

IN THE SUPREME COURT OF OHIO

THE LINCOLN ELECTRIC COMPANY,	)	Supreme Court Case
	)	CASE NO. 2013-1088
<i>Petitioner,</i>	)	
	)	
v.	)	On Certified Question from the United States
	)	District Court for the Northern District of
TRAVELERS CASUALTY AND	)	Ohio, Eastern Division
SURETY COMPANY, <i>et al.,</i>	)	
	)	District Court Case No. 1:11CV2253
<i>Respondents.</i>	)	

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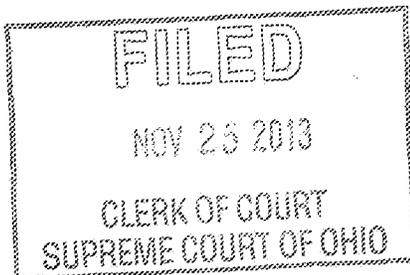
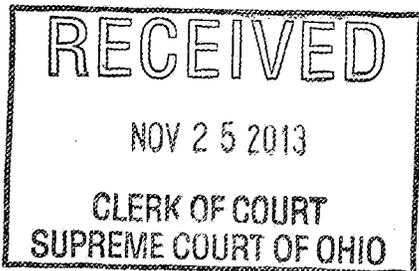
**BRIEF OF AMICI CURIAE THE NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND DANA COMPANIES, LLC IN SUPPORT OF PETITIONER THE LINCOLN ELECTRIC COMPANY**

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## INTEREST OF AMICI CURIAE

The National Electrical Manufacturers Association (“NEMA”) is an association of electrical equipment and medical imaging manufacturers. Founded in 1926 and headquartered in Rosslyn, Virginia, its 400-plus member companies manufacture a diverse set of products used in the generation, transmission, distribution, and end use of electricity as well as medical diagnostic imaging. Worldwide annual sales of products in the NEMA scope exceed \$140 billion. NEMA and its members rely on commercial general liability (“CGL”) policies as an integral part of protecting their businesses against risks. Both NEMA and its members have been the subject of various welding, asbestos, environmental, and other “long-tail” claims – claims which reach back a number of years or decades and thus implicate many successive insurance policies.

The National Association of Manufacturers Association (“NAM”) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. Many of its members are asbestos defendants who rely on insurance coverage for “long-tail” claims.

Dana Companies, LLC (“Dana”) is the successor by merger to Dana Corporation, which was a world-leading supplier of driveline, sealing, and thermal-management technologies that improved the efficiency and performance of passenger, commercial, and off-highway vehicles with both conventional and alternative-energy powertrains. The company’s global network of engineering, manufacturing, and distribution facilities provided original-equipment and

aftermarket customers with local product and service support. Based in Toledo, Ohio, Dana Corporation employed tens of thousands of people across the United States and internationally. As part of its business, Dana Corporation purchased “CGL policies for decades, and Dana continues to look to those policies for coverage for its liabilities. In particular, Dana has been the subject of hundreds of thousands of asbestos claims and scores of environmental contamination claims for which it continues to seek coverage.

The development of the law in Ohio and other states on the issue presented here is of vital interest to amici in their efforts to secure insurance coverage for “long-tail” liabilities, particularly when confronted with denials of coverage or reservations of rights from multiple insurers whose policies are implicated by particular “long-tail” claims.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The question certified to this Court by the United States District Court for the Northern District of Ohio is:

May an insured who has accrued indemnity and defense costs arising from progressive injuries, and who settles resultant claims against primary insurer(s) on a pro rata allocation basis among various primary insurance policies, employ an “all sums” method to aggregate unreimbursed losses, and thereby reach the attachment point(s) of one or more excess insurance policies?

*Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.*, No. 1:11-cv-02253 (N.D. Ohio July 3, 2013)  
 (“Certification Order”).

Amici respectfully submit that this question should be answered in the affirmative. This Court, and others throughout the country, repeatedly have construed the “all sums” standard

policy language<sup>1</sup> like that present in the policies that Travelers Casualty and Surety Company and St. Paul Fire and Marine Insurance Company (collectively, the “Insurers”) sold to The Lincoln Electric Company (“Lincoln Electric”), to mean that a policyholder has the exclusive right to select any implicated policy of its choice to respond in full to “long-tail” liabilities spanning multiple years and multiple insurance policies. *Goodyear Tire & Rubber Co. v. Aetna Casualty & Surety Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶ 12; *Penn. Gen. Ins. Co. v. Park-Ohio Indus.*, 126 Ohio St.3d 98, 2010-Ohio-2745, 930 N.E.2d 800, ¶ 2 (“[w]e continue to adhere to the all-sums method of allocation adopted in *Goodyear*”). Only after such an insurer has honored its contractual obligation to pay “all sums” may that insurer look to the other insurers whose policies also are implicated for contribution. *Id.*

The Insurers here argue, however, that their policyholder is no longer entitled to the full scope of coverage that the plain meaning of their policies provides, because the policyholder entered into a settlement under which its primary insurer is permitted to spread its indemnity payments equally across its primary policies. Certification Order at 4. In effect, the Insurers ask the Court to rewrite the policy language they drafted. Such a rewriting of this standard policy language could have severe negative implications nationwide. Because there is no legal basis for the Insurers’ argument, and because the Insurers’ approach threatens the certainty and stability of insurance contracts – and contracts in general – amici urge that the question be answered in the affirmative.

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<sup>1</sup> Most standard CGL insurance policies provide that the insurer will “indemnify the Insured for ***all sums*** which the Insured shall become legally obligated to pay as damages . . . on account of . . . Personal Injuries . . . to which this Policy applies, caused by an occurrence.” *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St. 3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶ 7 (2002) (emphasis added).

If this Court answers the certified question in the negative, the practical implications for policyholders in Ohio and perhaps nationwide would be drastic. Policyholders' reasonable expectations of what their policies were meant to cover would be violated, and upheaval would ensue as a result of a new interpretation of previously settled language. Moreover, under the legal rule the Insurers advocate, policyholders would be left virtually unable to settle claims against their insurers, thereby polarizing coverage disputes and violating Ohio's long-standing public policy favoring settlements. *See, e.g., Krischbaum v. Dillon*, 58 Ohio St.3d 58, 69, 567 N.E.2d 1291 (1991). Under the current rule, policyholders are able to craft settlements with their insurers that take into account the fact that "long-tail" claims may implicate many years of coverage, the fact that some insurers sell policies in many policy years, and the insurers' contribution rights against one another. Under the rule that the Insurers advocate, policyholders would be unable to enter into any such settlements, and would be forced to either (1) invite the contention from its non-settling insurers that the policyholder has given up its "all sums" rights under their policies, or (2) settle with all potentially implicated insurers at the same time. The first course is untenable, and the second would be highly impractical and always accompanied by the risk that the policyholder's liability will exceed original expectations. Thus, policyholders would face a very real risk of being unable to settle with their insurers if this Court adopts the rule advocated by the Insurers, increasing exponentially the number of disputes that will need to be addressed by courts rather than by private parties through mutual agreement.

Answering the certified question in the negative would essentially change Ohio law from an "all sums" approach to a "pro rata" approach in the context where a policyholder settles with its primary insurers using a horizontal allocation approach. Should this Court accept the Insurers' argument, they and other insurers will doubtless pursue this erosion of policyholders'

contractual rights in all of the jurisdictions that have adopted the “all sums” approach, disrupting contract rights and unsettling long-established law governing what “all sums” language plainly means. This Court should uphold previous precedent and reject the Insurers’ arguments.

### **STATEMENT OF FACTS**

Amici adopt and incorporate by reference the District Court’s statement of facts contained in its Certification Order.

### **ARGUMENT**

#### **I. COURTS IN OHIO AND ACROSS THE COUNTRY HAVE CONSTRUED THE MEANING OF “ALL SUMS” LANGUAGE IN THIRD PARTY LIABILITY INSURANCE POLICIES**

Insurance policies are subject to the basic underpinnings of contract law. Ohio courts have long held that the written contract is paramount in determining parties’ rights and obligations under an agreement. *See, e.g., Kostelnick v. Helper*, 96 Ohio St.3d 1, 3, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16 (citing *Pawlowski v. Pawlowski*, 83 Ohio App. 3d 794, 798-99, 615 N.E.2d 1071 (10th Dist.1992)); *Galmish v. Cicchini*, 90 Ohio St.3d 22, 27, 2000-Ohio-7, 734 N.E.2d 782 (2000) (noting importance of parol evidence rule in “protect[ing] the integrity of written contracts” by “ensur[ing] the stability, predictability, and enforceability of finalized written instruments”) (citation omitted); *Betts v. Betts*, 3d Dist. Hancock No. 5-12-33, 2013-Ohio-1938, ¶ 12 (noting that “written instruments generally receive special, favored status” under Ohio law) (citation omitted).

Ohio law is equally clear that, should parties wish to modify a contract, both parties must clearly do so. A writing or agreement involving only one party to a contract is legally insufficient. *See, e.g., TRINOVA Corp. v. Pilkington Brothers, P.L.C.*, 70 Ohio St. 3d 271, 277, 1994-Ohio-524, 638 N.E.2d 572 (1994) (holding that “a subsequent contract does not supersede

or modify unambiguous terms in a preceding contract unless the subsequent agreement specifically evidences an intent to do so . . . . [T]here is no need to refer to a second document executed by different parties to supply missing terms.”). Conduct outside the contract also cannot vary the language of the contract or its plain meaning. *See, e.g., Beasley v. Monoko, Inc.*, 195 Ohio App.3d 93, 2011-Ohio-3995, 958 N.E.2d 1003, ¶ 29 (10th Dist.) (“[I]f the contract terms are clear and precise, the contract is not ambiguous and the trial court is not permitted to refer to any evidence outside of the contract itself[.]”) (citation omitted). Like most standard CGL insurance policies, the contracts between the Insurers and Lincoln Electric specifically state that they cannot be changed or modified except by a written endorsement to the policy.

Critically, this Court already has interpreted how the “all sums” contract language in standard CGL policies, like the ones at issue here, provides coverage for “long-tail” claims. In *Goodyear*, this Court held that when these types of “long-tail” claims against a policyholder implicate multiple policies, the language of the policies is unambiguous: the policyholder may select any implicated policy to cover its liabilities in full up to that policy’s applicable limits of liability.” *Goodyear*, 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶ 7-¶ 8. This approach is known as the “all sums” approach, named after the standard policy language forming the basis for its conclusions: the insurer agrees to “indemnify the Insured for all sums which the Insured shall become legally obligated to pay as damages . . . on account of . . . Personal Injuries . . . to which this Policy applies, caused by an occurrence.” *Goodyear* at ¶ 7 (emphasis added); *see also Penn. Gen. Ins. Co. v. Park-Ohio Indus.*, 126 Ohio St.3d 98, 2010-Ohio-2745, 930 N.E.2d 800, ¶ 1 (“[w]e continue to adhere to the all-sums method of allocation adopted in *Goodyear*”); *Goodrich Corp. v. Comm’l Union Ins. Co.*, 9th Dist. Summit No. 23585, 2008 WL 2581579, at \*24-25 (June 30, 2008) (applying “all sums” approach from *Goodyear*).

Often using the same reasoning as this Court, many other jurisdictions also have decided that “all sums” contract language has the same meaning as that ascribed to it in *Goodyear*.<sup>2</sup> See, e.g., *Emhart Indus., Inc. v. Century Indem. Co.*, 559 F.3d 57, 70-72 (1st Cir.2009) (applying Rhode Island law); *Keene Corp. v. Ins. Co. of N. Am.*, 667 F.2d 1034, 1047-50 (D.C.Cir.1981); *California v. Continental Ins. Co.*, 55 Cal. 4th 186, 199-200, 281 P.3d 1000, 145 Cal.Rptr.2d 118 (2012); *Hercules, Inc. v. AIU Ins. Co.* 784 A.2d 481, 491 (Del. 2001); *Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049, 1057-58 (Ind.App.2001); *Cascade Corp. v. Am. Home Assur. Co.*, 135 P.3d 450 (Ore.Ct.App. 2006); *J.H. France Refractories Co. v. Allstate Ins. Co.*, 534 Pa. 29, 37-39, 626 A.2d 502 (1993); *Am. Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 855 (Tex.1994); *Am. Nat’l Fire Ins. Co. v. B&L Trucking & Constr. Co., Inc.*, 134 Wash. 2d 413, 423-24, 951 P.2d 250 (1998); *Wheeling Pittsburgh Corp. v. Am. Ins. Co.*, No. 93-C-340, 2003 WL 23652106, at \*19 (W.Va. Cir. Ct. Oct. 18, 2003), *Plastics Eng’g Co. v. Liberty Mut. Ins. Co.*, 2009 WI 13, ¶¶ 55-60, 315 Wis.2d 556, 759 N.W.2d 613. This approach was recognized long ago when the insurance companies first considered coverage for asbestos claims as they were drafting the standard policies at issue:

At the Keene trial, we introduced, among other things, a document containing the minutes of an April 21, 1977 insurance industry wide meeting in New York City with respect to potential asbestos and DES liability. At the meeting, the insurance industry

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<sup>2</sup> A competing approach, which was rejected by this Court in *Goodyear*, divides or prorates the liability among the implicated policies. For this reason, it is referred to as the “pro rata” approach. Using equitable principles rather than contract language as its basis, the “pro rata” approach has been adopted in some states. See, e.g., *Public Serv. Co. of Colorado v. Wallis & Co.*, 986 P.2d 924 (Colo. 1999); *Security Ins. Co. of Hartford v. Lumbermen’s Mut. Cas. Co.*, 264 Conn. 688, 826 A.2d 107 (2003); *AAA Disposal Systems, Inc. v. Aetna Cas. & Sur. Co.*, 821 N.E.2d 1278 (Ill.App.2005); *Atchison, Topeka & Santa Fe Ry. Co. v. Stonewall Ins. Co.*, 275 Kan. 698, 71 P.3d 1097 (2003); *Cole v. Celotex Corp.*, 599 So.2d 1058 (La.1992); *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724 (Minn.1997); *Sharon Steel Corp. v. Aetna Cas. & Surety Co.*, 308 Utah Adv. Rep. 3, 931 P.2d 127 (1997).

heavyweights discussed the Borel decision, and how that case's application of joint and several liability would affect liability insurance companies: The majority view was that coverage existed for each carrier throughout [sic] the period of time the asbestosis condition developed, i.e. from the first exposure through the discovery and diagnosis. The majority also contended that each carrier on risk during any part of the period could be fully responsible for the cost of defense and loss.

Eugene R. Anderson, *A "Keene" Story*, 2 Nev.L.J. 489, 495 (2002) (citation omitted).

After the policyholder has been paid in full, the "all sums" authorities recognize the right of the insurer whose policy is selected to spread its burden by obtaining contribution from other insurers whose policies are also implicated by the same claim. *Goodyear*, 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶ 11; *Emhart*, 559 F.3d at 73-74; *Keene*, 667 F.2d at 1050; *Continental Insurance*, 55 Cal.4th at 200; *Dana*, 759 N.E.2d at 1057-58; *Cascade*, 135 P.3d at 457-58; *J.H. France*, 534 Pa. at 42; *Garcia*, 876 S.W.2d at 855; *Wheeling Pittsburgh*, 2003 WL 23652106, at \*21, *Plastics Engineering*, 2009 WI 13 at ¶ 9 (Gableman, J, concurring in part). Some of these cases have implemented these side-by-side principles by collapsing them into an allocation approach that is consistent with the "all sums" obligation of each insurer. *See, e.g., Cascade*, 135 P.3d at 457-58 ("each insurer is liable to the insured for the full amount of its coverage . . . . The question then becomes determining what benefit each insurer will receive from the fortuity that other insurance covers the same loss.") (citation omitted); *Emhart*, 559 F.3d at 73 ("the district court applied equitable principles in giving Century a set-off for the Liberty Mutual settlement, the only known settlement") (citation omitted); *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co. (In re Asbestos Ins. Coverage Cases)*, Judicial Council Coordination Proceeding No. 1072, Phase IV Decision (Cal. Super. Ct. Jan. 24, 1990), reprinted in 5 L. of Toxic Torts Appendix 31C (2013), *aff'd in part, rev'd in part on other grounds sub*

*nom. Armstrong World Indus. v. Aetna Cas. & Sur. Co.*, 26 Cal. Rptr. 2d 35 (Cal.Ct. App. 1993), *vacated on other grounds*, 904 P.2d 370 (Cal. 1995).

*Armstrong*, one of the earliest cases to address these issues, illustrates this point. In *Armstrong*, the court noted that its “Phase III Decision” had held that “every policy triggered by an asbestos-related bodily injury claim has an independent obligation to respond in full to a claim,” subject to policy limits, deductibles, exclusions, ‘other insurance’ clauses, and rights of equitable contribution. *Id.*, slip op. at 19. In the following phase of litigation, the court was “presented with the difficult task of determining how liability for a claim covering a number of years is to be allocated among multiple primary and excess carriers pursuant to ‘other insurance’ clauses and principles of equitable contribution.” *Id.* at 20. The existence of settlements did not change the court’s analysis, nor did it rob the policyholder of the promised benefit of the “all sums” language in the policies. *Id.* at 19-20. The same was true in *Goodrich*, as discussed below, as well as many “all sums” decisions in other states. *See, e.g., Continental Insurance*, 55 Cal.4th at 194 (“the State had already entered into settlement agreements totaling approximately \$120 million with several other insurers.”); *Dana*, 759 N.E.2d at 1052 (“After the first appeal, Dana settled with all of its insurers except Allstate.”); *Cascade*, 135 P.3d at 453 (“Cascade has settled its claims against its primary insurers and against its excess insurers other than ERC.”); *B&L Trucking*, 951 P.2d at 252 (“Several parties were dismissed; some settled.”); *Plastics Engineering*, 759 N.W.2d at 624 (“Settlement among the insurers shall not alter any rights of the insured.”) (quoting Wis. Stat. § 631.43(1)); *Wheeling*, 2003 WL 23652106, at \*2 (“approximately twenty of the named defendant insurance companies have entered into settlement agreements with the Plaintiff. Currently there remain seven defendants . . .”).

## II. THE *GENCORP* APPROACH WOULD DISRUPT POLICYHOLDERS' CONTRACT RIGHTS ON A NATIONAL SCALE

The Insurers “contend that Lincoln Electric forfeited the right to allocate unreimbursed losses on a vertical, all sums basis when it entered into [a settlement agreement], under which losses were allocated . . . on a horizontal, pro rata basis.” Certification Order at 4. The decision on which the Insurers rely incorrectly applied this court’s *Goodyear* decision and held that, “by settling with its primary and umbrella insurers, GenCorp had made the choice to allocate its liability as broadly as possible, which meant that it had to demonstrate that its liabilities would exceed the cumulative limits of all the primary and umbrella policies before it could trigger the excess policies.” *GenCorp Inc. v. AIU Ins. Co.*, 138 F. App’x 732, 734 (6th Cir. 2005), *aff’g* 297 F.Supp.2d 995 (N.D. Ohio 2003) (applying Ohio law). There is absolutely no distinction between this result and “pro rata allocation.” See *Eli Lilly & Co. v. Aetna Cas. & Sur. Co.*, No. 49D12 0102 CP 000243, 2002 WL 34478091 (Ind. Super. Ct. July 15, 2002) (rejecting idea, as inconsistent with “all sums,” that “a last nonsettling insurer - if it is found liable to provide coverage can by a contribution action against settling insurers obtain ‘pro rata’ reallocation where that would leave the policyholder with less than a full recovery for its losses.”). Thus, according to the Insurers, if a policyholder settles some claims with any insurer whose policies span multiple years, the policyholder then forfeits its right to select any one of the implicated policies for the payment of different claims. In other words, according to the Insurers, a policyholder’s settlement somehow changes the policy language of all of its non-settling insurers’ policies – the same language on which this Court relied to find that an “all sums” approach applies to “long-tail” claims.

*GenCorp* did not explain how the result it reached could harmonize with other “all sums” authorities like this Court’s holding in *Goodyear*. In summarily referring to Ohio law on scope

of coverage, the district court in *GenCorp* stated only that the policyholder's "interpretation of *Goodyear*" was "in[] conflict" with the district court's prior decisions. 297 F. Supp. 2d. at 1007.<sup>3</sup>

Moreover, as noted by the district court in this action, this issue already has been addressed by the Ohio Court of Appeals, Ninth District, which completely rejected *GenCorp*'s reasoning. Certification Order at 9-10. In *Goodrich*, the policyholder had settled with several insurers, but the court rejected the insurer's argument that that fact would change the "all sums" language in the policies at issue. Though the insurers relied heavily on *GenCorp* in their briefs on appeal, the *Goodrich* court refused to apply its reasoning, and no mention of *GenCorp* even appears in the decision. See Appellant Commercial Union Insurance Company's Memorandum in Support of Jurisdiction, *Goodrich Corp. v. Comm'l Union Ins. Co.*, 9th Dist. Summit No. 08-1616, 2008 WL 3980897, at \*3-\*4 (Ohio Aug. 14, 2008); *Goodrich Corp. v. Comm'l Union Ins. Co.*, 9th Dist. Summit Nos. 23585, 23586, 2008-Ohio-3200, 2008 WL 2581579 (June 30, 2008). At least two state courts in other "all sums" jurisdictions have also explicitly noted that the *GenCorp* approach is inconsistent with the language providing the basis for the "all sums"

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<sup>3</sup> The district court in *GenCorp* explained that the non-settled excess insurers could not seek contribution from the settled primary insurers, "because those insurers have no remaining liability to *GenCorp*," and that that would "saddle the excess insurers with more than their contracted-for share of *GenCorp*'s liability and give them no recourse for reducing their burden." *GenCorp* at 1007. In a later decision holding that a non-settled insurer may not seek contribution from a settled insurer under Ohio law, the Sixth Circuit explicitly rejected the *GenCorp* court's supposed "unfairness" finding. *OneBeacon Am. Ins. Co. v. Am. Motorists Ins. Co.*, 679 F.3d 456, 461 (6th Cir. 2012). In rejecting *OneBeacon*'s reliance on "statements from [the *GenCorp*] decision that allude to the inequity that results from requiring a carrier to pay for more than its bargained-for share of liability," the Sixth Circuit reasoned that "no court is asking *OneBeacon* to pay more than its contracted-for share of liability; any amount that *OneBeacon* would pay, settlement credits or not, would be less than or equal to its policy limit." *Id.* The same is true here. Thus, the Sixth Circuit has cast grave doubt on the reasoning and precedential value of *GenCorp*.

approach. *Westport Ins. Corp. v. Appleton Papers Inc.*, 2010 WI App 86 ¶ 74, 787 N.W.2d 894, review denied, 791 N.W.2d 66 (Wis. 2010); see also *Dana Cos., LLC v. Am. Employers' Ins. Co.*, No. 49 D14-1012-PL-053501 (Ind. Super. Ct. May 8, 2013).

The only two decisions applying Ohio law that have followed *GenCorp* are a Pennsylvania federal court decision predicting Ohio law before *Goodrich* and an unreported state trial court decision. See *Goodyear Tire & Rubber Co. v. Hartford Acc. & Indem. Co.*, No. 97-933, 2005 WL 6244202 (W.D. Pa. Mar. 11, 2005); *MW Custom Papers LLC v. Allstate Ins. Co.*, No. 2012 CV 03228, 2012 WL 6565832 (Montgomery County Ct. Com. Pleas September 21, 2012). The Pennsylvania federal court decision predates *Goodrich*, and therefore could not have had the benefit of its reasoning. In addition, as the federal district court noted in this case, “[t]here is no evidence that the Montgomery County Court of Common Pleas was presented with the *Goodrich* decision,” and the decision contains no discussion whatsoever of *Goodyear*, *Goodrich*, or any “all sums” decision in Ohio. Certification Order at 10; *MW Custom Papers*, 2012 WL 6565832.

*GenCorp* is also inconsistent with the reasoning of one of the first courts to be presented with the question of how to apply multiple insurance policies over a series of years to “long-tail” asbestos claims. As the court in *Armstrong* explained:

An insurer has no vested right in the policy of another insurer which provides coverage for a different period of time. There is nothing in the policies which requires an insured to carry “other insurance.” Furthermore, if the non-settling insurer’s policy were the only policy triggered by a claim, the non-settling insurer would be liable in full for the claim, subject to applicable limits. Any settlements between a policyholder and other insurers serve only to reduce the amount that the non-settling insurer is otherwise obligated to pay.

*Armstrong*, reprinted in 5 L. of Toxic Torts Appendix 31C (2013), slip op. at 56.

In this case, the Insurers' desired result, based on *GenCorp*, seeks an outright redrafting of the language that this Court and many others already have construed, and violates basic principles of contract law. The Insurers seek to change the language of their insurance contracts with Lincoln Electric, based on settlement agreements between Lincoln Electric and its other insurers, despite the fact that the policies they drafted state that their language can be changed only by written endorsement. Not only do those settlements constitute contracts to which the Insurers are not parties, but the settlements also constitute conduct outside the insurance contract. Neither provides an adequate basis under law to modify the insurance contracts between the Insurers and Lincoln Electric.

If Ohio overturns these long-established rules governing what standard CGL policy language means, inevitably insurers will seek similar results in other states. Thus, the ability of policyholders to settle their disputes with any of their liability insurers would be severely undercut in jurisdictions across the nation. Moreover, such an approach fails to respect the basic underpinnings of contract law, and violates the certainty that parties expect from contractual agreements. This Court should answer the certified question in the affirmative, and refuse to modify the "all sums" language contained in standard insurance contracts.

**CONCLUSION**

For the foregoing reasons, this Court should answer the certified question in the affirmative.

Respectfully submitted,



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I hereby certify that I directed that a copy of Brief of Amici Curiae of the National Electrical Manufacturers Association, the National Association of Manufacturers, and Dana Companies, LLC be served by email and first class mail on November 25, 2013 on the following:

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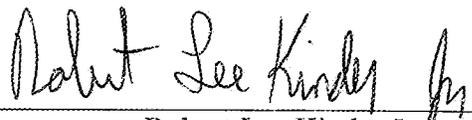
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