

6 9008-6

69008-6

NO. 69008-6

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAY 30 PM 1:47

PACCAR INC,
Petitioner

v.

CASSIE LISBY, individually, and as Personal Representative
of THE ESTATE OF CLAYTON LISBY, and
as legal guardian for her minor child J.L.,

Respondent.

BRIEF OF RESPONDENT

Mark G. Olson, WSBA # 17846
Law Offices of Mark G. Olson
2825 Colby Avenue, Suite 302
Everett, WA 98201
(425) 388-5516

Eric D. Pearson (Admitted Pro Hac
Vice)
Heygood, Orr & Pearson
2331 W. Northwest Highway, 2nd
Floor
Dallas, TX 75220
(214) 237-9001

Attorneys for Respondent

TABLE OF CONTENTS

INTRODUCTION.....1

ARGUMENT.....2

 I. Washington trial courts have broad discretion
 to impose conditions on a dismissal for
 forum non conveniens.....2

 II. Piper and its progeny do not prohibit a court
 from considering whether a plaintiff will be denied
 any remedy at all if the case is dismissed on forum
 non conveniens grounds.....6

 A. A court determining a motion to dismiss under
 the doctrine of forum non conveniens may
 properly consider whether the plaintiff would be
 denied any remedy at all in the alternative forum.....6

 B. Courts ruling on forum non conveniens motions
 to dismiss frequently must determine whether a
 statute of limitations would deny the plaintiff a
 remedy in the alternative forum.....8

 C. There is no principled reason for treating statutes
 of repose differently from statutes of limitations.....10

 III. Petitioner's entire analysis is fundamentally
 flawed for the simple reason that the trial court
 did not make a choice of law determination.....14

CONCLUSION.....15

TABLE OF CASES

WASHINGTON CASES

<i>Boyer v. Darcy</i> , 2002 Wash. App. LEXIS 259 (Feb. 14, 2002).....	3, 7
<i>Hill v. Jawanda Transport, Ltd.</i> , 96 Wn. App. 537 (1999).....	10, 13, 15
<i>Int'l Sales & Lease, Inc. v. Seven Bar Flying Serv., Inc.</i> , 12 Wn. App. 894 (1975).....	2, 4
<i>Johnson v. Spider Staging Corp.</i> , 87 Wn.2d 577 (1976).....	13
<i>Klotz v. Dehhoda</i> , 134 Wn. App. 261 (2006).....	4
<i>Myers v. Boeing Co.</i> , 115 Wn.2d 123 (1990).....	3, 5, 13
<i>Sales v. Weyerhaeuser Co.</i> , 163 Wn.2d 14 (2008).....	2, 3, 7
<i>Weiland v. Gordon</i> , 1999 Wash. App. LEXIS 178 (Feb. 1, 1999).....	13
<i>Wolf v. Boeing Co.</i> , 61 Wn. App. 316 (1991).....	5

OTHER CASES

<i>In re Air Crash Disaster Near Bombay, India on January 1, 1978</i> , 531 F. Supp. 2d 1173 (W.D. Wash 1982).....	9, 10
<i>Carijano v. Occidental Petroleum Corp.</i> , 643 F.3d 1216 (9th Cir. 2011).....	4, 8, 9

<i>Chang v. Baxter Healthcare Corp.</i> , 599 F.3d 728 (7th Cir. 2010).....	9, 10
<i>Crystal Co. v. Inchape Shipping Servs.</i> , 1999 U.S. App. LEXIS 34131 (9 th Cir. Dec. 22, 1999).....	9
<i>Dhaliwal v. Vanguard Pharm. Machinery, Inc.</i> , 2009 U.S. Dist. LEXIS 98087 (S.D. Tex. Oct. 22, 2009).....	8
<i>Downs v. 3M Co.</i> , 2010 R.I. Super. LEXIS 1 (R.I. Sup. Ct. Jan. 5, 2010).....	12, 13
<i>FIL Leveraged US Government Bond Fund Limited v. Mansfield</i> , 1998 U.S. App. LEXIS 17586 (9th Cir. July 29, 1998).....	4
<i>Loya v. Starwood Hotels & Resorts Worldwide, Inc.</i> , 583 F.3d 656 (9th Cir. 2009).....	9
<i>Manfredi v. Johnson Controls, Inc.</i> , 487 N.W.2d 475 (Mich App. 1992).....	11, 12
<i>Norex Petr. Ltd. v. Access Indus., Inc.</i> , 416 F.3d 146 (2d Cir. 2005).....	8
<i>Piper Aircraft Co. v. Reyno</i> , 454 U.S. 235, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981).....	2, 6, 7
STATUTES	
RCW 7.72.060.....	5, 6, 14

INTRODUCTION

This is a product liability lawsuit arising out of the death of Clayton Lisby, who was killed when the water truck he was driving rolled over and the cab of the truck collapsed. The truck he was driving was designed, manufactured, marketed and sold by PACCAR, Inc. (“Petitioner”), a Delaware corporation with its principal place of business in Bellevue, Washington. Petitioner answered the suit and filed a motion seeking dismissal of the case under the doctrine of forum non conveniens. Petitioner alleged that Texas, where the accident at issue occurred, was an adequate alternative forum. CP 50-53.

The trial court granted Petitioner’s motion on the condition that it agree to waive any applicable statute of limitations defenses. CP 335. Concerned that Petitioner would nonetheless argue that any subsequent Texas suit was time-barred under the Texas statute of repose, Respondent filed a motion requesting that the trial court also condition dismissal on Petitioner’s waiver of the Texas statute of repose. CP 339-351. The trial court granted the motion, entering a dismissal order that required Petitioner to stipulate to application of the Washington statute of repose. CP 361-62. Petitioner then appealed.

The trial court’s Order was not an abuse of discretion. Washington trial courts have broad discretion to impose conditions on a dismissal for

forum non conveniens. *Piper* and its progeny do not prohibit a court from considering whether a plaintiff will be denied any remedy at all if the case is dismissed on forum non conveniens grounds. Rather, case law clearly holds that when the plaintiff's claim would be time-barred in the alternative forum, that forum is not adequate as a matter of law. As a result, trial courts frequently condition forum non conveniens dismissals on the defendant's waiver of any statute of limitations defense. There is no principled reason to treat statutes of repose differently when their preclusive effect is essentially the same.

ARGUMENT

I. Washington trial courts have broad discretion to impose conditions on a dismissal for forum non conveniens.

A trial court's determination of whether to dismiss on the basis of forum non conveniens "necessarily requires the court to consider whether the case will proceed in the alternative forum." *Sales v. Weyerhaeuser Co.*, 163 Wn.2d 14, 21 (2008). Washington trial courts have broad authority to impose conditions on a dismissal for forum non conveniens intended to ensure that the case will actually proceed in the alternative forum. See *Int'l Sales & Lease, Inc. v. Seven Bar Flying Serv., Inc.*, 12 Wn. App. 894, 899 (1975) (recognizing that forum non conveniens "permit[s] a court which has assumed jurisdiction to attach conditions to

the removal of the cause to a more convenient forum”). The conditions generally are geared toward ensuring that the case is actually litigated in the alternate forum and is not summarily dismissed on a legal or procedural ground:

The efficacy of forum non conveniens depends on the court's power to subject dismissal on the fact that the parties will litigate in the alternative forum. The stipulation requirement gives meaning to the court's determination that a specific forum offers a better location for the litigation of the case.

Sales, 163 Wn.2d at 21.

Washington trial courts have routinely imposed conditions on dismissal intended to ensure that the alternate forum is actually an “adequate” one. *See, e.g., Myers v. Boeing Co.*, 115 Wn2d 123, 127 (1990) (“Conditions of the dismissal were that Boeing submit to jurisdiction in Japan, waive any statute of limitations defense, admit liability for compensatory damages, and not oppose recognition in Japan of the judgment in liability entered on July 24, 1987.”); *Sales*, 163 Wn.2d at 22 (trial court had discretion to condition dismissal on defendant’s stipulation to not remove the action to federal court once the action was re-filed); *Boyer v. Darcy*, No. 20044-2-III, 2002 Wash. App. LEXIS 259 at *6-12 (Feb. 14, 2002) (affirming forum non conveniens dismissal order

that imposed the conditions that defendants “(1) submit to the jurisdiction of a British Columbia court; (2) waive their statute of limitations defense; and (3) admit liability for the accident.”); *Klotz v. Dehhoda*, 134 Wn. App. 261, 264 (2006) (forum non conveniens dismissal order conditioned on “the defendant admit[ting] liability and that a British Columbia court accept[ing] jurisdiction”); *Int’l Sales & Lease, Inc. v. Seven Bar Flying Svc., Inc.*, 12 Wn. App. 894, 899 (1975) (forum non conveniens dismissal condition on the following: defendant “pays plaintiff, International Sales, \$1,264.06 on account; (2) pays plaintiff reasonable attorney's fees expended to date in this court and in the superior court, said fees to be fixed by the trial court; (3) pays said \$1,264.06 and fees as fixed within 60 days after the filing of the formal order; and (4) agrees to reimburse the plaintiff for reasonable attorney's fees and costs in New Mexico, should the latter recover more than \$ 1,264.06 in this suit.”); *see also Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1234-35 (9th Cir. 2011) (district court erred because it did not even consider conditioning forum non conveniens dismissal on Defendant’s (1) agreement to satisfy any judgment rendered in Peruvian court; (2) waiver of statute of limitations defense; and (3) agreement to comply with United States discovery rules); *FIL Leveraged US Government Bond Fund Limited v. Mansfield*, No. 97-56414, 1998 U.S. App. LEXIS 17586, at *8 (9th Cir. July 29, 1998)

(affirming the “myriad of conditions” imposed by the district court in a forum non conveniens dismissal order). These cases demonstrate that Washington courts have wide discretion to impose conditions that ensure a case actually proceeds in the alternative forum.

Conditions imposed by a forum non conveniens dismissal order “are within the sound discretion of the trial court” and are reviewed solely for an abuse of discretion. *Wolf v. Boeing Co.*, 61 Wn. App. 316, 329 (1991); *see also Myers v. Boeing Co.*, 115 Wn. 2d 123, 128 (1990). In this case, the trial court imposed the condition that Petitioner agree to waive the Texas statute of limitations and the Texas statute of repose. This condition is far less restrictive than many of the conditions that Washington’s courts have applied in the past (such as a condition that a defendant stipulate to liability) and was done to ensure that the case actually proceeds in Texas as opposed to being promptly dismissed on repose grounds.¹ Because the trial court was well within its authority to impose the condition, there was no abuse of discretion.

¹ In this case there is a significant difference between Washington’s statute of repose (under which Respondent’s claims are not barred) and Texas’s statute of repose (under which it appears possible that Respondent’s claims against Defendant may be barred). Washington’s statute of repose in a products liability case is generally based on the useful life of the product, Wash Code § 7.72.060(1), whereas Texas has a 15-year limitation with a few minor exceptions, none of which are likely present here, Tex. Civ. Prac. & Rem. Code § 16.012(b). Washington also has a rebuttable presumption that if harm occurs more than 12 years after the time of delivery, then the harm occurred after the product’s useful

II. *Piper* and its progeny do not prohibit a court from considering whether a plaintiff will be denied any remedy at all if the case is dismissed on forum non conveniens grounds.

A. A court determining a motion to dismiss under the doctrine of forum non conveniens may properly consider whether the plaintiff would be denied any remedy at all in the alternative forum.

Petitioner asserts that the trial court erred because “plaintiffs may not defeat a motion to dismiss on forum non conveniens grounds merely by showing that the substantive law to be applied in the alternative forum would be less favorable to the plaintiffs than that of their chosen forum.” Brief of Petitioner at 10. While this is a correct statement of the law, it is simply inapplicable to the facts of this case. Here, Respondent never suggested that dismissal was inappropriate simply because the law in Texas might be less favorable to Respondent than the law in Washington. Rather, Respondent argued that the case would likely not be litigated in Texas unless the court required Petitioner to waive its statute of repose defense just as it had required Petitioner to waive its statute of limitations defense:

life, but that presumption can be overcome by a preponderance of the evidence. Wash Code § 7.72.060(2). From what little and incomplete discovery has been conducted to date, it appears that the truck at issue was manufactured in 1990, and thus was likely sold some time shortly thereafter. (Defendant PACCAR Inc.’s Responses to Plaintiff’s Interrogatories No. 4.) Under Texas’s statute of repose, Respondent’s claims would likely be barred, whereas Washington’s statute of repose would allow Respondent to establish that the incident in question occurred during the product’s useful life.

It appears from the Court's ruling that the Court contemplated Plaintiff being able to pursue her cause of action in Texas, and if the Order is not amended to clarify that the dismissal is conditional upon Defendant agreeing to waive all limitation defenses (including the statute of repose), then the Plaintiff's ability to pursue her claim in Texas may well be precluded. Surely that is not the outcome intended by this Court. To ensure that Defendant actually litigates this case in Texas and does not use the *forum non conveniens* process for gamesmanship purposes, the Court should amend the Order to specify that dismissal is conditioned on Defendant waiving all limitations defenses, including any statute-of-repose defense.

CP 341.

Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) and its progeny stand for the proposition that the mere presence of more favorable law in the plaintiff's chosen forum cannot serve as a basis for denying a motion to dismiss on forum non conveniens grounds. Those cases, do not, however, prohibit a court from considering whether a plaintiff will be denied any remedy at all if the case is dismissed on forum non conveniens grounds:

The initial question in the forum non conveniens analysis is whether there is an appropriate alternative forum for the dispute. This requirement is satisfied if the alternative forum does not pose a danger that the plaintiff will be deprived of *any* remedy or be treated unfairly.

Boyer v. Darcy, No. 20044-2-III, 2002 Wash. App. LEXIS 259 at *6-12 (Feb. 14, 2002); *see also Sales v. Weyerhaeuser Co.*, 163 Wn.2d 14, 21 (2008) (in determining whether to dismiss on the basis of forum non

conveniens, trial court must “consider whether the case will proceed in the alternative forum,” whether “the parties will litigate in the alternative forum” and whether the alternative forum can “adjudicate the case.”); *Norex Petr. Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 159 (2d Cir. 2005) (“We here clarify that a case cannot be dismissed on grounds of forum non conveniens unless there is presently available to the plaintiff an alternative forum that will permit it to litigate the subject matter of its dispute.”); *Dhaliwal v. Vanguard Pharm. Machinery, Inc.*, Civil Action H-08-2452, 2009 U.S. Dist. LEXIS 98087 at *5 (S.D. Tex. Oct. 22, 2009) (“While an adequate forum does not require the same benefits of an American court, it does require the ability to bring suit in the alternative forum.”).

B. Courts ruling on forum non conveniens motions to dismiss frequently must determine whether a statute of limitations would deny the plaintiff a remedy in the alternative forum.

In order to ensure that a plaintiff is not denied any remedy at all, courts ruling on forum non conveniens motions to dismiss frequently must determine whether a statute of limitations would deny the plaintiff a remedy in the alternative forum. *See Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1235 (9th Cir. 2011) (“The danger that the statute of limitations might serve to bar an action is one of the primary reasons for the limitation on the court’s discretion with respect to the application of

the doctrine of forum non conveniens.”) (internal quotation marks and citation omitted). When the suit would be time-barred in the alternative forum, that forum is inadequate as a matter of law. *See, e.g., In re Air Crash Disaster Near Bombay, India on January 1, 1978*, 531 F. Supp. 2d 1173, 1181-82 (W.D. Wash 1982) (concluding no alternative forum existed when claims would be barred by statute of limitations in proposed alternative forum); *Chang v. Baxter Healthcare Corp.*, 599 F.3d 728, 736 (7th Cir. 2010) (“[I]f the plaintiff’s suit would be time-barred in the alternative forum, his remedy there is inadequate”). A court granting a motion to dismiss in such circumstances is required to condition the dismissal on the defendant’s agreement to waive its statute of limitations defense. *See, e.g., Crystal Co. v. Inchape Shipping Servs.*, No. 98-16783, 1999 U.S. App. LEXIS 34131 at *4 (9th Cir. Dec. 22, 1999) (“We affirm the dismissal on grounds of forum non conveniens and remand for entry of a conditioned dismissal. The dismissal should be conditioned on all defendants agreeing to . . . waive any applicable statute of limitations”); *Carijano*, 643 F.3d at 1235 (“We have affirmed *forum non conveniens* dismissals that addressed statute of limitations concerns by requiring waiver in the foreign forum.”); *Loya v. Starwood Hotels & Resorts Worldwide, Inc.*, 583 F.3d 656, 664 (9th Cir. 2009) (finding no abuse of discretion where the district court conditioned dismissal on the defendant’s

agreement to accept service “and waive any statute of limitations defenses.”).

C. There is no principled reason for treating statutes of repose differently from statutes of limitations.

Petitioner, as the party seeking dismissal, had the burden of demonstrating the existence of an adequate alternative forum. *See, e.g., Hill v. Jawanda Transport, Ltd.*, 96 Wn. App. 537, 540 (1999) (“A defendant bears the burden of proving an adequate alternative forum exists.”). A forum cannot be considered “adequate” (or even “available”) when the plaintiff’s claim would be time-barred in that forum. *See, e.g., In re Air Crash Disaster Near Bombay, India on January 1, 1978*, 531 F. Supp. 2d 1175, 1181-82 (W.D. Wash 1982) (concluding no alternative forum existed when claims would be barred by statute of limitations in proposed alternative forum); *Chang v. Baxter Healthcare Corp.*, 599 F.3d 728, 736 (7th Cir. 2010) (“[I]f the plaintiff’s suit would be time-barred in the alternative forum, his remedy there is inadequate”).

In the instant case, Petitioner has not challenged the trial court’s Order to the extent it required Petitioner to waive any statute of limitations defense it might have in Texas; in fact, Petitioner recognizes that was a “correct ruling.” Brief of Petitioner at 6. It asserts, however, that the trial court erred by requiring Petitioner to similarly waive the Texas statute of

repose by stipulating to the applicability of the Washington statute of repose. But Petitioner offers no principled justification for why a statute of limitations and a statute of repose should be treated so differently, especially given its admission that statutes of repose “terminat[e] even the right to bring an action.” Brief of Petitioner at 6. Because the preclusive effect of a statute of repose is as strong as, if not stronger than, the preclusive effect of a statute of limitation, there is no justifiable reason why a court can properly order a party to waive one but not the other. In fact, at least two courts have held that the waiver of a statute of repose, just like the waiver of a statute of limitations, is a permissible condition of dismissing a case under the doctrine of forum non conveniens.

In the case of *Manfredi v. Johnson Controls, Inc.*, 487 N.W.2d 475 (Mich App. 1992), a plaintiff injured by a mold machine while working in Georgia filed suit in Michigan against the machine’s manufacturer. The defendant answered and filed a motion to dismiss on the basis of forum non conveniens, which the court granted. On appeal, the plaintiff argued that Georgia was not an adequate alternative forum because his claim would likely be barred by Georgia’s ten-year statute of repose, an issue he first raised in his motion for reconsideration before the trial court. *Id.* at 477. The appellate court held that the availability of an alternative forum was a “critical issue” and that the trial court had failed to properly

consider whether Georgia was an alternative forum in light of its statute of repose. The court of appeals reversed the dismissal and remanded to the trial court to conduct a hearing to determine whether Georgia was in fact an alternative forum. *Id.* at 479.

In *Downs v. 3M Co.*, C.A. No. PC 06-1710, 2010 R.I. Super. LEXIS 1 (R.I. Sup. Ct. Jan. 5, 2010), a consolidated case was filed in Rhode Island state court by numerous plaintiffs who alleged they had been exposed to the defendants' asbestos products. The defendants filed motions to dismiss two of the consolidated claims on forum non conveniens grounds. They claimed that Colorado and Nebraska were alternative forums because the plaintiff's respective asbestos exposure occurred in those states. The court agreed. However, it clarified that if it were to dismiss the case in which the defendants asserted that Nebraska was an adequate alternative forum, it would do so only if the defendants agreed to waive Nebraska's statute of repose:

The Defendants in the *Downs* matter contend that the statute of repose in Nebraska would bar this litigation. Were this Court to dismiss the *Downs* case for forum non conveniens, Defendants' voluntary waiver of that limitation would be a requirement, as would the waiver of any applicable statutes of limitations in both of these matters. The Court's finding that the alternative forums are available and adequate assumes, *arguendo*, that such waivers would be made.

Downs, 2010 R.I. Super. LEXIS 1 at *24. The trial court here was well within its rights in imposing a similar condition on the dismissal of this case.

III. Petitioner’s entire analysis is fundamentally flawed for the simple reason that the trial court did not make a choice of law determination.

Petitioner devotes an extensive amount of its briefing to discussing Washington authority that recognizes that as a matter of practice choice of law determinations are often left to the new forum. As a preliminary matter, there is nothing in those authorities that suggests a trial court is prohibited from ever considering a choice of law question or its impact on the litigation, and there is certainly nothing to suggest that a trial court is flatly precluded from imposing as a condition of dismissal that a defendant waive the statute of repose. *See, e.g., Johnson v. Spider Staging Corp*, 87 Wn.2d 577, 579 (1976) (court “need not reach the choice of law issue”); *Myers*, 115 Wash. at 1278-79 (holding merely that choice of analysis was separate from balance of *forum non conveniens* factors); *Weiland v. Gordon*, No. 41443-7-I, 1999 Wash. App. LEXIS 178, at *9 (Feb. 1, 1999) (holding only that “*forum non conveniens* and choice of law analysis are separate inquires”); *Hill v. Jawanda Transport, Ltd.*, 96 Wn. App. 537, 546 (1999) (holding choice of law analysis was “not a necessary element” of the *forum non conveniens* doctrine).

Petitioner asserts that the trial court “erred in ruling on the choice of law issue” because statutes of repose are substantive, because choice of law rulings should be left to the new court following a forum non conveniens dismissal and because the parties did not fully brief the issue. Brief of Petitioner at 4-10. Petitioner’s entire focus is misplaced, however, because the trial court in this case **did not make a choice of law determination**. That is, the trial court did not make a substantive, affirmative ruling regarding which state’s statute of repose applies. Brief of Petitioner at 10 (noting that “the court did not actually engage in any choice of law analysis.”). The trial court merely imposed as a condition of dismissal that Petitioner **stipulate** that Washington’s statute of repose applies if this case proceeds in Texas so as to ensure the case is actually litigated there. CP 362 (“Dismissal is conditioned upon Defendant PACCAR, Inc.’s waiver of statute of limitations and stipulation that Washington’s statute of repose, RCW 7.72.060, shall apply in the proceeding in Texas.”); Brief of Petitioner at 2 (claiming that the trial court erred by “requiring PACCAR to stipulate” that Washington’s statute of repose will apply in Texas). Although it took the form of a stipulation, the practical effect of the trial court’s Order was to require Petitioner to waive the Texas statute of repose just as it required Petitioner to waive the Texas statute of limitations, a condition it does not contest. As with any

other condition imposed on a forum non conveniens dismissal, Petitioner can refuse to accept the condition and litigate the case in Washington. In such an instance, Petitioner will have the opportunity to argue which state's statute of repose should apply, something it could not possibly do if the trial court had actually made a choice of law determination as Petitioner suggests.²

CONCLUSION

For all of the reasons set forth above, Petitioner has failed to carry its burden of showing that the trial court's Order constituted an abuse of discretion. As a result, the Court should deny Petitioner's petition and affirm the trial court's Order.

Respectfully submitted,



Eric D. Pearson (Admitted Pro Hac Vice)
Heygood, Orr & Pearson
2331 W. Northwest Highway, 2nd Floor
Dallas, TX 75220
(214) 237-9001

Attorneys for Plaintiff/Respondent

² To the extent there is some choice of law aspect to the trial court's decision, even the authorities cited by Petitioner recognize that choice of law has some relevance in a forum non conveniens analysis. *Hill v. Jawanda Transport*, 96 Wash. App. 537, 546 (1999) (a "choice of law question informs, but does not govern a trial court's forum non conveniens dismissal.").

CERTIFICATE OF SERVICE

I certify that I mailed, or caused to be mailed, a copy of the foregoing BRIEF OF RESPONDENT postage prepaid, via U.S. mail on the 29th day of May, 2013 to all counsel of record at the following addresses:

Counsel for Petitioner:

Kenneth W. Masters
Masters Law Group, PLLC
241 Madison Avenue North
Bainbridge Is, WA 98110

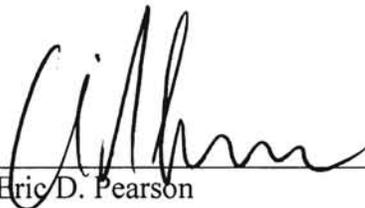
Pamela T. Tonglao
PACCAR, Inc.
777 106th Avenue NE
Bellevue, WA 98004

J. Bradley Powell
Sanford G. Hooper
J. Banks Sewell
Lightfoot, Franklin, White, LLC
400 20th Street North
Birmingham, AL 35203

Co-Counsel for Respondent:

Mark G. Olson
Law Offices of Mark G. Olson
P.O. Box 836
Everett, WA 98206

Marty L. Matthews
Law Offices of Marty Matthews
5420 LBJ Freeway, Suite 300
Dallas, TX 75240


Eric D. Pearson