


September 20, 2010

Mr. Robert H. Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box. 5116
Norwalk, CT 06856-5116

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box. 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1840-100: Proposed Accounting Standards Update of Topic 450 (Disclosure of Certain Loss Contingencies)

Dear Sirs,

We write on behalf of several United States manufacturers to comment on the July 20, 2010 Exposure Draft of a Proposed Update on Topic 450 (Disclosure of Certain Loss Contingencies) ("Proposal").

We agree with many of the concerns raised by other entities and groups that have criticized the Proposal as requiring prejudicial disclosures that will not improve the quality of information disclosed to investors. We write separately to highlight our concern that the disclosure of case-specific or class-specific information will not be useful to our investors, but will be detrimental to our shareholders. Specifically, the proposed disclosures will injure our companies, and in turn our shareholders, by prejudicing our companies' in ongoing and future litigation and by giving an advantage to our non-U.S. competitors. In order to demonstrate how U.S. manufacturers and their shareholders will be injured by the proposed disclosures, this letter describes how the Proposal's new disclosures are prejudicial to and unnecessary for an entity with litigation loss contingencies that arise primarily from products liability cases.

Products liability cases are an inevitable cost of selling products to consumers, particularly in the United States where the tort system is unique and creates competitive disadvantages for domestic companies. But the specifics of each claim – and their resolution – vary substantially from case to case. For example, cases may involve a different product or model, different component providers, different injuries, and different substantive laws. Moreover, the circumstances surrounding the use of the product – including the age and condition of the product or any plaintiff error in using the product – will vary, as does the potential for co-defendant liability. Myriad other factors – such as the plaintiff's attorney, the judge, the size of the court's docket, the jury pool, and whether the plaintiff is sympathetic – also may effect the resolution of a claim, whether through trial or a pre-trial settlement.

Companies with experience in products liability suits often are able to estimate *total* litigation losses in a given period with reasonable accuracy. But the outcome of any *individual* case generally is not predictable. We believe that disclosing the total amount accrued is important to ensuring that financial statement users understand litigation-related loss

contingencies. As detailed below, however, the Proposal requires case-specific and class-specific disclosures that will not be useful to investors and will cause competitive harm.

Disclosing accruals will cause substantial prejudice to companies.

The Proposal requires an entity to reveal any amount accrued for a specific case or aggregated group of cases, to the severe detriment of our companies. The prejudice manifests itself in several ways:

- A plaintiff who knows how a company has accrued for its claim will have a significant advantage in negotiating a settlement, as the accrued amount will become the minimum settlement value for the case.

- New plaintiffs may be encouraged to file similar actions based on the disclosed magnitude of the accrual.

- The company will be unable to resolve cases confidentially. Product liability cases are often settled on a confidential basis. Disclosing accruals for or settlements of specific cases ensures that the circumstances of those cases are made public despite the agreement between the settling parties.

- The case-specific accrual will be perceived or argued to be an admission of liability and may prevent or hinder the company from denying liability persuasively.

The required disclosures may further prejudice the company by revealing the confidential judgments underlying accruals. Accrued amounts necessarily reflect management's evaluation of the probable resolution of a contingency. Disclosure of several accruals is likely to reveal *why* management evaluated one contingency differently than another. For example, a company may make different accruals for two cases that are otherwise similar but that involve different products or specific injuries. Disclosing these two different accruals will reveal (1) which variables the company finds relevant to the probable resolution of a claim, and (2) how the company values a relevant variable. Similarly, disclosing accruals over several periods may reveal how the company assesses certain developments in a particular case.

Revealing the confidential judgments underlying an accrual will further prejudice our companies:

- Current or future plaintiffs will be able to extract higher settlement values if they know that their case involves factors that the company believes are likely to increase the probable loss.

- Armed with information regarding the importance of certain factors, current or future plaintiffs may seek to out-maneuver companies in litigation. For example, a new plaintiff may realize that he should file the complaint in a different jurisdiction, hire a particular expert, or argue a particular theory of liability.

In addition, the proposed disclosures will disadvantage U.S. manufacturers in competition with non-U.S. manufacturers:

- As described above, the Proposal will increase the cost of litigation for disclosing entities. Manufacturers that do not have inflated litigation costs will have an advantage in the competition for customers and in the competition to raise capital.

- The proposed disclosures may reveal confidential information that non-U.S. competitors can exploit without having to disclose similar information about themselves.

Finally, as explained in detail in the comments submitted by others, litigation opponents may argue that the disclosure of accruals waived attorney-client privilege and attorney work product protection for the otherwise-privileged information and assessments underlying the disclosure.[1]

Aggregation of disclosures will not avoid, and may exacerbate, the prejudices outlined above.

Based on the Proposal's guidance and commentary, it appears that accruals may not be subject to aggregation if the claims relate to different products, different time periods, different types of plaintiffs, individual or class claims, different insurers, different jurisdictions, and single-defendant or multiple co-defendants charged with the same liability. Aggregating along such narrow classifications may preclude meaningful aggregation.

Even where several cases are aggregated, the disclosure of a total accrual for the aggregated group will continue to prejudice the company. A plaintiff may not know how the company has assessed his specific claim, but he will know the average accrual for the group. That average may set the price for settlement just as a case-specific accrual would have. And, when the average for a class of contingencies is skewed by the inclusion of one or more particularly significant contingencies, a plaintiff with a claim in that class is likely to demand a settlement based on the inflated average, even if the claim itself is of below-average value.

In fact, the act of designating relevant classifications for aggregation or tabular disclosure may itself prejudice the company by revealing what the company sees as the salient differences between cases. We are particularly concerned that disclosing accruals "by class" for *unasserted* claims will prejudice the company by revealing the confidential information that it relies on to estimate liability for unasserted claims.[2]

---

[1] *See, e.g.*, Letter filed by Amgen (File Reference 1840-100, Letter # 98); Letter filed by ABCNY/FRC/CSR (File Reference 1840-100, Letter # 136). We adopt those arguments but, in the interest of avoiding repetition, we have not restated them in this letter.

[2] The Proposal is unclear regarding what type of aggregation is appropriate for unasserted claims. We believe the Proposal would allow unasserted products liability claims to be disclosed in a single group, even though the claims are likely to vary in unknowable ways when ultimately asserted. A contrary view, as discussed above, would substantially prejudice the company.

Finally, aggregation cannot mitigate the risk that a disclosure waives privilege or work-product protection.

The proposed disclosures will not improve the quality of information disclosed.

Disclosing the total amount accrued for estimable products liability-related loss contingences provides financial statement users with useful information about these contingencies. Given the variability and unpredictability of individual case results, the disaggregated disclosures called for by the Proposal would provide no additional useful information to financial statement users. Case-specific disclosures cannot prepare investors for unforeseeable developments, which are a characteristic of litigation in the United States, or provide a reliable basis for predicting the timing or amount of other contingences. Thus, there is no countervailing benefit to financial statement users to justify the harm that these disclosures will cause to companies and their investors.

* * *

We support the Board's efforts to ensure that financial statement users be provided reliable, meaningful information about loss contingencies. The current standard, however, satisfies those goals by appropriately focusing on whether the financial statement is misleading absent disclosure and gives flexibility to tailor disclosures to the circumstances and facts of a particular litigation-related contingency or type of litigation-related contingency. We therefore urge the Board to withdraw the proposed Exposure Draft. At a minimum, we hope that the Board will amend the Proposal to give reporting entities more flexibility in making disclosures regarding accruals, so that the disclosures may be tailored to be useful and non-misleading based on the overall circumstances of the entity's litigation contingencies.

Respectfully,

/s/
James E. Kline
Vice President, General Counsel & Secretary
Cooper Tire & Rubber Co.

/s/
Jeffrey W. Carr
Senior Vice President, General Counsel & Secretary
FMC Technologies Inc.

/s/
Stephen K. Krull
Senior Vice President, General Counsel & Secretary
Owens-Corning, Inc.

/s/
David B. Liner
Vice President, General Counsel & Secretary
Roper Industries, Inc.