

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

GENCORP INC.,  
Plaintiff-Appellant,  
v.  
AIU INSURANCE COMPANY, et al.,  
Defendants-Appellees.

On Appeal from the United  
States District Court for the  
Northern District of Ohio,  
Eastern Division

MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF AMICI CURIAE  
CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

Certain Underwriters at Lloyd's, London (hereinafter "Underwriters"), who  
are subscribers to excess insurance liability policies with insureds in the State of  
Ohio, and who are parties to other coverage litigation pending in Ohio involving  
environmental liability claims similar to those present here, hereby move,

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<sup>1</sup> Millennium Chemicals, Inc., et al. v. Lumbermen's Mutual Casualty Co., et al.,  
Court of Common Pleas, Cuyahoga County, Ohio, Case No. 411388; The Glidden  
Company v. Lumbermens Mutual Casualty Co., et al., Court of Common Pleas,  
Cuyahoga County, Ohio, Case No. 409039; The Goodyear Tire and Rubber  
Company v. The Aetna Casualty and Surety Company, et al., Court of Common  
Pleas, Summit County, Ohio, Case No. CV 93 09 3226; Commercial Union, et al.  
v. B.F. Goodrich Company, et al., Court of Common Pleas, Summit County, Ohio,  
Case No. CV 99 02 0410; Goodrich Corporation v. Affiliated FM Insurance  
Company, et al., Court of Common Pleas, Summit County, Ohio, Case No. 2002-  
11-6854. Some Underwriters were initially parties to GenCorp's initial suit  
(GenCorp I) and either received summary judgment or were dismissed on the basis

pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, for leave to

file an *amicus curiae* brief herein in support of the defendants-appellees Excess

Insurers and for affirmation of the decision below.

The excess policies issued by Underwriters, like the excess policies at issue

in the case at bar, typically provide that the Excess Insurers will be obligated to

indemnify the insured only for losses that exceed the limits of the underlying

insurance policies described therein, and require exhaustion of those underlying

insurance policies in order to trigger the excess policy. Accordingly, Underwriters

are directly interested in the issues presented herein by GenCorp's settlement with

all of its underlying insurers, particularly the issue of how those settlements impact

on the obligations of GenCorp's Excess Insurers. This Court has already permitted

the filing of an *amicus curiae* brief by a number of Ohio companies,<sup>2</sup> similarly

situated to GenCorp, on the basis that they have an interest in the development of

insurance law in the State of Ohio and seek to preserve policyholders' rights.

(Ohio Companies' Brief p. 1.) Underwriters, similarly situated to GenCorp's

of a settlement. Thereafter, some Underwriters were inadvertently named in the  
second suit that gave rise to this appeal (*GenCorp II*), and were then dismissed.

<sup>2</sup> Brief of *Amici Curiae* The Ohio Chemistry Technology Council; Aeroquip-  
Vickers, Inc.; The Babcock & Wilcox Company; Eaton Corporation; The Glidden  
Company; Goodrich Corporation; The Goodyear Tire & Rubber Company; The  
Lincoln Electric Company; Millennium Holdings, LLC; NCR Corporation; and  
The Sherwin-Williams Company (hereinafter referred to as the "Ohio  
Companies").

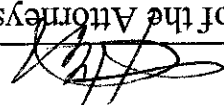
Excess Insurers, have the same interest in the development of Ohio insurance law and seek to preserve insurers' rights in the State of Ohio.

Underwriters further believe that their views and perspectives are reflective of a wide range of excess insurers who issued policies to Ohio insureds, and that their proposed brief will assist the Court in resolving the issues in this case.

Respectfully submitted,

LORD, BISSELL & BROOK LLP

By:

  
One of the Attorneys for *Amici Curiae*  
Certain Underwriters at Lloyd's, London

Hugh C. Griffin  
John B. Harlow  
Daniel S. Lambert  
LORD, BISSELL & BROOK LLP  
115 S. LaSalle Street  
Chicago, IL 60603  
(312) 443-0700

**CERTIFICATE OF SERVICE**

I certify that the above Motion for Leave to File Proposed Brief of

*Amici Curiae* was served via U.S. Mail on July 2, 2004 to:

Maryann C. Hayes  
Maria G. Enriquez  
Ellen J. Zabinski  
Bates & Carey LLP  
191 N. Wacker Drive, Suite 2400  
Chicago, IL 60606

Steven G. Janik  
Janik & Dorman  
9200 S. Hills Blvd., Suite 300  
Cleveland, OH 44147

Christopher J. Raistrick  
John D. Dalton  
Michael R. Gregg  
Merlo, Kanofsky & Brinkme  
208 S. LaSalle Street, Suite 950  
Chicago, IL 60604

Steven G. Adams  
Melito & Adolfsen  
233 Broadway  
New York, NY 10279

John S. Anooshian  
Elizabeth Canapary  
Patricia B. Santelle  
White & Williams LLP  
1800 One Liberty Place  
Philadelphia, PA 19103

Amelia A. Bower  
Plunkett & Cooney  
100 E. Broad Street  
Columbus, OH 43215

Margaret Orbon  
Gordon K. Walton  
Clausen, Miller PC  
10 South LaSalle Street  
Chicago, IL 60603

Daniel G. Gourash  
Robert D. Anderle  
Porter, Wright, Morris & Arthur  
1700 Huntington Building  
Cleveland, OH 44115

Gary W. Johnson  
Weston Hurd Fallon Paisley & Howley  
2500 Terminal Tower  
50 Public Square  
Cleveland, OH 44113

David J. Fagnilli  
Davis & Young  
1700 Midland Building  
Cleveland, OH 44115-1027

David A. Schaefer  
McCarthy, Lebit, Crystal & Haiman  
1800 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

Michael J. Baughman  
Cohn, Baughman & Martin  
525 W. Monroe, Suite 550  
Chicago, IL 60661

Jeffrey C. Garish  
Stephen P. Brown  
Plunkett & Cooney  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304

Jerome J. Duchowicz  
John D. Labarbera  
O'Hagan Smith & Amundsen  
150 N. Michigan Avenue, Suite 3300  
Chicago, IL 60601

John F. Myers  
Holland, Myers & Myers  
159 S. Main Street, Suite 825  
Akron, OH 44308

John C. Weisensell  
Bernlohr & Wertz, LLP  
The Nantucket Building  
23 South Main Street, Suite 301  
Akron, OH 44308

Paul A. Rose  
Clair E. Dickinson  
Brouse McDowell  
500 First National Tower  
Akron, OH 44308

Amy Bach  
United Policyholders  
42 Miller Avenue  
Mill Valley, CA 94941

David L. Lester  
Umier & Berne LLP  
1300 East 9th Street, Suite 900  
Cleveland, OH 44114

Gerald V. Weigle, Jr.  
Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202-4700

Alexander Gillespie  
Gilbert & Kurent  
1250 Eye Street, N.W., Suite 600  
Washington, D.C. 20005

Thomas W. Ladd  
McCarter & English  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102

Jeffrey E. Glen  
Richard P. Lewis  
Anderson Kill & Olick, P.C.  
1251 Avenue of the Americas  
New York, NY 10020

Hugh C. Griffin

