) The Member Attorney understands that his or her access to and use of the materials compiled in a WPDBS database and the Computerized Index of materials in a WPDBS database is limited to and restricted by the provisions of the Corporation's Document Deposit Agreement, these Bylaws and the Corporation's Joint Prosecution and Confidentiality Agreement; and,

(m) The Member Attorney understands that he or she does not have unlimited or unconditional access to all of the documents maintained in any one of the Corporation WPDBS databases. The Member Attorney acknowledges that the Corporation provides him or her with access to materials in a WPDBS database only for the limited purpose of providing the Member Attorney with the opportunity to select specific documents which are relevant to his or her particular product defect case. As a condition to access, the Member Attorney agrees to disclose the specific facts of his or her particular case to the Corporation's Chief Legal Officer or to the Document Owner. The Corporation's Chief Legal Officer or Document Owner (or an employee of the Corporation acting under the direct supervision of the Chief Legal Officer or Document Owner) will prepare a list of materials in the WPDBS database which are in his or their professional judgment pertinent to the facts of the Member Attorneys particular case. The Member Attorney will select from this list the specific materials which he or she believes are relevant to the specific facts of the particular product defect case that he or she is handling, and which are reasonably necessary for him or her to properly prepare such case on behalf of the plaintiff. The Member Attorney acknowledges that, having selected and obtained only specific material that is relevant to and of use in preparing his or her particular case for trial, such material then shall constitute the work product of the Member Attorney. The Member Attorney further acknowledges that any and all material selected from one of the Corporation's WPDBS databases and the information contained in any such material is subject to the Corporation's Joint Prosecution and Confidentiality Agreement. The Member Attorney understands that he or she has no authority to disclose the identity or contents of any material selected by or on behalf of the Member Attorney from any of the Corporation's WPDBS databases for use in preparing a particular case for trial to any person, except in strict compliance with the conditions and restrictions set forth in these Bylaws and the other Corporate Documents.

**(5) OBLIGATIONS OF MEMBER ATTORNEYS CONCERNING THE CORPORATION'S WORK PRODUCT DOCUMENT BANKING SYSTEM AND COMPUTERIZED INDEX.**

**(a)[A] The Member Attorney agrees to take whatever steps, including legal action and the adoption of internal procedures, that are necessary and appropriate in order to protect and preserve any privilege or immunity or other objection which the Member Attorney, Document Owner, other Member Attorney or the Corporation is or may be entitled to assert concerning the use or disclosure of the identity or contents of [i] any or all material compiled in the Corporations WPDBS databases or the Computerized Index for any of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's WPDBS databases for use in preparing a particular case for trial.**

**(a)[B]The Member Attorney agrees to take whatever steps, including legal action and the adoption of internal procedures, that are necessary and appropriate in order to protect and preservethe confidential status of the identity and the contents of [i] any or all the material compiled in the Corporations WPDBS databases or the Computerized Index for any of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's WPDBS databases for use in preparing a particular case for trial.**

**(b)[A] The Member Attorney agrees to take no action and to enter into no agreement that would destroy or impair any privilege or immunity or other objection which the Member Attorney, Document Owner or other Member Attorney or the Corporation is or may be entitled to assert concerning the use or disclosure of the identity or the contents [i] any or all of the material compiled in any one of the Corporation's WPDBS databases or a Computerized Index for any one of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's databases for use in preparing a particular case for trial.**

**(b)[B] The Member Attorney agrees to take no action and to enter into no agreement that would destroy or impair the confidential status of the identity or the contents [i] any or all of the material compiled in any one of the Corporation's WPDBS databases or a Computerized Index for any one of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's databases for use in preparing a particular case for trial.**

**(c) The Member Attorney agrees to take whatever legal and other action that is necessary and appropriate to resist any effort by anyone (including, without limitation, a defendant or any other person, firm or corporation affiliated directly or indirectly with the defense of a defective product case) to obtain copies of or otherwise to discover the identity or the contents of [i] any or all of the material compiled in any one of the Corporation's WPDBS databases or a Computerized Index for any one of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's WPDBS databases for use in preparing a particular case for trial. Such resistance shall include the assertion of the Member Attorney's entitlement to work**

product protection or any other privilege, immunity or objection which the Member Attorney is or may be entitled to assert including the assertion that the material is subject to a Confidentiality Agreement. The Member Attorney acknowledges that this resistance is a recognition that such discovery efforts are legally improper and threaten to eliminate the numerous and invaluable juridical benefits which result from a cooperative sharing of information among attorneys attempting to properly prepare individual cases each of which involve the same product defect, common issues of law and fact, the same technical materials and identical strategic considerations.

(d) The Member Attorney agrees to notify the Corporation immediately if a defendant or any other person seeks to obtain copies of or otherwise discover the identity or contents of [i] any or all of the material in any one of the Corporation's WPDBS databases or a Computerized Index for any one of the WPDBS databases, and, [ii] any material selected by or on behalf of the Member Attorney from any of the Corporation's WPDBS databases for use in preparing a particular case for trial. The Member Attorney agrees that such notice will provide the Corporation with a reasonable opportunity to assist the Member Attorney in his or her effort to resist any such discovery effort including the opportunity to assist in the assertion of any privilege, immunity, or other objection which the Member Attorney, or Document Owner, other Member Attorney or the Corporation is or may be entitled to assert, including the assertion that the material is subject to a Confidentiality Agreement.

## **ARTICLE VI**

### **Meetings of Members**

(1) **PLACE OF MEETING.** All meetings of the members shall be held at the offices of the Corporation in Birmingham, Jefferson County, Alabama, or at such other place or places as may be designated by the Board of Directors or by the Executive Committee pursuant to the authority granted to said committee hereinafter.

(2) **ANNUAL MEETINGS.** The annual meeting of the members for the election of directors and for the transaction of such other business as may come before the meeting shall be held on the first Saturday in February in each year or on some other date as may be designated by the Board of Directors, or by the Executive Committee pursuant to the authority granted to said committee hereinafter. An annual meeting of members shall be held once during each calendar year, commencing with the year 1990.

(3) **SPECIAL MEETINGS.** A special meeting of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called at any time by the President, the Chairman of the Board of Directors, the Chief Legal Officer, the Executive Committee, by order of the Board of Directors or by members constituting at least ten percent (10%) of the outstanding then current membership in the Corporation.

(4) **NOTICE OF MEETINGS.** Except as otherwise provided by statute, notice of each meeting of the members, whether annual or special, shall be given at least ten (10) days before the day on which the meeting is to be held to each member of record entitled to vote at such meeting by delivering a written or printed notice thereof to him personally, or by mailing such notice in a postage prepaid envelope addressed to him at his post office address furnished by him to the Secretary of the Corporation for such purpose, or, if he shall not have furnished to the Secretary of the Corporation his address for such purpose, then at the post office address, if any, as the same appears upon the member ledger books of the Corporation or at his post office address last known to the Secretary of the Corporation or by transmitting a notice thereof to him at such address by telephone, telegraph, cable, radio or wireless. Except where expressly required by law, no publication of any notice of such a meeting of members shall be required. Every such notice shall state the time and place of the meeting but need not state the purposes thereof, except for special meetings or as otherwise in these bylaws or by statute expressly provided or required. Notice of any meeting of members shall not be required to be given to any member who shall attend such meeting in person or by proxy (other than by default proxy as described in Paragraph (5)); and if any member shall, in person or by attorney thereunto authorized, in writing or by telephone, telegraph, cable, radio or wireless, waive notice of any meeting, whether before or after such meeting be held, notice thereof need not be given to him. Notice of any adjourned meeting of the members shall not be required to be given, except when expressly required by law.

(5) **DEFAULT PROXIES.** In the case of annual meetings of members, or of special meetings of members that are called only by the President, the Chairman of the Board of Directors, the Chief Legal Officer, the Executive Committee or the Board of Directors, the notices of such a meeting sent to members may be accompanied with a Notice of Default Proxy. Such Notice of Default Proxy shall indicate (i) the issue or issues of the meeting; (ii) the recommendations of the Board of Directors or the Executive Committee as to the resolution of each respective issue; and (iii) that, if a member receiving the Notice of Default Proxy does not object to any or all of such Board of Director or Executive Committee recommendations by placing an "x" in the box or boxes on the Notice of Default Proxy provided for that purpose and returning such objection to the registered office of the Corporation (which is c/o Francis H. Hare, Jr., Esq., Attorneys Information Exchange Group, Inc., The ParkWoods Building, 402 Office Park Drive - Suite 200, Birmingham, Alabama 35223) within twenty-four (24) hours prior to the meeting, then the Chairman of the meeting shall be deemed to be and shall have such member's proxy to vote for and on behalf of such member, on any and all issues not so objected to, in accordance with the Board of Directors' or the Executive Committee's (as applicable) recommendations on such issue or issues not so objected to. The Chairman of the meeting shall receive and may vote default proxies in accordance with such Notice of Default Proxy and the previous sentence.

(6) **ORGANIZATION.** At every meeting of the members, the President, or in his absence, the Chairman of the Board, or in his absence, the Vice Chairman, or in his absence, the Chief Legal Officer, or in his absence, a Vice President, or in the absence of all of the foregoing officers, a Chairman chosen by the members present in person or by proxy and entitled to vote thereat, by a majority vote, shall act as Chairman. The Secretary, or in his absence, an Assistant Secretary, shall

act as Secretary at all meetings of the members. In the absence from any such meeting of the Secretary and the Assistant Secretaries, the Chairman may appoint any person to act as Secretary of the meeting.

(7) **BUSINESS AND ORDER OF BUSINESS.** At each meeting of the members such business may be transacted as may properly be brought before such meeting, whether or not such business is stated in the notice of such meeting or in a waiver of notice thereof, except for special meetings or as otherwise in these bylaws or by statute expressly provided or required. The order of business at all meetings of the members shall be determined by the Chairman, unless the majority of the members present in person or by proxy at such meeting shall otherwise determine.

(8) **QUORUM.** At each meeting of the members, the majority in number of the then current members of the Corporation, present either in person or by proxy, shall constitute a quorum for the transaction of business, except where otherwise provided by law or by the Articles of Incorporation. In the absence of such a quorum, the members of the Corporation present in person or by proxy and entitled to vote, by a majority vote, or, in the absence of all the members, any officer entitled to preside or act as Secretary at such meeting, shall have the power to adjourn the meeting from time to time, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting as originally called. The absence from any meeting of the number of members required by the laws of the State of Alabama, by the Articles of Incorporation of the Corporation or by these bylaws for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if the number of members required in respect of such other matter shall be present.

(9) **VOTING.** At each meeting of the members, each member in good standing shall be entitled to one vote in person or by proxy. Whether a member shall be entitled to vote at a meeting shall be determined either (i) on the date fixed pursuant to Article XI of these bylaws as the record date for the determination of members in good standing entitled to vote at such meeting; or (ii) at the date of such meeting if no such record date shall have been fixed.

Any vote of a member may be made by the member entitled thereto in person or by his proxy, which shall either be the default proxy described in Paragraph (5) or under an appointment by an instrument in writing subscribed by such member or by his attorney thereunto authorized and delivered to the Secretary of the meeting. At all meetings of the members, all matters (except in special cases where other provision is made by statute, and except as otherwise provided in these bylaws or in the Articles of Incorporation) shall be decided by the vote of a majority of the members present in person or by proxy and entitled to vote thereat, a quorum being present. Unless required by law or demanded by a member present in person or by proxy at any meeting and entitled to vote thereat, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the member voting, or by his proxy, if there be such proxy.

(10) **LIST OF MEMBERS.** It shall be the duty of the Secretary or other officer, who shall have charge of the membership ledger, to keep and maintain a complete list of members. Such list shall be open to the examination of any member at the place where said list is customarily kept; provided that such list shall be produced and kept at the time and place of any election during the whole time thereof and subject to the inspection of any member who may be present. The original membership ledger shall be the only evidence as to who are members entitled to examine such list, or to examine the books of the Corporation, or to vote in person or by proxy at any meeting of members.

Notwithstanding the foregoing, the list of members is privileged and confidential. Accordingly, it can only be inspected by members, in accordance with the foregoing paragraph, and neither the list nor its contents may be copied by anyone or disclosed to any non-members under any circumstances. Therefore, notices of special meetings of members that are called by the requisite percentage of members, member proxy solicitations made by a member or members and other notices or correspondence sent to members from a member or members shall be made through the Corporation upon the reasonable request of the member wishing to send such notices or correspondence, upon such requesting member paying to the Corporation the expenses thereof.

(11) **ADDRESSES OF MEMBERS.** Each member shall designate to the Secretary of the Corporation, an address at which notice of meetings and all other corporate notices may be served on, or mailed to, him or her, and if any member shall fail to designate such address, corporate notices may be served upon him or her by mail directed to him or her at his or her post office address, if any, as the same appears upon the membership record of the Corporation at his or her post office address last known to the Secretary of the Corporation.

## ARTICLE VII

### Directors

(1) **QUALIFICATIONS AND POWERS.** A member wishing to run for the office of Director need not be a sustaining member. However, prior to serving as such, Directors must be sustaining members. The Board of Directors shall exercise all the powers of the Corporation except such as are by law, or by the Articles of Incorporation of this Corporation, or by these bylaws conferred upon or reserved to the members and except such powers as may be delegated to an executive committee and other committees as provided in Article VII of these bylaws.

(2) **NUMBER.** The Board of Directors shall consist of not less than twenty (20) nor more than fifty (50) directors, such number to be fixed from time to time by resolution of the directors of the Corporation.

(3) **TERM OF OFFICE.** Each director shall be elected to serve until the next annual meeting of members and until his successor is chosen and qualified. In case one or more vacancies shall occur in the Board of Directors, whether caused by death, resignation, retirement, disqualification or removal from office of any director or otherwise, successors to fill such vacancies shall be elected either by vote of the remaining directors or by vote of the members at any regular or special meeting and shall hold office until the next annual meeting of members and until their successors are chosen and qualified.

(4) **REMOVAL.** Any or all of the directors may be removed from office, with or without cause, by vote of a majority of members.

(5) **ELECTION OF DIRECTORS.** Directors shall be elected each year at the annual meeting of members, or at a special meeting held in lieu thereof as provided in Article VI thereof.

(6) **PLACE OF MEETING, ETC.** The Board of Directors may hold its meetings and have one or more offices at such place or places within or outside the State of Alabama, as the Board may from time to time determine, or, in the case of meetings, as shall be specified or fixed in the respective notices or waivers of notice thereof.

(7) **ANNUAL MEETINGS.** The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, immediately after, or as soon as practicable after, each annual meeting of members and election of directors at the same place at which each such annual meeting of members is held, and notice of such meeting need not be given; such meeting, however, may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or in a consent and waiver of notice thereof signed by all the directors.

(8) **OTHER REGULAR MEETINGS.** Other regular meetings of the Board of Directors shall be held at such places and at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day not a legal holiday. Notice of regular meetings need not be given.

(9) **SPECIAL MEETINGS: NOTICE.** Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, the President, the Chief Legal Officer, the Executive Committee, or a majority of the directors then in office. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least two (2) days before the day on which the meeting is to be held, or shall be directed to him at such place by telephone, telegraph, cable, radio or wireless, or be delivered personally not later than the day before the day on which the meeting is to be held. Every such notice shall state the time and place of the meeting but need not state the purposes thereof, except as otherwise in these bylaws or by statute expressly provided. Notice of any meeting of the Board need not be given to any director,

however, if waived by him in writing or by telephone, telegraph, cable, radio or wireless, whether before or after such meeting be held, or if he shall be present at the meeting; and any meeting of the Board shall be a legal meeting without any notice thereof having been given if all of the directors shall be present thereat.

(10) ORGANIZATION. At each meeting of the Board of Directors the Chairman of the Board of Directors, or in his absence, the President, or in his absence, the Vice Chairman, or in his absence, the Chief Legal Officer, or in the absence of all of the foregoing officers, a director chosen by a majority of the directors present, shall act as Chairman. The Secretary, or, in his absence, an Assistant Secretary, or in the absence of both the Secretary and Assistant Secretaries, any person appointed by the Chairman shall act as Secretary of the meeting.

(11) BUSINESS AND ORDER OF BUSINESS. At each meeting of the Board of Directors such business may be transacted as may properly be brought before such meeting, whether or not such business is stated in the notice of such meeting, or in a waiver of notice thereof, except as otherwise in these bylaws or by statute expressly provided or required. The order of business at all meetings of the Board of Directors shall be as determined by the Chairman, subject to the approval of a majority of the directors present at such meeting.

(12) QUORUM AND MANNER OF ACTING. Except as otherwise provided by statute or by these bylaws or by the Corporation's Articles of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business at any meeting, and the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time until a quorum be had. Notice of any adjourned meeting need not be given.

(13) WRITTEN CONSENT IN LIEU OF MEETING. Notwithstanding any of the foregoing provisions of this Article VII or of Article VIII below, the Board of Directors and any committees of the Board may take any action they are required or permitted to take without a meeting on written consent, setting forth the action so taken, signed by all of the directors entitled to vote thereon.

(14) RESIGNATIONS. Any director of the Corporation may resign at any time by giving verbal or written notice thereof to the Chairman of the Board of Directors, or to the President or to the Secretary of the Corporation. The resignation of any director shall take effect at the time notice thereof is given, unless otherwise specified in the notice. The acceptance of a resignation shall not be necessary to make it effective.

## **ARTICLE VIII**

### **Executive and Other Committees**

(1) **APPOINTMENT AND TERM OF OFFICE OF EXECUTIVE COMMITTEE.** The Board of Directors may appoint an Executive Committee consisting of between three (3) and fifteen (15) members, who shall be directors, which numbers shall include the President, to serve during the pleasure of the Board. The President shall be, ex officio, Chairman of the Executive Committee.

(2) **OTHER COMMITTEES.** From time to time the Board of Directors or the Executive Committee may appoint any other committee or committees for any purpose or purposes to the extent lawful, including committees for litigation support groups of the Corporation, which shall have such powers as shall be specified in the resolution of appointment.

(3) **VACANCIES IN COMMITTEES.** Vacancies occurring in a Committee from any cause shall be filled by the Board of Directors or the Executive Committee at any meeting thereof.

(4) **COMMITTEES TO REPORT TO BOARD.** All actions by a Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

(5) **PROCEDURE OF COMMITTEES.** Each Committee shall fix its own rules of procedure not inconsistent with these bylaws or with any discretions of the Board of Directors. It shall meet at such times and places and upon such notice as shall be provided by such rules or by resolution of the Board of Directors. The presence of a majority shall constitute a quorum for the transaction of business, and in every case an affirmative vote of a majority of all the members of the Committee present shall be necessary for the taking of any action, except as may be provided in the Corporation's Articles of Incorporation.

(6) **GENERAL POWERS OF EXECUTIVE COMMITTEE.** During the intervals between the meetings of the Board of Directors, the Executive Committee, except as limited by statute or by the bylaws of the Corporation or by specific directions of the Board of Directors, shall possess and may exercise all the powers of the Board of Directors in the management and direction of the business and conduct of the affairs of the Corporation in such manner as the Executive Committee shall deem for the best interests of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all instruments and documents which may require it, except that the Executive Committee shall not have the power to elect directors nor to elect or remove any executive officer. In addition, the Board of Directors hereby authorizes the Executive Committee to designate the place and date of the annual meeting of members each year, to be held once each calendar year in accordance with ARTICLE VI, Paragraph (2) hereof.

(7) **COMPENSATION.** The members of any duly appointed committee shall receive such compensation and/or fees as from time to time may be fixed by the Board of Directors.

## **ARTICLE IX**

### **Officers**

(1) **EXECUTIVE OFFICERS.** The Executive Officers shall be Directors. The Executive Officers of the Corporation shall be a Chairman of the Board, a President, a Vice Chairman of the Board, one or more Vice Presidents (one or more of which may be designated as Executive Vice Presidents), and a Chief Legal Officer. The Subordinate Officers shall be the Executive Director, a Treasurer and a Secretary. One person may hold the offices and perform the duties of any two of said officers, except those of President and Vice President, Secretary and Assistant Secretary, and Treasurer and Assistant Treasurer.

(2) **ELECTION, TERM OF OFFICE AND QUALIFICATIONS OF EXECUTIVE OFFICERS.** The executive officers shall be elected annually by the Board of Directors. Each executive officer shall hold office until his successor shall have been duly elected and qualified in his stead, or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

(3) **SUBORDINATE OFFICERS.** The Board of Directors or the Executive Committee may from time to time appoint such officers as the Board of Directors or the Executive Committee may deem necessary, including an Executive Director, one or more Assistant Treasurers and one or more Assistant Secretaries, and may also appoint such agents and employees of the Corporation as may be deemed proper. Such officers, agents and employees shall hold office for such period, have such authority, and perform such duties as are in these bylaws provided or as the Board of Directors or the Executive Committee may from time to time prescribe. The Board of Directors may from time to time authorize any officer to appoint and remove agents and employees and to prescribe the powers and duties thereof.

(4) **REMOVAL.** Any officer, agent, employee or member may be removed, with or without cause, by the Board of Directors at any meeting called for that purpose, or, except in case of any officer elected by the Board of Directors, by any officers upon whom the power of removal may be conferred by the Board of Directors.

(5) **RESIGNATIONS.** Any officer may resign at any time by giving written notice to the Board of Directors. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(6) **VACANCIES.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Board of Directors, upon a vacancy in this office, by the President, or upon a vacancy in both such offices, in the manner prescribed in these bylaws for regular election or appointment to such office.

(7) **THE CHAIRMAN OF THE BOARD OF DIRECTORS.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the Board of Directors. In addition to the powers and duties mentioned in these bylaws, he shall have supervision of such matters, not contrary to law, the Articles of Incorporation or these bylaws, as may be assigned or delegated to him by the Board of Directors or the Executive Committee.

(8) **THE PRESIDENT.** The President shall be the Chief Executive Officer of the Corporation and shall have general supervision of the business of the Corporation and over its several officers, subject, however, to the control of the Board of Directors and the Executive Committee. He shall at each annual meeting and from time to time report to the members and the Board of Directors and the Executive Committee all matters within his knowledge which the interests of the Corporation may require to be brought to their notice; shall preside when present at all meetings of the members and, in the absence of the Chairman of the Board, of the Board of Directors; shall sign and execute in the name of the Corporation all deeds, mortgages, bonds, contracts or other instruments authorized by the Board of Directors or the Executive Committee except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the Corporation; and in general shall perform all duties incident to the Office of President and such other duties as

from time to time may be assigned to him by the Board of Directors or the Executive Committee or as are prescribed by these bylaws. The President shall be, ex officio, a member of all standing committees.

(9) **VICE CHAIRMAN.** The Vice Chairman shall assist the Chairman of the Board and the President in carrying out their duties. In addition, in the absence of either the Chairman of the Board or the President, or both, or in the case of his or their inability to act, the Vice Chairman shall perform the duties and exercise the powers of either the Chairman of the Board or the President, or both, subject to the control of the Board of Directors and the Executive Committee.

(10) **VICE PRESIDENTS.** One or more Vice Presidents shall perform such duties and exercise such powers as may be assigned to them from time to time by the Board of Directors or the Executive Committee. In the absence of either the Chairman of the Board or the President, or both, or in the case of his or their inability to act, a Vice President, (and, in the event there is more than one Vice President, the senior Vice President, if he is available), shall perform the duties and exercise the powers of either the Chairman of the Board or the President, or both, subject to the control of the Board of Directors and the Executive Committee.

(11) **CHIEF LEGAL OFFICER.** The Chief Legal Officer shall provide such legal advice and counsel concerning the Corporation, and its objects, purposes, powers and operations as requested by the President, the Board of Directors or the Executive Committee. The Chief Legal Officer shall have authority to engage and compensate outside counsel so as to facilitate his carrying out this responsibility.

(12) **SUBORDINATE OFFICERS.**

(a) **THE EXECUTIVE DIRECTOR.** The Executive Director shall operate the day-to-day business of the Corporation, subject to the supervision of the President. Those day-to-day duties shall include, without limitation, encouraging membership, obtaining membership dues, providing services and litigation support to members, specifically including maintenance of the Corporation's document banking system, obtaining payment from members for services and support, supervising the Corporation's educational activities, supervision of subordinate employees, and directing all other day-to-day Corporation operations at its Birmingham operations offices within the framework of the Corporation's annual budget, as amended. The Executive Director shall have the authority to employ the resources of the Corporation to perform any specific task which he is instructed to accomplish by the Board of Directors, the Executive Committee, or the President in the proper exercise of their respective duties and powers.

(b) **THE SECRETARY.** The Secretary may keep or cause to be kept in books provided for that purpose the minutes of the meetings of the members and the Board of Directors; shall see that all notices are duly given in accordance with the provisions of these bylaws and as required by law; shall be custodian of the records and of the seal of the

Corporation and shall see that the seal is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; shall keep a register of the post office address of each member, and make all proper changes in such register, retaining and filing his authority for such entries; shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed; and in general shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or the Executive Committee.

(c) **ASSISTANT SECRETARIES.** At the request of the Secretary or in his absence or disability, any Assistant Secretary shall have power to perform all the duties of the Secretary, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the Secretary. The Assistant Secretaries shall perform such other duties as from time to time may be assigned to them by the Board of Directors, by the Executive Committee, by the Chairman of the Board or by the President.

(d) **THE TREASURER.** The Treasurer shall give such bond for faithful performance of his duties as the Board of Directors shall require. He shall have charge and custody of, and be responsible for, all funds and securities of the Corporation and deposit all such funds in the name

of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these bylaws; at all reasonable times exhibit his books of accounts and records to any of the Directors of the Corporation, upon application during business hours at the office of the Corporation or where such books and records are kept; render a statement of the condition of the finances of the Corporation at all regular meetings of the Board of Directors, if called upon to do so, and a full financial report at the annual meeting of the members, if called upon so to do; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever; and in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors or by the Executive Committee.

(e) ASSISTANT TREASURERS. At the request of the Treasurer, or in his absence or disability, any Assistant Treasurer shall have power to perform all the duties of the Treasurer, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Treasurer. The Assistant Treasurers shall perform such other duties as from time to time may be assigned to them by the Board of Directors, by the Executive Committee, by the Chairman of the Board or by the President.

(13) SALARIES. The salaries of the officers shall be fixed from time to time by the Board of Directors. No officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Corporation.

## ARTICLE X

### Members Entitled to Vote

CLOSING OF MEMBER BOOKS. The Board of Directors may, by resolution, direct that the membership books of the Corporation be closed for a period not exceeding fifty (50) nor less than ten (10) days preceding the date of any meeting of members; provided, however, that in lieu of closing the membership books as aforesaid, the Board of Directors may fix in advance a date not exceeding fifty (50) nor less than ten (10) days preceding the date of any meeting of members, as a record date for the determination of the members entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, and in such case such members and only such members as shall be members of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, notwithstanding the election of new members to the Corporation after any such record date fixed as aforesaid.

## **ARTICLE XI**

### **Contracts, Checks, Drafts, Bank Accounts, Etc.**

(1) **CONTRACTS, ETC.** The Board of Directors or the Executive Committee may authorize any officer or officers or agent or agents of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and, unless so authorized by the Board of Directors or by the Executive Committee or by these bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

(2) **CHECKS, DRAFTS, ETC.** All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by the Treasurer, or at his request by an Assistant Treasurer, or by such officer or officers, employee or employees, of the Corporation as shall from time to time be determined by resolution of the Board of Directors or the Executive Committee.

(3) **DEPOSITS.** All cash and securities of the Corporation shall be placed in trust or deposited from time to time to the credit of the Corporation in such responsible banks or trust companies as the Board of Directors or the Executive Committee or the Chairman of the Board or the President may from time to time designate, or as may be designated by any other officer or officers of the Corporation to whom such power may be delegated by the Board of Directors or the Executive Committee.

(4) **GENERAL AND SPECIAL ACCOUNTS.** The Board of Directors or the Executive Committee or the Chairman of the Board or the President may from time to time authorize the opening and keeping, with responsible banks or trust companies as it or he may designate, of general and special trust and/or bank accounts, and may make such special rules and regulations, with respect thereto, not inconsistent with the provisions of these bylaws, as it or he may deem expedient.

## **ARTICLE XII**

### **Books and Records**

(1) **LOCATION.** The books and records of the Corporation, except the original or a duplicate membership ledger, shall be kept within the State of Alabama at such place or places as the Board of Directors may from time to time determine, except as otherwise allowed by law.

(2) **EXAMINATION BY MEMBERS.** The Board of Directors shall, subject to the laws of Alabama, have power to determine from time to time whether or to what extent and at what time and places and under what conditions and regulations any accounts and books of the Corporation, or any of them, shall be open to the inspection of the members; and no member shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of Alabama, unless and until authorized so to do by resolution of the Board of Directors or of the members; provided, however, that, subject to such reasonable restrictions as the Board of Directors may prescribe, the Corporation shall at any time, upon the written request of any member, mail to such member a statement of the assets then belonging to the Corporation; provided, further, that an original or duplicate membership ledger, containing the names and addresses of the members shall at all times, during the usual hours for business, be open to the examination of every member at the principal office or place of business of the Corporation in Alabama.

Notwithstanding the foregoing, the books and records of the Corporation are privileged and confidential. Accordingly, they can only be inspected by members, in accordance with the foregoing paragraph, and they may not be copied by anyone or disclosed to any nonmembers under any circumstances.

## **ARTICLE XIII**

### **Miscellaneous**

(1) **COMPENSATION OF DIRECTORS.** The Directors shall receive such compensation and/or fees, and reimbursement for expenses incurred in connection with attendance at meetings or other performance of their duties, as from time to time may be fixed by the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity, as an officer, agent or otherwise, and receiving compensation therefor.

(2) **WAIVER OF NOTICE.** Whenever any notice whatsoever is required to be given by these bylaws or the Articles of Incorporation or the laws of the State of Alabama, a waiver thereof in writing, or by telephone, telegraph, cable, radio or wireless by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto; and any such notice with respect to any members' or directors' meeting may be dispensed with, if every member shall attend such members' meeting, either in person or by proxy, or if every director shall attend such directors' meeting in person.

(3) **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS.** Every person who is, or has been, a director, officer, employee or agent of the Corporation, shall be indemnified by the Corporation in the manner and to the extent authorized by Section 10-3A-20(14) of the Code of Alabama. The foregoing rights of indemnification shall be without prejudice to any other rights to which any such director, officer, employee or agent may be entitled as a matter of law.

## **ARTICLE XIV**

### **Amendments**

Subject to any restrictive provisions of law or of the Corporation's Articles of Incorporation, all bylaws of the Corporation shall be subject to alteration or repeal, and new bylaws may be made only by the affirmative vote of a majority of the Board of Directors at any regular or special meeting, provided that notice of the proposed alteration or repeal or of the proposed new bylaws be included in the notice of any such special meeting.

# **Appendix 3.c**

AIEG Membership Agreement

## MEMBERSHIP AGREEMENT

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ , by and between \_\_\_\_\_ ("Member Attorney") and The Attorney's Information Exchange Group, Inc., a non-profit corporation ("AIEG").

The parties affirm that membership in AIEG is limited to plaintiff's counsel handling defective product cases involving the same technical, legal and factual issues, the same materials and information and the same strategic considerations who desire to aid their own case preparation activities and who are willing to participate in a cooperative effort to assist other attorneys handling similar cases in achieving a common interest, namely, to properly prepare and fairly resolve individual cases. The parties affirm that Member Attorneys handling similar cases can diminish the time and expense required to achieve this common interest only when they combine their talents and resources in a litigation support group.

### SECTION 1: OBLIGATIONS OF THE AIEG

AIEG agrees to expend its revenues and use its resources to further the purposes of AIEG and to accomplish the objectives of AIEG as set forth in Article I of AIEG's Bylaws, including, *inter alia*, the following:

(a) To assist in the administration of the activities of litigation support groups comprised of Member Attorneys handling similar product defect cases.

(b) To facilitate communication by and between Member Attorneys handling similar product defect cases.

(c) To conduct seminars and to publish a newsletter concerning factual, legal and/or technical developments pertaining to the common interest of Member Attorneys.

(d) To take whatever action (including internal procedures and legal action) that is necessary and appropriate to preserve both the work product status and confidentiality of the identity and contents of [i] the materials compiled in an AIEG Work Product Document Banking System (WPDBS) database and the Computerized Index of materials in an AIEG WPDBS database, and, [ii] the identity and contents of any information selected from one of its WPDBS databases and furnished to the Member Attorney from a WPDBS for the Member Attorney's use in a particular case. See Article V, Paragraph (4) and (5) of AIEG's Bylaws.

(e) To exercise due diligence to assist Member Attorneys in fulfilling their obligation to resist Restrictive Protective Orders and other improper discovery tactics by a defendant in a product defect case. See Article V, Paragraph (3)(b) and (c) of AIEG's Bylaws.

## SECTION 2: OBLIGATIONS OF THE MEMBER ATTORNEY

The Member Attorney agrees as a condition of continued membership in AIEG to the following:

(a) To pay the membership fee and the currently owed dues referred to in the Application for Membership and to keep current the payment of all future AIEG dues.

(b) To provide AIEG with written notification at the earliest possible date after the Member Attorneys first acquisition of knowledge of any fact or event likely to change or which does change the accuracy of the representations affirmed in the Affidavit In Support Of AIEG Membership.

(c) To complete and return within a reasonable time a questionnaire concerning product defect cases similar to the ones for which AIEG maintains a litigation support group which the Member Attorney or his or her firm is handling at present or has handled in the past.

(d) To exercise due diligence to assist AIEG and other Member Attorneys sharing a common interest in handling similar cases in their efforts to further the purposes and to accomplish the objectives of AIEG, specifically including acquiring, sharing and depositing materials relevant to the common issues involved in AIEG litigation support groups.

(e) Concerning Protective Orders:

The Member Attorney specifically acknowledges and affirms his or her obligations concerning protective orders set forth in Article V of AIEG's Bylaws.

(f) Concerning AIEG's Work Product Document Banking System WPDBS  
And Computerized Index

(i) The Member Attorney understands that his or her access to and use of materials compiled in an AIEG's WPDBS database or listed in a Computerized Index to an AIEG WPDBS is limited to and restricted by the provisions set forth in the Document Deposit Agreement, AIEG's Bylaws and the Joint Prosecution and Confidentiality Agreement. The Member Attorney affirms his or her commitment to abide by and to fulfill the terms of these corporate documents.

(ii) The Member Attorney specifically agrees to take whatever action (including internal procedures and legal action) that is necessary and appropriate to preserve both the work product status and confidentiality of the identity and contents of the materials compiled in or selected from AIEG WPDBS databases and the Computerized Index of materials in AIEG's WPDBS databases.

**SECTION 3: TERMINATION**

The provisions for termination of membership are set forth in Article IV (4) of AIEG's Bylaws.

(a) The Member Attorney specifically acknowledges that his or her membership may be terminated for the failure to exercise due diligence to assist the Corporation's efforts to achieve its purposes. See AIEG Bylaws.

(b) The Member Attorney specifically acknowledges that his or her membership is subject to automatic and immediate termination for violation of the obligations concerning access to and use of materials in AIEG WPDBS databases and/or a Computerized Index to an AIEG WPDBS database. See Article V (4) and (5) of AIEG's Bylaws.

IN WITNESS WHEREOF, the parties affix their names as of the day and year first above written.

**THE MEMBER ATTORNEY:**

Name \_\_\_\_\_  
(please print)

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Would you like your E-Mail address included in our website e-mail directory?

Yes \_\_\_\_\_ No \_\_\_\_\_

Signature \_\_\_\_\_

**ATTORNEYS INFORMATION EXCHANGE GROUP, INC.  
A NONPROFIT CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF AIEG MEMBERSHIP**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn,  
deposes and says:

1. I am an attorney licensed to practice law in the above state.

2. Neither I nor any member of my law firm (where applicable) have in the past or do at present represent any entity responsible for the design, manufacture or distribution of products (including any insurance company for any such entity) except as follows: (please give a detailed description of any such relationship-use back if necessary) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I am a member in good standing of the Association of Trial Lawyers of America and my state trial lawyers association.

4. I represent the plaintiff(s) in a case(s) involving a defective product:

Product: \_\_\_\_\_  
Defect: \_\_\_\_\_  
Case: \_\_\_\_\_

5. I need access to an AIEG litigation support group involving plaintiff attorneys handling cases involving the same defect in order to properly prepare my client's case for a fair and just resolution.

6. I have read and understood the AIEG Bylaws, Membership Agreement, Document Deposit Agreement and the Joint Prosecution and Confidentiality Agreement and agree to be bound by and comply with their provisions - specifically with regard to those provisions pertaining to Restrictive Protective Orders and the AIEG Work Product Document Banking System (WPDBS) .

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_ .

Applicant \_\_\_\_\_

Before me, a Notary Public, appeared the above named Applicant, a person known personally to me, and in my presence executed the above sworn affidavit, acknowledging the contents thereof to be true and correct based on his or her own knowledge and under penalty of perjury, on the date stated above.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

# **Appendix 3.d**

*AIEG Document Deposit Agreement*

## **DOCUMENT DEPOSIT AGREEMENT**

The Document Deposit Agreement (herein, the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, the Member Attorney who will be referred to herein as (the "Document Owner"), in his or her professional capacity as a practicing lawyer, and, the Attorneys Information Exchange Group, Inc., a not-for-profit corporation (alternatively referred to herein as the "Document Bank" and/or "AIEG").

### **RECITAL**

**WHEREAS**, the Document Owner is an Attorney Member of AIEG. The Document Owner is familiar with and supportive of AIEG's corporate purposes as set forth in Article I of AIEG's Bylaws; and,

**WHEREAS**, the Document Owner states his or her understanding of the truth and accuracy of the following:

1. The Document Owner understands that AIEG administers certain litigation support groups consisting of Member Attorneys who share a common interest in properly preparing individual cases each of which involve the same product design defect, common issues of law and fact and identical strategic considerations. The Document Owner desires to work jointly and in concert with other Member Attorneys who share this common interest; and,

2. The Document Owner understands that each of AIEG's litigation support groups involving the same product design defect also involve the same documents and technical material pertaining to the relative safety or danger associated with the use of a product incorporating the same defective design and the relative safety or danger of alternative designs. These common documents include but are not limited to those documents which are referred to as the manufacturer's "Internal Documents". The phrase Internal Documents refers to documents created

or acquired by a corporate manufacturer in the usual and ordinary course of the company's business of designing, testing, manufacturing and distributing products; and,

3. The Document Owner understands that AIEG maintains a database referred to as a Work Product Document Banking System (WPDBS) and a Computerized Index of information in the WPDBS database for the common benefit of AIEG Member Attorneys representing plaintiffs involved in similar defective design product cases; and,

4. The Document Owner understands that AIEG maintains a WPDBS database and a Computerized Index for each of the litigation support groups which it administers; and,

5. The Document Owner understands that each of AIEG's WPDBS databases includes, inter alia, a compilation of documents selected by Member Attorneys on the basis of these attorneys professional experience and legal evaluation, analysis and understanding of the technical, factual, and legal issues and the strategic considerations which are common to all cases which collectively comprise each of AIEG's litigation support groups. The Document Owner understands that the selection of particular documents for inclusion in a WPDBS database is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of these Member Attorneys (the documents in a WPDBS database which have been subject to the above described attorney selection process are referred to as "Select Documents"); and,

6. The Document Owner understands that in addition to Select Documents, each of AIEG's WPDBS databases includes memoranda prepared by Member Attorneys representing plaintiffs in similar cases which not only analyze, evaluate and comment on Select Documents but also analyze, evaluate and comment on the technical, legal, and factual issues and the strategic considerations which are common to all cases which collectively comprise each of AIEG's litigation support groups (these memoranda are referred to as "Attorney Memos"). The Document

Owner understands that these Attorney Memos contain and reflect the legal analysis, opinions, mental impressions and conclusions of these attorneys; and,

7. The Document Owner understands that the content, format, organization and structure of the Computerized Index which lists the Attorney Memos and Select Documents compiled in each of AIEG's WPDBS' was developed by Member Attorneys and is based on these attorneys professional experience and legal analysis and their evaluation of the technical, legal and factual issues and the strategic considerations which are common to all the cases which collectively comprise each of AIEG's litigation support groups. The Document Owner understands that the development of these Computerized Indices is both based on and expresses the legal analysis, opinions, mental impressions and conclusions of these Member Attorneys; and,

8. The Document Owner understands that the identity and contents of the materials compiled in each one of AIEG's WPDBS databases and listed on the Computerized Index for each WPDBS database are entitled to immunity from discovery in that they constitute the opinion work product of Member Attorneys; and,

9. The Document Owner understands that the identity and contents of materials compiled in an AIEG WPDBS database, and listed on the Computerized Index is further protected by a Joint Prosecution and Confidentiality Agreement by which every Member Attorney agrees to be bound; and,

10. The Document Owner understands that AIEG's Member Attorneys access to and use of the materials compiled in a WPDBS and the Computerized Index is limited to and restricted by the provisions of the Document Deposit Agreement, AIEG's Bylaws and the Joint Prosecution and Confidentiality Agreement; and,

11. The Document Owner understands that AIEG, including the Chief Legal Officer, staff and Member Attorneys are obligated to and do in fact take whatever action (including internal procedures and legal action) that is necessary and appropriate to protect the work product status and to enforce the Joint Prosecution and Confidentiality Agreement concerning the identity and contents of materials in each of AIEG's WPDBS databases and the Computerized Index for each of AIEG's WPDBS databases.

**WHEREAS,** The Document Owner possesses and owns certain documents which are referred to as Privilege Documents. The Document Owner asserts that the Privilege Documents which are hereby offered to AIEG for deposit under this Agreement were themselves selected by the Document Owner in his or her professional capacity as plaintiff's counsel for use in the preparation of an individual defective design product case. The Document Owner asserts that Privilege Documents consist of particular documents which the Document Owner has selected for inclusion in the appropriate AIEG's WPDBS on the basis of his or her professional experience and legal analysis of the technical and legal issues and the strategic concerns commonly involved in other similar cases. The Document Owner asserts that his or her selection of Privilege Documents is both based on and expresses the Document Owner's legal analysis, opinions, mental impressions and conclusions concerning the issues commonly involved in similar cases. The Document Owner asserts that he or she shares a common interest with other plaintiff's lawyers handling similar cases in properly preparing and presenting the plaintiff's position in individual cases which involve the same product defect, the same documents, common issues of law and fact and identical strategic considerations. The Document Owner offers to deposit the Privilege Documents subject to this Agreement solely for the purpose of working in concert with and assisting other Member Attorneys who share this common interest; and,

**WHEREAS**, The Document Owner's offer to deposit Privilege Documents in AIEG's WPDBS is based on the Document Owner's understanding and acceptance the truth and accuracy of the various matters which are set forth in this Recital.

**NOW, THEREFORE**, in consideration of the foregoing premises, which are incorporated herein by reference, it is hereby agreed as follows:

**1. TERMS OF ACCEPTANCE**

The Document Bank affirms the truth and accuracy of the various matters on which the Document Owner's offer is based and accepts the Document Owner's offer to deposit Privilege Documents subject to the terms and conditions set forth in this Agreement and AIEG's other Corporate Documents.

**2. TERMS OF DEPOSIT AND ACCESS**

(1) This Agreement applies to all Privilege Documents presently deposited by the Document Owner and which may hereafter be deposited by the Document Owner.

(2) All Privilege Documents shall remain the exclusive legal property of the Document Owner. The Document Owner reserves the right to impose any condition or restriction on the access to or use of Privilege Documents which he or she may in their absolute discretion choose to impose. The parties agree that access to Privilege Documents shall be granted only under the terms and conditions set forth in AIEG's Corporate Documents (i.e. AIEG's Bylaws, Membership Agreement, Joint Prosecution and Confidentiality Agreement and this Agreement) and in accordance with any other additional restrictions imposed by the Document Owner. This Agreement shall not be construed so as to provide the Document Bank, an AIEG Member

Attorney or any other person, other than the Document Owner, with any legal, equitable or other proprietary interest in Privilege Documents.

(3) The Document Owner reserves the right to withdraw his or her Privilege Documents at any time for any reason. Nothing in this Agreement or in AIEG's other Corporate Documents shall be construed as limiting the Document Owner's access to his or her own Privilege Documents. The Document Owner understands and agrees that the deposit of Privilege Documents does not give the Document Owner unlimited or unrestricted access to the entire contents of an AIEG WPDBS database or Computerized Index. A Document Owner's access to and use of the materials compiled in a WPDBS database and listed on the Computerized Index is limited and restricted by AIEG's Corporate Documents the same as other Member Attorneys.

(4) In no event shall the Document Bank or any Member Attorney have authority to disclose the identity or contents of Privilege Documents to any person in response to a discovery request in connection with a product defect case or any other type of litigation. The submission by a Member Attorney of a request for information in order to respond to a discovery inquiry which seeks the disclosure of the identity or contents of materials in an AIEG WPDBS which includes Privilege Documents shall be deemed an automatic revocation of this Agreement and shall affect an immediate withdrawal by the Document Owner of any and all Privilege Documents in the WPDBS that is the subject of any such agreement or court order.

(5) In no event shall the Document Bank provide access to or disclose the existence, identity or contents of Privilege Documents to any person other than an AIEG Member Attorney handling a similar case. In those instances, disclosure shall only be made in connection with the selection of specific documents necessary and relevant to the preparation of a particular product defect case and in strict compliance with the terms and conditions set forth in the AIEG's

corporate documents. The Document Owner hereby appoints and authorizes AIEG's Chief Legal Officer to select particular Privilege Documents in order to respond to requests for assistance by other Member Attorneys handling similar cases. The Document Bank shall confirm that any Member Attorney who obtains Privilege Documents from a WPDBS under the provisions of this paragraph has executed the Joint Prosecution and Confidentiality Agreement.

(6) The parties agree to take whatever action including the adoption of appropriate internal procedures and legal action that is reasonable and necessary in order to preserve the work product status and to enforce the Confidentiality Agreement concerning the identity and contents of Privilege Documents from any disclosure other than a disclosure in strict accordance with the terms and conditions of this Agreement, AIEG's Bylaws and the Joint Prosecution and Confidentiality Agreement.

(7) It is noted that the Document Bank does not accept for deposit in a WPDBS any document which is subject to a Restrictive Protective Order forbidding disclosure to persons outside the litigation in which the document was produced.

(8) It is noted that AIEG maintains other databases that are distinctly different in nature and composition from the WPDBS. It is expressly agreed that the Document Bank shall hold Privilege Documents separate and distinct from all other databases maintained by AIEG.

(9) Nothing in this Agreement should be construed as limiting AIEG's ability to accept a court's designation to administer a "clearinghouse" permitting the sharing of discovery materials under the terms of a protective order. AIEG affirms its agreement to maintain the administration of any such "clearinghouse" separate and distinct from the operation of its WPDBS databases.

**3. TERMINATION AT WILL**

In addition to the provisions in Paragraphs 2 (c) and (d) above, the parties agree that for any reason whatsoever, either party may terminate this Agreement on five (5) days prior written notice to the other party. In that event the Document Bank agrees to immediately return all Privilege Documents subject to this Agreement to the Document Owner, and the Document Owner agrees to reimburse the Document Bank for the cost of returning Privilege Documents.

# **Appendix 3.e**

AIEG Joint Prosecution and  
Confidentiality Agreement

# JOINT PROSECUTION AND CONFIDENTIALITY AGREEMENT

This Joint Prosecution Confidentiality Agreement is made and entered into by and between and the undersigned Member Attorney of the Attorneys Information Exchange Group, Inc. (AIEG) and the AIEG, acting on behalf of the other Member Attorneys handling similar product defect claims who desire to work together in a cooperative effort to assist each other and their clients in achieving a common interest, namely, to properly prepare and fairly resolve individual claims involving common issues.

WHEREAS, AIEG was organized and operates for the purpose of providing litigation support to its Member Attorneys handling similar claims in a context in which Member Attorneys may develop and share work product information without compromising the entitlement to work product protection;

WHEREAS, the Member Attorney is representing an individual claimant who suffered damage in connection with the defective condition of a product which may be described as follows:

PRODUCT: \_\_\_\_\_

DEFECT: \_\_\_\_\_

CASE: \_\_\_\_\_

WHEREAS, other Member Attorneys represent the plaintiff in one or more claims involving the same product defect, the same technical materials and information and common issues of law and fact and identical strategic considerations (claims involving the same defect and common issues are collectively referred to herein as the "Subject Litigation);

WHEREAS, each local defense counsel in the Subject Litigation has access to and the benefits of a collaborative mechanism established and implemented by or on behalf of the corporate defendant(s) for the purpose of assisting local defense counsel in the preparation and presentation of the defense of each individual claim involved in the Subject Litigation;

WHEREAS, each Member Attorney represents an individual plaintiff in the Subject Litigation and has a compelling need to obtain access to a collaborative mechanism in the representation of his or her client in order to fairly and adequately prepare his or her client's individual claim and to achieve a just resolution;

IN WITNESS WHEREOF, the parties have affixed their names and seals as of the day and year first above written.

**THE DOCUMENT BANK:**

**ATTORNEYS INFORMATION EXCHANGE  
GROUP, INC., A NONPROFIT CORPORATION  
(L.S.)**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THE DOCUMENT OWNER:**

\_\_\_\_\_

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

NOW, in consideration of the mutual promises, undertakings and obligation provided for herein, the parties hereto agree as follows:

1. To the extent consistent with the best interest of his or her individual client, the Member Attorney agrees to assist in a cooperative effort to investigate, prepare and conduct discovery in the Subject Litigation in order to achieve the common interest of minimizing cost, maximizing judicial efficiency and assuring the just and speedy resolution of the Member Attorney's individual claim and the other similar claims which collectively comprise the Subject Litigation.

2. (a) The Member Attorney agrees to share information including discovery materials concerning the common issues involved in the Subject Litigation except where restricted by the terms of a valid and operative protective order. The Member Attorney acknowledges his or hers obligations concerning Restrictive Protective Orders set forth in Article V, Paragraph (3)(b) and (c) of AIEG'S Bylaws.

(b) The Member Attorney agrees to participate in the activities associated with the creation and operation of the AIEG Work Product Document Banking System (WPDBS) database pertaining to the subject litigation. That is, the Member Attorney agrees to assist in (i) the deposit and/or selection of documents of particular significance to the issues commonly involved in the Subject Litigation (referred to as "Select Documents") and (ii) the preparation of memorandum which not only analyze, evaluate and comment on Select Documents but also analyze and evaluate the technical, legal and factual issues and strategic considerations which are common to all cases which collectively comprise the Subject Litigation (these memoranda will hereinafter be referred to as "Attorney Memo") and (iii) the development of a Computerized Index listing the compilation of Select Documents and Attorney Memos contained in the WPDBS database.

(c) The Member Attorney agrees to take whatever action (including internal procedures and legal action) that is necessary and appropriate to preserve both the work product status and confidentiality of the identity and contents of (i) the materials compiled in AIEG's WPDBS database and the Computerized Index of materials in the WPDBS database and (ii) any specific materials selected from a WPDBS database for use by the Member Attorney in preparing a particular case for trial. See Article V, Paragraph (2)(c) and (d), (4) and (5) of AIEG's Bylaws.

3. The Member Attorney agrees to maintain the confidential status of all confidential information acquired in furtherance of this Agreement and agrees that all such information (including but not limiting to the identity and contents of material contained in or selected from an AIEG WPDBS database, confidential communications with other Member Attorneys, confidential information acquired at AIEG seminars, and all correspondence, memoranda, notes and other materials based on or reflecting the identity or content of such information) shall be maintained in absolute confidence. See Article V, Paragraph (2)(c) and (d), (4) and (5) of AIEG's Bylaws.

4. To the extent that a Member Attorney discloses information in violation of this Agreement or AIEG's other Corporate Documents, or waives protection available to the Member Attorney (including but not limited to the work product doctrine), such disclosure or waiver shall not extend to other Member Attorneys or the AIEG.

# Appendix 4

*McDonald v. Cooper Tire* – District Court  
Sanctions Order

Case 8:01-cv-01306-JDW-TGW Document 447 Filed 10/27/2005 Page 1 of 6

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

ROBERT LEE MCDONALD, SR., et al.,

Plaintiffs,

vs.

Case No. 8:01-CV-1306-T-27TGW

COOPER TIRE & RUBBER COMPANY,

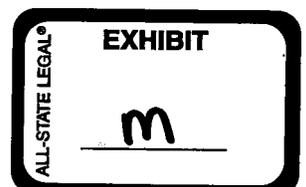
Defendant.

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ORDER

BEFORE THE COURT is a Report and Recommendation submitted by the Magistrate Judge (Dkt. 392) recommending that Defendant, Cooper Tire & Rubber Company's re-filed Motion for Sanctions against Plaintiff's counsel, Hugh Smith (Dkt. 372) be granted. The Magistrate Judge recommends that the District Court use its inherent authority to sanction Smith for his bad faith violation of a protective order by ordering that he pay Defendant's attorneys' fees and expenses incurred in responding to the inappropriate disclosure that is the subject of the motion.

In the Report and Recommendation, the Magistrate Judge finds that Plaintiff's counsel willfully violated the protective order by providing a transcript of the deposition of Defendant's chief chemist, Ritz Feczner, to attorney Thomas Dasse, who represented a plaintiff in unrelated litigation against Cooper in Arizona. The Magistrate Judge was unpersuaded by Plaintiff's counsel's arguments that a subsequent district court order had abrogated the protective order and that Cooper itself had violated the protective order by disseminating copies of Feczner's deposition to counsel representing Cooper in an unrelated hearing, thereby waiving the protections of the protective order.



Case 8:01-cv-01306-JDW-TGW Document 447 Filed 10/27/2005 Page 2 of 6

The Magistrate Judge found and concluded that:

"Nonetheless, when Smith disclosed the pertinent pages of the Feczcr deposition to Dasse they were still subject to the protective order"

"In sum, Smith deliberately engaged in precisely the type of conduct the protective order was intended to prevent."

"Furthermore, this is undoubtedly a willful violation of the protective order."

"Furthermore, Smith's purported justifications for disclosing the deposition appear to be nothing more than post-hoc rationalizations which are not only meritless, but which had been previously rejected by this court."

"These circumstances plainly establish the bad faith that is necessary for the court to employ its inherent authority to impose sanctions for Smith's misconduct.

The undisputed material facts are that on May 2, 2002, a protective order of confidentiality was entered, establishing a procedure for designation of confidential material, resolving designations through objections and judicial review, restricting access to confidential material to authorized persons, use of confidential material, inadvertent disclosure and return of confidential material. (Dkt. 41). With respect to depositions, the protective order expressly provides a procedure for designating confidential material. (Dkt. 41, ¶ 11).

In November 2003, Smith furnished excerpts of Feczcr's deposition, which had been designated as confidential material by Cooper, to attorney Dasse.<sup>1 2</sup> In a court filing in a case pending in the Superior Court of Arizona, Dasse quoted from certain pages of Feczcr's depositions

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<sup>1</sup> Feczcr's deposition was taken on January 21, 2003. Cooper designated portions of her testimony as confidential in accordance with the protective order, including the excerpts Smith furnished to Dasse.

<sup>2</sup> Dasse serves as co-chair of the Attorney's Information Exchange Group (AIEG), in which Smith is an active member. (Dkt. 325, Exh. E).

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which had been designated confidential, specifically, pages 35-36, 72, and 82-84. (Dkt. 325, Exh. F). In another case pending in the Superior Court of Arizona, Dasse filed a responsive pleading, again quoting from those confidential pages of Feczer's deposition.

At the time Smith furnished the confidential portions of Feczer's deposition to attorney Dasse, Feczer's deposition was subject to this Court's protective order of confidentiality. (Dkt. 41). Indeed, on February 7, 2003, Smith filed a motion to dissolve the protective order, in which he argued that Cooper had violated the terms of the protective order by disclosing it to Cooper's counsel in other proceedings, Fulbright & Jaworski. After a hearing, the Magistrate Judge denied the motion to dissolve the protective order. (Dkts. 200, 201). Notwithstanding this ruling, some eight to nine months later, Smith gave designated confidential portions of Feczer's to attorney Dasse.<sup>3</sup>

Clearly, given the Magistrate Judge's rejection of Plaintiffs' request for authority to share discovery with other attorneys and the existence of the protective order at the time Smith furnished the deposition excerpts to Dasse, Smith could not have and cannot now justify the dissemination of portions of Feczer's deposition to outside counsel. This Court agrees with the Magistrate Judge that "Smith's purported justifications for disclosing the deposition appear to be nothing more than post-hoc rationalizations."

As to Smith's argument that he was justified in disclosing what was otherwise confidential deposition testimony because Cooper had disclosed it to its other attorneys, this Court agrees with the Magistrate Judge that this argument is disingenuous. Even assuming, for the sake of argument,

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<sup>3</sup> Preliminary to entry of the May 2, 2002 protective order of confidentiality, Plaintiffs filed a motion for the entry of a limited protective order, seeking court authority "to share documents and information discovered with other lawyers representing individuals who have been injured by the same or similar products and the mechanism of invoking trade secrets protection." (Dkt. 31). Plaintiff's motion was denied by the Magistrate Judge. (Dkt. 38, 39). The protective order ultimately entered contained no such sharing authority. (Dkt. 41).

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that Cooper's dissemination of the deposition testimony to Cooper's attorneys in unrelated litigation, who then either gratuitously or pursuant to court order disclosed that deposition testimony to opposing counsel, and that this disclosure would support a theory of waiver, this Court agrees with the Magistrate Judge that "it was the role of the court, not Plaintiffs' counsel, to determine the consequences of the Defendant's actions in this regard." Simply put, it was incumbent upon counsel to bring to the attention of the Court Cooper's dissemination of the otherwise protected information and seek relief from the protective order of confidentiality.<sup>4</sup>

Before the Magistrate Judge, Smith argued that the district court's order of March 7, 2003 implicitly abrogated the protective order of confidentiality. (Dkt. 179). The Magistrate Judge found that Smith's unilateral determination in this regard was, "in itself", evidence of bad faith. While Smith does not urge this "implicit abrogation" theory to the district court and indeed, acknowledges that the district court's order did not abrogate the protective order, that is nonetheless another example of post-hoc rationalization for conduct contrary to the express protections of the protective order.

In sum, Smith disclosed confidential deposition testimony to an outside party, contrary to the express prohibitions of this Court's protective order of confidentiality. Just eight months before, he unsuccessfully sought to have the protective order dissolved. To the extent it could be argued that Cooper in some way waived the protections of the protective order by disclosing Feczer's deposition to Cooper's counsel in unrelated litigation and thereafter to opposing counsel, the protective order contemplated judicial resolution of any dispute in that regard. By unilaterally determining that Cooper had waived the provisions of the protective order, ignoring the judicial process for resolution

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<sup>4</sup> Indeed, as the Magistrate Judge points out, during the hearing on Plaintiff's motion to dissolve the protective order, Plaintiff's counsel was invited to file a motion if he desired to share confidential information with attorneys representing other plaintiffs. (Dkt. 392, p. 10, n. 6).

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of any such dispute and failing to seek authority to share information in light of an earlier court order expressly denying that authority, it is apparent that the Magistrate Judge's findings that Smith willfully violated the terms of the protective order and conducted himself in bad faith is supported by the record and is not clearly erroneous.<sup>5</sup>

Regrettably, this Court agrees with the Magistrate Judge that "these circumstances plainly establish the bad faith that is necessary for the court to employ its inherent authority to impose sanctions for Smith's misconduct." Attorney Smith has long been known to the Court as a competent, professional attorney who conducts himself with civility and professionalism. It is apparent to the undersigned, having presided over the trial of this cause, that Smith, perhaps with his wisdom and objectivity obscured by his day to day battles with Cooper, did what in hindsight he regrets having done. No amount of rationalization or explanation can mitigate his misconduct, however. Sanctions must be imposed to protect the due administration of justice.

The District Court may "accept, reject or modify in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. §636(b)(1)(C). After a *de novo* review of the record in this matter, including a review of a transcript of the hearing conducted by the Magistrate Judge on July 9, 2004. Defendant's Motion for Sanctions (Dkt. 372), Plaintiff's Response to the Motion for Sanctions (Dkt. 376), Plaintiff's Objections to the Report and Recommendation (Dkt. 411), Defendant's Response to Plaintiff's Objections to the Report and Recommendation (Dkt. 410 and 415), and Plaintiff's Affidavit in Support of Objections to the Report and Recommendation (Dkt. 412), the Court agrees with the findings of fact and conclusions of law in the Report and Recommendation. The Magistrate's findings of fact are supported by the record and are not clearly

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<sup>5</sup> That the Feczter deposition was subsequently filed of record during the trial of this case does not mitigate this finding. At the time of Smith's disclosure to attorney Dasse, the protective order of confidentiality prohibited that disclosure.

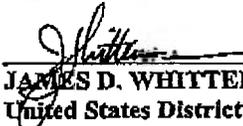
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erroneous. Upon consideration, the Report and Recommendation is adopted in all respects. Plaintiffs' objections are overruled.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Report and Recommendation of the Magistrate Judge is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review.
2. Defendant, Cooper Tire & Rubber Company's re-filed Motion for Sanctions against Plaintiffs' counsel, Hugh Smith (Dkt. 372) is **GRANTED**. Within fifteen days from the date of this Order, Defendant shall file a statement of its attorneys' fees and expenses relating only to its efforts to enforce the Protective Order of Confidentiality, with supporting affidavits, including a description of the services performed, the time expended, and the reasonable hourly rate requested.

**DONE AND ORDERED** in chambers this 27<sup>th</sup> day of October, 2005.

  
**JAMES D. WHITTEMORE**  
United States District Judge

Copies to:  
Counsel of Record

# Appendix 5

*McDonald v. Cooper Tire* – 11th  
Circuit Affirmance of Sanctions

**CORRECTED**

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 06-10244  
Non-Argument Calendar  
\_\_\_\_\_

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
JUNE 28, 2006  
THOMAS K. KAHN  
CLERK

D. C. Docket No. 01-01306-CV-T-27-TGW

ROBERT LEE MCDONALD, SR., et al.,

Plaintiffs,

HUGH N. SMITH,

Interested Party-Appellant,

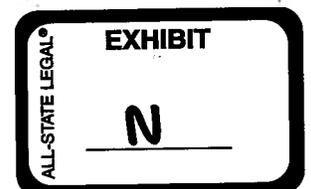
versus

COOPER TIRE & RUBBER COMPANY,  
a Delaware corporation,

Defendant-Appellee.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Middle District of Florida  
\_\_\_\_\_

(June 28, 2006)



Before CARNES, HULL and PRYOR, Circuit Judges.

PER CURIAM:

Hugh N. Smith, the attorney for the plaintiffs in this product liability suit, appeals the district court's order granting defendant's motion for sanctions against him personally and imposing sanctions of \$13,691.50 in attorney's fees payable to the defendant. After review, we affirm.

### I. BACKGROUND

After a trial, the jury returned a verdict in favor of the defendant, Cooper Tire & Rubber Company ("Cooper"), and a final judgment in defendant Cooper's favor was entered in February 2004. This appeal, however, involves only the district court's sanctions order, which was entered based on appellant Smith's violation of a protective order as to certain confidential discovery materials. We first review the events leading up to the sanctions order.

In May 2002, during the course of discovery, the district court issued a Protective Order of Confidentiality ("Protective Order") for the purpose of protecting from public disclosure defendant Cooper's confidential materials. The Protective Order limited access to confidential material to authorized persons and prohibited the use of confidential material in any other litigation. The Protective Order also permitted defendant Cooper to designate parts of depositions as

confidential.

In January 2003, Smith took the deposition of Rita Feczer, Cooper's Principal Analytic Chemist. In accordance with the Protective Order, defendant Cooper designated a majority of Feczer's deposition testimony as confidential. In March 2003, in another case against defendant Cooper in Texas, Cooper was ordered by the court to produce Feczer's deposition transcript taken in this case. Cooper complied, providing three copies to opposing counsel pursuant to a protective order.

Prior to trial in this case, defendant Cooper filed its first motion for sanctions after Smith disclosed Feczer's deposition transcript to attorneys representing other plaintiffs suing Cooper in Arizona ("first motion"). After trial in this case, defendant Cooper filed a second motion for sanctions alleging that Smith was acting as plaintiff's counsel in a discovery hearing in another case against Cooper and that Smith had improperly presented confidential portions of Feczer's deposition testimony during that hearing ("second motion").

In granting the first motion for sanctions, the district court concluded that Smith wilfully violated the Protective Order. The district court sanctioned Smith and awarded \$13,691.50 in fees for Cooper's attorneys who had directly enforced the Protective Order. The district court denied Cooper's second motion for

sanctions, however, because the entire Feczer deposition was available in the public court file by the time Smith offered it at the discovery hearing. This appeal thus involves only the first motion for sanctions.

## II. DISCUSSION

We review the district court's imposition of sanctions for abuse of discretion. Martin v. Automobili Lamborghini Exclusive, Inc., 307 F.3d 1332, 1335 (11th Cir. 2002). Courts have the inherent power to impose sanctions for failure to comply with a court order. Kleiner v. First Nat'l Bank of Atlanta, 751 F.2d 1193, 1209 (11th Cir. 1985). "To exercise its inherent power a court must find that the party acted in bad faith." Martin, 307 F.3d at 1335. "One aspect of a court's inherent power is the ability to assess attorneys' fees and costs against the client or his attorney, or both, when either has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" Byrne v. Nezhad, 261 F.3d 1075, 1106 (11th Cir. 2001) (quotation marks omitted).

If a party objects to opposing counsel's manner of conducting discovery, including depositions, the proper remedy is to seek a protective order. Thomas v. Tenneco Packaging Co., 293 F.3d 1306, 1325 (11th Cir. 2002). Federal Rule of Civil Procedure 26(c) specifically provides that a party may file a motion for a protective order "to protect a party or person from annoyance, embarrassment,

oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.” Fed. R. Civ. P. 26(c)(7).

Upon review of the record and consideration of Smith’s brief, we discern no reversible error. At the hearing on defendant Cooper’s sanctions motions, Smith admitted to providing the Feczer deposition to unauthorized persons under the Protective Order. Smith’s contention that defendant Cooper waived confidentiality by voluntarily providing Feczer’s deposition to plaintiffs’ attorneys in another case is contradicted by the facts in the record. Defendant Cooper provided portions of the Feczer deposition only after ordered to do so by the court and only pursuant to a protective order devoid of any sharing provisions.<sup>1</sup> In addition, at the time Cooper provided portions of the Feczer deposition, the trial in this case had not commenced and the Feczer deposition was not in the public record.

Appellant Smith’s argument that the district court’s findings as to the first

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<sup>1</sup>In his appeal brief, Smith asserts that Cooper provided the Feczer deposition transcript voluntarily to outside attorneys and then “orchestrated an order in the Texas case compelling its production after the fact.” However, Smith provides no cites to record evidence that supports these propositions, and our own search of the record has found none. The only record cite provided by Smith is to the declaration of Larry Lawrence, an attorney in the Texas litigation, who averred that he was provided copies of the depositions of two other Cooper employees (Jean Hoffman and Lyle Campbell) by agreement with Cooper’s Texas counsel. But, Lawrence says nothing about being provided the Feczer deposition. In contrast, the declaration of Troy Vancil, counsel for Cooper in the Texas litigation, averred that the Feczer deposition was provided only after the court granted plaintiffs’ motion to compel and ordered the deposition produced.

and second motions are inconsistent is also without merit. The district court adopted the magistrate judge's findings, supported by the record, that Smith's actions at issue in the first motion occurred prior to the trial in this case, when the Feczer deposition was confidential and not part of the public record; whereas, Smith's actions at issue in the second motion occurred after the trial in this case, when the deposition had been placed in the public record.<sup>2</sup>

For the above stated reasons, we cannot say the district court abused its discretion in granting Cooper's motion for sanctions.

**AFFIRMED.**

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<sup>2</sup>Before trial, the district court sua sponte vacated several paragraphs of the Protective Order, one of which had required confidential material to be filed with the court under seal. Therefore, at trial, the Feczer deposition was placed in the court's public record. The confidential portions of the Feczer deposition were later redacted from the deposition, pursuant to court order.