

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. OP-24-0289

ANNETTE M. TRUJILLO,

Petitioner,

v.

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY,
THE HONORABLE MOLLY OWEN PRESIDING JUDGE,

Respondent.

Original Proceeding from the Twentieth Judicial District Court
Lake County
Honorable Molly Owen
Cause No. DV-19-36

**MOTION OF THE MONTANA CHAMBER OF COMMERCE,
CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA, AND THE PRODUCT LIABILITY ADVISORY
COUNCIL, INC. FOR LEAVE TO APPEAR AS *AMICI CURIAE***

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Attorneys for Defendant Ho's, Inc.

The Montana Chamber of Commerce (“Montana Chamber”), the Chamber of Commerce of the United States of America (“U.S. Chamber”), and the Product Liability Advisory Council, Inc. (“PLAC”) respectfully request that the Court grant them leave to participate and submit an *amicus curiae* brief in this matter, pursuant to Mont. R. App. P. 12(7). In support of their Motion, the Montana Chamber and the U.S. Chamber (collectively, “the Chambers”) and PLAC state as follows:

I. Statement of Interest

Established in 1931, the mission of the Montana Chamber is to advocate on behalf of Montana businesses and be the driving force in promoting a favorable business climate in the State of Montana. The Montana Chamber represents about 1,200 businesses large and small across the State. The Montana Chamber serves business members by working to create and to sustain an optimal business climate, business prosperity, and a strong Montana economy. Through advocacy, education, and collaboration, the Montana Chamber works to provide an empowered and educated workforce, reduce business growth obstacles, and advance positions that promote success for Montana businesses.

The U.S. Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents

the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

PLAC is a non-profit professional association of corporate members representing a broad cross-section of American and international product manufacturers.¹ These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of product manufacturers and others in the supply chain. PLAC's perspective is derived primarily from its corporate members' experiences spanning a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred leading product litigation defense attorneys are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed more than 1,200 briefs as *amicus curiae* in both state and federal courts, including this Court, presenting the broad perspective of its members and seeking fairness and balance in the

¹ <https://plac.com/PLAC/PLAC/Amicus.aspx>.

development and application of the law as it affects product risk management.

The Chambers and PLAC have a strong interest in the legal issues before the Court in this case. The relief Petitioner seeks—that a subsidiary be compelled to produce documents and records from its out-of-state, out-of-country corporate parent, documents which it has no legal right to demand—has the potential to create an enormous barrier to outside investment in this State and has far-reaching national and international implications.

The Chambers and PLAC are interested in this matter given the widespread nature of affiliated corporate entities and the national perspective that possession, custody and control of documents is limited to the actual corporate parties to the case. Moreover, the sweeping discovery sought by way of the petition for writ of supervisory control, seeking records going decades and likely to require substantial third-party searches for non-electronic documents (many in Japanese and a host of other languages), is not only disproportionate but will have a ripple effect on other products liability defendants in Montana.

If this Court grants supervisory review, its ruling will have a far-reaching impact inside *and* outside Montana and has the potential to

discourage investment in the State by national and multinational corporations.

II. Reasons an amicus brief is desirable

An *amicus* brief from the Chambers and PLAC will provide the Court with a relevant foundational discussion regarding principles of corporate law, specifically corporate separateness, and attendant protections of affiliated but separate business entities such as parents, subsidiaries, and sister companies from various types of liability and litigation. The relief Petitioner seeks here—compelled production of documents requiring a party to obtain and produce documents from an affiliated non-party entity—has far-reaching implications in Montana, nationwide, and internationally. The sweeping rule that Petitioner proposes will be used against multinational and national corporate families that divide manufacturing and distribution responsibilities and will have applicability not only in products liability actions such as this one but also in business tort litigation and other commercial litigation.

The request for supervisory control seeks to rewrite Montana discovery rules, disregards long-settled principles of corporate separation, and bypasses established procedures for obtaining third-party discovery across the country and around the globe.

III. Identity of the Parties Whose Position the Chambers and PLAC Support

The Chambers and PLAC support the position of Respondent Toyota Motor Sales USA, Inc.

IV. Parties' positions regarding participation by the Chambers and PLAC

Both parties have been contacted regarding participation by the Chambers and PLAC. Petitioner Annette Trujillo has no objection provided she is given the opportunity to respond. Respondent Toyota Motor Sales USA, Inc. does not oppose or object to this Motion.

V. Proposed Date for *Amicus Curiae* Brief

A copy of the proposed amicus brief is attached and filed contemporaneously with this Motion. If this Motion is granted, the Chambers and PLAC propose to formally file their *amicus* brief of record on Thursday, July 11, 2024.

Respectfully submitted this 8th day of July, 2024.

GORDON REES SCULLY MANSUKHANI, LLP

/s/Nathan A. Huey

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Attorneys for Proposed Amicus Curiae The Montana Chamber of Commerce, Chamber of Commerce of the United States of America, and The Product Liability Advisory Council, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 16(3), I hereby certify that this Motion for Leave is double-spaced, is proportionately spaced, and uses the Georgia typeface in 14-point size; and that the word count (including footnotes) calculated by Microsoft Word is 893 words.

/s/ Nathan A. Huey

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CERTIFICATE OF SERVICE

I, Taylor Jordan, hereby certify that I have served true and accurate copies of the foregoing Motion to the following on July 8, 2024:

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I, Nathan A Huey, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 07-08-2024:

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Electronically signed by Taylor Jordan on behalf of Nathan A Huey
Dated: 07-08-2024