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August 24, 2010

**Via Hand Delivery**

Hon. Blake Hawthorne  
Clerk, Supreme Court of Texas  
201 West 14th Street, Room 104  
Austin, TX 78701

Re: No. 2009-0048; *Motor Coach Industries Mexico, S.A. de C.V., et al. v. James Hinton, Individually and as Representative of the Estate of Dolores Hinton, Deceased, et al.*; In the Supreme Court of Texas

Dear Mr. Hawthorne:

Respondents/Cross Petitioners James Hinton, *et al.* ("Hinton") respectfully submit this letter brief to apprise the Court of recent developments that are germane to the federal preemption issue before the Court in this case and to briefly respond to MCI's recent post-submission letter brief. Please forward a copy of this letter to the justices.

On August 18, 2010, NHTSA published a Notice of Proposed Rule Making ("NPRM") that calls for mandatory, three-point seat belts for passenger seats in motor coaches like the one at issue in this case.<sup>1</sup> A copy of the August 18, 2010 NPRM is attached. Both parties discussed in their briefs a report issued by NHTSA in 2007, "NHTSA's Approach to Motor Coach Safety,"<sup>2</sup> which led to the release in November of 2009 of the Department of Transportation's "Motor Coach Safety Plan."<sup>3</sup> NHTSA's proposed rule fulfills one of the "priority action items" listed in the 2009 Motor Coach Safety Plan: "Initiate rulemaking to require the installation of seat belts on motorcoaches to improve occupant protection." Hinton's claims are consistent with the proposed rule.

<sup>1</sup> 75 Fed. Reg. 50958 (Aug. 18, 2010).

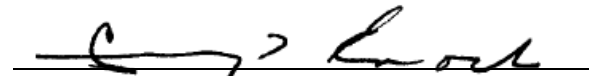
<sup>2</sup> Appendix 8, MCI's Petition for Review.

<sup>3</sup> See "Motor Coach Safety Action Plan," dated November 16, 2009, p. 3. Hinton has requested that the Court take judicial notice of the Safety Action Plan. (Hinton's Request to Take Judicial Notice, filed on December 11, 2009).

Hinton respectfully requests the Court take judicial notice of NHTSA's August 18, 2010 Notice of Proposed Rulemaking, 75 Fed. Reg. 50958 (Aug. 18, 2010). NHTSA's NPRM further demonstrates that Hinton's state court product liability claim does not conflict with federal law.

Finally, MCI filed a letter brief on August 11, 2010, regarding the South Carolina Supreme Court's recent decision in *Priester v. Cromer*, No. 26846, 2010 WL 2990978 (S.C., August 2, 2010). *Priester* conflicts with the Fifth Circuit's decision in *O'Hara v. General Motors Corp.*, 508 F.3d 753 (5th Cir. 2007), and offers no new arguments. *O'Hara* remains the better reasoned decision. And *O'Hara's* reasoning is consistent with the position of the United States, the Department of Transportation, and NHTSA. (See Hinton's Post-Submission Letter Brief dated June 10, 2010, discussing *Williamson v. Mazda Motor of America, Inc.*, now pending before the United States Supreme Court).

Respectfully submitted,



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