

1 E. SCOTT DOSEK #012114
 2 JOHN P. PASSARELLI #16018 (NE)
 3 KUTAK ROCK LLP
 4 Suite 300
 5 8601 North Scottsdale Road
 6 Scottsdale, AZ 85253-2742
 7 (480) 429-5000
 8 Facsimile: (480) 429-5001

9 *Attorneys for Plaintiff / Counterdefendant /*
 10 *Counterclaimant Soilworks, LLC*

11 **UNITED STATES DISTRICT COURT**
 12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 SOILWORKS, LLC, an Arizona
 14 corporation,

15 Plaintiff / Counterdefendant /
 16 Counterclaimant,

17 v.

18 MIDWEST INDUSTRIAL SUPPLY, INC.,
 19 an Ohio corporation authorized to do
 20 business in Arizona,

21 Defendant / Counterclaimant /
 22 Counterdefendant.

NO.: 2:06-CV-2141-DGC

**SOILWORKS, LLC'S RESPONSE TO
 MIDWEST INDUSTRIAL SUPPLY,
 INC.'S MOTION *IN LIMINE* (DOC.
 #103) TO BAR EVIDENCE
 CONCERNING SOILWORKS, LLC'S
 COSTS**

(Before the Honorable David G. Campbell)

23 Midwest's Motion *in Limine* to Bar Evidence Concerning Soilworks, LLC's Costs
 24 ("Motion") is disingenuous and must be denied. Midwest's Motion, on its face, along with
 25 the Exhibit attached thereto, demonstrates why its Motion must be denied. The discovery
 26 requests attached to Midwest's Motion are clearly overbroad, overreaching and improper
 27 under the Federal Rules of Civil Procedure. Midwest sought information with respect to
 28 Soilworks' business that went far beyond the scope of the dispute between the two parties
 inasmuch as Midwest never even attempted to limit its discovery requests to the Soilworks'
 products which are at issue in this case, namely Durasoil, Soiltac, and Gorilla Snot.

Soilworks properly interposed objections to these discovery requests and Midwest did
 not challenge those objections.

Further, and perhaps more importantly, Midwest was granted access to, and
 photocopied, virtually every piece of paper maintained by Soilworks in all of its files at its

1 only office in Gilbert, Arizona. In addition, Soilworks computed its sales and costs of good
2 sold for its Soiltac and Gorilla Snot products for the years 2003 through 2007, and this
3 information has been provided to Midwest.

4 For reasons set forth in Soilworks' own Motions *in Limine*, none of Soilworks' sales
5 information is relevant to any of the remaining issues in this case, and should not be offered
6 into evidence in any event. If, however, Soilworks' sale information is admitted, its costs
7 and expenses related to such sales must also be admitted.

8 Dated this 24th day of September, 2008.

9 KUTAK ROCK LLP

10 By _____ /s E. Scott Dosek
11 E. Scott Dosek, Esq.
12 John P. Passarelli, Esq.
13 8601 North Scottsdale Road #300
14 Scottsdale, AZ 85253-2742
15 *Attorneys for Plaintiff Soilworks, LLC*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2008, the foregoing **SOILWORKS, LLC'S RESPONSE TO MIDWEST'S MOTION *IN LIMINE* TO BAR EVIDENCE CONCERNING SOILWORKS, LLC'S COSTS** was filed electronically. Notice of this filing will be sent to all parties by operations of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s Amy S. Fletcher
Amy S. Fletcher