



## STANDARD OF REVIEW

In a motion to dismiss, the court must assume all well-pleaded facts or allegations in the complaint as true.<sup>1</sup> The plaintiff or complainant will have every reasonable factual inference drawn in his favor.<sup>2</sup> However, the plaintiff must offer more than conclusory allegations, and only the well-pleaded facts of the plaintiff's complaint are accepted as true.<sup>3</sup> When personal jurisdiction is challenged by a motion to dismiss pursuant to Superior Court Civil Rule 12 (b)(2), the plaintiff has the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant.<sup>4</sup> This burden is met by a threshold prima facie showing that jurisdiction is conferred by the statute.<sup>5</sup> Consideration of a motion to dismiss can include looking to necessary documents outside the pleadings.<sup>6</sup> The court will apply two-step analysis in determining jurisdiction: 1) Does Delaware's long arm statute apply? 2) Is the exercise of jurisdiction consistent with due process?<sup>7</sup>

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<sup>1</sup>*Plummer & Co. Realtors v. Crisafi*, 533 A.2d 1242, 1244 (Del. Super. 1987).

<sup>2</sup>*Harmon v. Dudaily*, 407 A.2d 232 (Del. Super. 1979).

<sup>3</sup>*Lester v. Katzen*, 1994 Del. Super. Lexis 617 at \*2 (Del. Super. Dec. 19, 1994) (citing *Greenly v. Davis*, 486 A.2d 669 (Del. Super. 1984)).

<sup>4</sup>*Padcom, Inc. v. Netmotion Wireless, Inc.*, 2004 U.S. Dist. Lexis 9658 at \*7 (D. Del., May 24, 2004) (citing *Provident Nat'l Bank v. California Fed. Sav. & Loan Assoc.*, 819 F.2d 434 (3d Cir. 1987); *Jeffreys v Exten*, 784 F.Supp.146, 151 (D. Del. 1992).

<sup>5</sup>*Harmon*, 407 A.2d at 232.

<sup>6</sup>*Whitwell, Archmere Academy, Inc.*, 2008 WL 1735370 at \*3 (Del. Super. Apr. 16, 2008).

<sup>7</sup>*LaNuova D & B, S.p.A. v. Bowe Co.*, 513 A.2d 764, 768 (Del. 1986).

## FACTS

With these points in mind, Russell Crane (“Crane”) was repairing a doorway while standing on a Multi-Matic ladder (“Multi-Matic”) manufactured by Krause, Inc. (“Krause”). Crane borrowed the ladder from David Coney, who had purchased it from a Home Depot store in Delaware. Suddenly, he fell onto a concrete floor and was hurt when the ladder unexpectedly collapsed. Crane suffered serious injuries, incurred known medical expenses in excess of \$100,000 and has sustained loss of earnings.

The Multi-Matic allegedly had a negligently designed latching mechanism and red indicator tab. Krause Werk initially designed, manufactured, and distributed Multi-Matic ladders in the United States through an Illinois distributor named Demarco. Because Demarco failed to fulfill its financial obligations, Krause Werk ended its business relationship with Demarco.

Subsequently, it founded Krause Inc. (“Krause”) in 1987 as a wholly-owned subsidiary which was incorporated in Illinois. Krause was originally formed to distribute Krause Werk’s ladders throughout the United States. Shortly thereafter, Krause Werk converted Krause into a manufacturing facility, and for about 10 years, Krause has manufactured and distributed ladders based on Krause Werk’s original Multi-Matic design from Illinois throughout the United States. During Krause’s initial start-up period, Krause Werk provided Krause with equipment and financing. Krause Werk has never advertised, solicited, and operated business in Delaware. Krause Werk’s design team

worked directly with Krause to ensure compliance with U.S. standards. Krause did not have an engineer on staff until the mid-90's.

Krause Werk is solely owned by the Krause family members: Guenther Krause and his son, Stefan Krause. Krause Werk was the sole owner of Krause's stock. Guenther Krause served as Krause's President and sole Director, and also as Krause Werk's President and General Manager. Mr. Garry Speight is Krause's own General Manager and Vice President. Mr. Edward Hansen, Director of Operations, managed Krause's day-to-day business from Krause Werk. Mr. Speight and Edward Hansen sent Guenther Krause regular reports regarding the operations and finances of Krause.

Mr. Guenther Krause visited the United States approximately two to three times a year. He met with employees of Home Depot on at least one occasion regarding the sale of Krause ladders in the Home Depot stores and provided information to promote the sale of the ladder. He was aware that Home Depot was a national retailer and that Krause had a marketing strategy to sell Multi-Matics in markets outside of Illinois. Krause Werk carries an industrial liability insurance policy, which covers itself, Krause and other foreign entities against risks globally, including the United States.

In or around 1980, Krause Werk had developed and patented the hinge concepts for the Multi-Matic including the hinge/ lock design and release bar. In 1995, Krause Werk and Krause executed an Intangible Property License Agreement ("Agreement"). It authorized Krause to use Krause Werk's ladder patents and trademarks. It granted Krause

the exclusive right to utilize the name Multi-Matic on its ladders. Krause Werk had registered Multi-Matic, the Krause emblem, and other insignia as trademarks with the United States government; Guenther Krause signed the Agreement on behalf of Krause Werk. The Agreement obligated Krause Werk and Krause to share know-hows concerning the Multi-Matic ladder at issue with each other. Krause Werk received royalties totally about \$70,000 annually under the Agreement.

Before 1995, the locking bolt in the hinge of Multi-Matic was composed of die-cast zinc. From 1995 to 1996, Krause Werk, in response to potential changes in European Safety standards, discussed the need with Krause to redesign the bolt. In 1997, Krause redesigned the bolt with die-cast steel. The steel locking bolts were sent to Krause Werk's plant for testing. Thereafter, sometime between 1997 to 1998, Krause redesigned the locking bolt on its ladder to a different metallurgy, and it was composed of powdered steel and coated using Xylan with Teflon. However, the last redesign was defective, which led to a recall of all ladders manufactured from December 1997 to May 21, 1998. The report filed pursuant to the Consumer Product Safety Act provides that "Krause has had extensive discussions about the problem with Guenther Krause and engineers at Krause Werk. Mr. Krause and Krause Werk engineers are assisting Krause in analyzing and investigating the problem and possible solutions." In early 1998, Krause removed the Xylan coating shortly after confirming the defect.

In 2000, Krause filed for Chapter 11 reorganization bankruptcy and ceased all operations. It did not have the capacity to satisfy all the personal injury claims involving Multi-Matics. Then, it entered into a chapter 7 liquidation bankruptcy by the end of 2001. These claims arose not only from the defects identified in the recall but also from alleged defects for ladders manufactured on the original design. These would include the ladder at issue here. Guenther Krause approved the bankruptcy during the trial of a severe personal injury suit involving a collapsing ladder in California.

The parties disagree about which corporation re-designed the Multi-Matic at issue or whether the redesign is a proximate cause for the negligence claims. However, there is sufficient record information to show that Krause Werk designed the center entry of the locking bolt through the hinge and this component was not changed by Krause. Also, when Krause did make a change to the release bar, the modification did not affect the function of the release bar as argued by Krause Werk. Ultimately a jury will have to decide the merits of the parties' disagreement, but for the purposes of this motion, there is enough to demonstrate that Krause Werk's design was faulty and proximately caused personal injuries.

#### **QUESTION**

May this Court exercise personal jurisdiction over Krause Werk, a German limited liability company under Delaware's Long Arm Statute and Due process Clause of the

United States Constitution? This Court will only discuss issues that are necessary to the decision. Several of the positions were abandoned at oral argument.

### **I. Delaware's Long Arm Statute**

A two prong test is applied to determine whether personal jurisdiction can be obtained over a nonresident: First, the court must consider whether one of Delaware's long arm statutes applies; second, it must evaluate whether subjecting a defendant to jurisdiction in Delaware violates the Due Process clause of the Fourteenth Amendment.<sup>8</sup>

The pertinent Delaware's Long Arm Statute provides that:

(c)[A] court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

- (1) *Transacts any business or performs any character of work or service in the State;*
  - (2) *Contracts to supply services or things in this State;*
  - (3) *Causes tortious injury in the State by an act or omission in this State;*
  - (4) *Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the state or derives substantial revenue from services, or things used or consumed in the State.*<sup>9</sup>
- . . . (emphasis added).

Home Depot asserts that this Court can exercise direct personal jurisdiction over Krause Werk under §§3104(c)(1) and (c)(4). Section 3104(c)(1) addresses specific jurisdiction, which is at issue when the claims arise out of acts or omissions taking place

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<sup>8</sup>*LaNuova D & B*, 513 A.2d at 768.

<sup>9</sup>10 *Del. C.* §3104(c).

in Delaware.<sup>10</sup> The jurisdictional theory is then based on the relationship between the action and the forum. On the other hand, section 3104(c)(4) codifies general jurisdiction, which is premised on the relationship between the forum and a party.

Neither of these sub sections can be completely satisfied. Subsection (c)(1) is not satisfied because Krause Werk has taken no act related to Multi-Matics in Delaware. Subsection (c)(4) is not satisfied because Krause Werk does not quite meet any of criteria listed under this subsection; the amount of money received from Delaware sales and royalties is unknown and the “substantial revenue” standard cannot be satisfied. However, this Court may exercise personal jurisdiction through the stream of commerce theory, which confers jurisdiction “in products liability cases in which the product has traveled through an extensive chain of distribution before reaching the ultimate consumer.”<sup>11</sup> Although there is no basis to satisfy (c)(1) and (c)(4) individually, as a whole, I find that there is a sufficient basis for “dual jurisdiction”, which arises when (c)(1) and (c)(4) are partially satisfied.<sup>12</sup>

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<sup>10</sup>*Whitwell*, 2008 WL 1735370, at \*3.

<sup>11</sup>*Boone v. Oy Partek Ab*, 724 A.2d 1150, 1156-1158 (Del. Super. 1997).

<sup>12</sup>*Power Integrations, Inc. v. BCD Semiconductor Corp. & Shanghai BCD Semi Conductor Manufacturing Co.*, 2008 WL 1775415, at \*5 (D. Del. Aprl. 11, 2008). Plaintiff referenced the stream of commerce theory which is pertinent to the issue and which this order finds to be appropriate.

The development of the dual jurisdiction concept and application of the long-arm statute to jurisdiction based on the “stream of commerce” theory was extensively discussed in a recent Delaware District Court proceeding.<sup>13</sup> One of the challenges inherent in the stream of commerce theory is that it does not fit comfortably within any particular provision of 10 Del. C. §3104(c). The stream of commerce concept is based on specific jurisdiction theory, and it does not require a defendant to act in Delaware; however, (c)(1)—the only potentially applicable specific jurisdiction provision—requires an in-state act.

In *LaNuova*, the Delaware Supreme Court “recognized the potential viability of the concept of dual jurisdiction”<sup>14</sup>:

It is conceivable that a tort claim could enjoy a dual jurisdictional basis under (c)(1) and (c)(4) if the indicia of activity set forth under (c)(4) were sufficiently extensive to reach the transactional level of (c)(1) and there was a nexus between the tort claim and the transaction of business or performance of work.<sup>15</sup>

In *Boone v. Oy Partek Ab.*, the Court applied the stream of commerce theory: “when a manufacturer has sufficient general contacts with Delaware and the Plaintiffs’ claims arise out of those contacts, jurisdiction is appropriate under §3104(c)(1) and (c)(4).”<sup>16</sup>

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<sup>13</sup>*Id.*

<sup>14</sup>*Power Integrations*, 2008 WL 1775415, at \*5.

<sup>15</sup>*LaNuova D & B*, 513 A.2d at 768. n.3.

<sup>16</sup>*Boone*, 724 A.2d at 1157-1158 (quoting *LaVnuova D & B* (citation omitted)); See *Power Integrations, Inc.*, 2008 WL 1775415, at \*5-6.

The *Boone* Court, reconciled the stream of commerce theory with the Delaware statutory framework”.<sup>17</sup> However, this analysis should not “overemphasize §3104(c)(1) or (c)(4)”. Rather than emphasizing the level of general presence or act of manufacturer in State, the Court focused on the existence of defendant’s purpose or intent to serve Delaware market. In other words, if the defendant “purposefully shipped the accused product into the forum state through an established distribution channel, no more is usually required to establish specific jurisdiction.”<sup>18</sup>

Plaintiffs argued that “it is irrational to suppose that Krause Werk did not anticipate that ladders subject to the Agreement, which included use of Krause Werk’s designs, patents, and trademarks throughout North America, would be sold in Delaware.”<sup>19</sup> The fact that Home Depot is a national retailer and Krause Werk’s awareness of it shows that Krause Werk anticipated to be haled into the Delaware court. Additionally, Plaintiffs asserted that the insurance policy paid by Krause Werk, which also covers its subsidiary, Krause, confirms this expectation.

Home Depot cites *Wright v. American Home Products, Corp.* to support its argument that Krause Werk indeed had the purpose or intent to serve a national market,

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<sup>17</sup>*Power Integrations*, 2008 WL 1775415, at \*6.

<sup>18</sup> *Padcom, Inc.*, 2004 U.S. Dist. Lexis 9658, at \*13 (citing *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F. 3d 1558, 1564 (Fed. Cir.1994)).

<sup>19</sup> Pl.’s Answering Br., at 20.

including Delaware’s market, thus would support a dual jurisdictional basis.<sup>20</sup> In *Wright*, even though American companies manufactured and marketed a dangerous diet pill, the court focused on the “French defendants’ continuing involvement in the manufacture, distribution, regulation and use of the drugs they licensed the American entities to manufacture and sell.”<sup>21</sup> Further, the *Wright* Court used the active participation of French defendants in regulatory process to reflect the defendants’ purpose or intent to serve the U.S. market:

[T]he French defendants engaged in a years-long pattern of pushing their product into and throughout the U.S. market. And, their efforts were more than licensing. They were involved in introducing a product into a tightly-regulated market, a market regulated by the FDA. Not only were the French defendants aware of that but they helped in the process and participated in the ongoing nature of the regulatory process.<sup>22</sup>

Here, even though Krause manufactured and marketed the Multi Matic, Krause Werk was continuously involved in the manufacture, marketing and distribution. Multi Matic was only manufactured by Krause because Krause Werk granted the license to do so.<sup>23</sup> Like the licenses in *Wright*, which kept the foreign companies informed of FDA application and approval processes, the Agreement here has supplemented Krause Werk’s intimate involvement in the process to protect Krause Werk’s patent.<sup>24</sup> The Agreement provided that Krause participate with Krause Werk in improvements to the ladder. It also

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<sup>20</sup>*Wright v. American Home Products Corp.*, 768 A.2d 518 (Del. Super. 2000).

<sup>21</sup>*Id.* at 528.

<sup>22</sup>*Id.*

<sup>23</sup>*Wright*, 768 A.2d 518 at 532.

<sup>24</sup>*Id.* at 522.

was a segue with the Consumer Product Safety Commission. Krause Werk assisted Krause with its compliance obligations, and Krause continued to derive financial benefits from its royalties.

Krause Werk's close involvement with Krause is reflected by Guenther Krause's receipt of periodic reports from Krause regarding its operations and finances. As indicated before, Krause Werk engineered several changes to the MultiMatic. Guenther Krause also attended one of Home Depot's meetings in the U.S. in which distribution and marketing of Multi Matics was discussed. Giving Plaintiffs the benefit of all reasonable inferences, the function of Krause as wholly owned subsidiary under the close supervision of Krause Werk can be seen like that of a sales / marketing agent of Krause Werk in the United States, including in Delaware. Indeed, Krause solicited business everywhere.<sup>25</sup> Additionally, Home Depot is a national retailer, and no state was excluded when Krause agreed to distribute the Multi Matic to Home Depot.<sup>26</sup> Implicitly Krause Werk solicited business from Delaware.

The intent of Delaware's long arm statute is to "provide residents a means of redress against those not subject to personal service within the State" and "in order to effectuate this intent, this section should be construed liberally so as to provide

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<sup>25</sup>*Wright*, 768 A.2d at 530 (citing *Boone v. Oy Partek Ab*, 724 A.2d 1150 (Del. Super. 1997)).

<sup>26</sup>*Power Integrations, Inc.*, 2008 WL 1775415, at \*7 ("[I]t must be noted that a non-resident firm's intent to serve the United States market is sufficient to establish an intent to serve the Delaware market unless there is evidence that the firm intended to exclude from its marketing and distribution efforts some portion of the country that includes Delaware").

jurisdiction to the maximum extent possible.”<sup>27</sup> Similarly, the court in *Crucible, Inc. v. Stora Kopparbergs* observed that it is not fair to “allow a wrongdoing manufacturer to insulate himself from the long arm of the courts by using an intermediary or by professing ignorance of the ultimate destination of his products.”<sup>28</sup>

Krause Werk was closely involved with Krause’s manufacturing, distributing and marketing during its existence, and this type of control under the *Wright* case satisfies the purpose or intent threshold for jurisdictional purposes. Here, a Delaware resident was severely hurt while using the Multi-Matic. Circumstantially, Krause Werk desired profit from the national market, including Delaware. In the dual jurisdictional context, I find that Krause Werk exhibited an intent and purpose to serve the Delaware market under 10 Del. C. § 3104(c)(4). Further, its action resulted in the marketing of an allegedly defective ladder to Home Depot in Delaware that resulted in later serious injury to a citizen under 10 Del. C. § 3104(c)(1).

## **II. Due Process Clause**

To subject a non-resident defendant to a personal jurisdiction, due process requires minimum contacts with the forum state such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”<sup>29</sup> In *World-Wide*

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<sup>27</sup> *Boone*, 724 A.2d at 1156-57.

<sup>28</sup> *Crucible, Inc. v. Stora Kopparbergs Bergslags AB, D.C.Pa.*, 403 F.Supp. 9, 12 (W.D. Penn. 1975)(citing *Honeywell, Inc. v. Metz Appraterwerke*, 509 F.2d 1137 (7<sup>th</sup> Cir. 1975)).

<sup>29</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

*Volkswagen*, the United States Supreme Court found that foreseeability alone or mere likelihood that a product will find its way into the forum State is not enough for conferring personal jurisdiction.<sup>30</sup> Also, as elucidated in *Burger King Corp. v. Rudzewicz*, “jurisdiction is proper where the contacts of the defendant proximately result from actions by the defendant *himself* which create a substantial connection with the forum.”<sup>31</sup> To justify jurisdiction, a defendant should reasonably anticipate being haled into court in forum State based on his own conduct, which proximately creates substantial connection with the forum State.<sup>32</sup> Furthermore, conduct of the defendant indicating “an intent or purpose to serve the market in the forum State” is necessary.<sup>33</sup> As discussed in the previous section, Plaintiffs and Home Depot demonstrated that Krause Werk acted in an affirmative manner to purposefully avail itself of the privilege of conducting activities within the forum state, invoking the benefits and protection of its laws.<sup>34</sup> Both Plaintiffs

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<sup>30</sup> *Id.* at 296; *See also Hanson v. Denckla*, 357 U.S. 235 (U.S. 1958) (Florida courts cannot constitutionally exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State, notwithstanding it is foreseeable that the Settlor of Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there).

<sup>31</sup> *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

<sup>32</sup> *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 104 (1987); *See Mayhall v. Nempco, Inc.* 1994 Lexis 705 (Del. Super. July 29, 1994) (The court could not exercise personal jurisdiction over a manufacturer of a motorcycle brake drums, who did not maintain a license nor conduct business in the state; nor market or promote its products in the forum State).

<sup>33</sup> *Fischer v. Hilton*, 549 F. Supp. 389 (Del. 1982). (*citing Burger King Corp.*, 473 U.S. 462 (1985)).

<sup>34</sup> *Supra* at 1-17.

and Home Depot have successfully established sufficient minimum contacts between Krause Werk and the State of Delaware.<sup>35</sup>

The Due Process Clause requires courts to consider whether the exercise of personal jurisdiction would offend “traditional notions of substantial justice”.<sup>36</sup> The *World-Wide Volkswagen* Court considered several factors in determining this issue:

A court must consider the burden on the defendant, the interests of the forum state, and the plaintiff’s interest in obtaining relief. It must also weigh in its determination “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several state in furthering fundamental social policies.” (citation omitted).

The burden on Krause Werk of litigating this case in Delaware is minimal compared to Delaware’s and Plaintiffs’ significant interests. Although Krause Werk is a German based corporation, most of Krause Werk’s witnesses would be employees of Krause from Illinois. It is not difficult for them to travel and testify here. The State of Delaware has a significant interest in litigating this case because a Delaware citizen was severely injured by the Multi Matic ladder, which was purchased from a local Home Depot store. A similar result was reached elsewhere where Krause Werk unsuccessfully sought to dismiss a similar personal injury claim on jurisdictional grounds. Krause Werk

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<sup>35</sup>*Int’l Shoe Co. v. Washington*, 326 U.S. at 316 (quoting *Milikin v. Meyer*, 311 U.S. 457, 463, 85 L.Ed.278, 61 S. Ct. 339 (1940)).

<sup>36</sup>*See Luc v. Krause Werk GMBH & Co.*, 289 F.Supp.2d 1282 (D. Kan., 2003) (In *Luc*, the Court found personal jurisdiction on an equitable alter ego basis between Krause and Krause Werk. At oral argument, the parties did not believe that an avenue would be available given the separation of law and equity in the Delaware Court system); *See also Whelan v. Krause, Inc.*, C.A. No. 01-0783 (D.N.J. Mar.18, 2002) (In the litigation, the New Jersey District Court felt that the claims should be transferred to Illinois where general personal jurisdictions could be found under Illinois law); *Whelan v. Krause, Inc.*, No. 01-C-9963 (N.D. Ill. Jan. 5, 2004) (When transferred, the Illinois District Court ultimately found that personal jurisdiction existed and the suit could proceed there against Krause Werk under the law of the case doctrine).

is familiar with domestic law with the litigation background and a Delawarian should not be forced to travel to Germany to seek relief under an unfamiliar civil code system. Also, it is efficient to try this case in Delaware because, other than the representatives of Krause Werk, both Plaintiffs and Home Depot are Delaware residents.

I conclude that exercising personal jurisdiction over Krause Werk will not offend “traditional notions of fair play and substantial justice”. Minimum contacts have been established between Krause Werk and this State. Delaware’s and Plaintiffs’ interests outweigh Krause Werk’s slight burden to litigate in the Superior Court. It should not come as an unfair surprise to Krause Werk that its designed ladder was successfully marketed in Delaware and that it should have to answer for the consequences.

### **CONCLUSION**

This Court has jurisdiction under 10 Del. C. § 3104(c)(1), (4). Minimum contacts have been demonstrated to show the exercise of personal jurisdiction is consistent with fair play and substantial justice. Consequently, Krause Werk’s Motion to Dismiss is denied.

**IT IS SO ORDERED.**

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Richard F. Stokes, Judge

cc: Prothonotary  
William D. Fletcher, Jr., Esquire

B. Brian Brittingham, Esquire,  
Sean T. O'Kelly, Esquire  
James M. Kron, Esquire