

**No. 21-10994**

---

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

JOHN D. CARSON,  
*Plaintiff-Appellant,*

v.

MONSANTO COMPANY,  
*Defendant-Appellee.*

---

On Appeal from the United States District Court  
for the Southern District of Georgia,  
No. 4:17-cv-00237-RSB-CLR (Baker, J.)

---

**MOTION TO CONSIDER PREVIOUSLY-FILED BRIEF OF *AMICI  
CURIAE* IN CONNECTION WITH THE RENEWED PETITION FOR  
REHEARING *EN BANC***

---

*Amici Curiae* The Chamber of Commerce of the United States of America (the “Chamber”), the Pharmaceutical Research and Manufacturers of America (“PhRMA”), and the Product Liability Advisory Council, Inc. (“PLAC”) (together, “*Amici*”) respectfully move the Court to consider, when deciding the Renewed Petition for Rehearing *En Banc* filed by Appellee Monsanto Company on November 4, 2022, the brief previously filed by *Amici* (with leave of this Court) in support of Monsanto’s initial Petition for Rehearing. In support of this motion and in demonstration of good cause, *Amici* state as follows:

1. On July 12, 2022, a panel of this Court issued an opinion reversing the judgment of the district court. On August 2, 2022, Monsanto filed a Petition for

Rehearing *En Banc* (the “Initial Petition”). On August 9, 2022, *Amici* filed an unopposed motion for leave to file a brief in support of Monsanto’s Initial Petition. On September 6, 2022, the Court granted the motion and on the same date, the brief of *Amici* was filed. On October 28, 2002, the panel vacated its opinion and substituted a new opinion, thus mooting the then-pending Initial Petition.

2. On November 4, 2022, Monsanto filed a Renewed Petition for Rehearing *En Banc* (the “Renewed Petition”), in which it made the same fundamental points it made in its Initial Petition.

3. In the view of *Amici*, the panel’s substitute opinion raises the same concerns as its original opinion, and the points raised in the brief previously filed by *Amici* remain applicable to the substitute opinion and the Renewed Petition. Accordingly, *Amici* respectfully request that the Court, in deciding whether to grant the Renewed Petition, consider the brief previously filed by *Amici* and available to the Court in the docket of this case (See Docket Entry for September 6, 2022, 1:39 PM). *Amici* suggest that the Court should do so for the same good cause that persuaded the Court to grant *Amici* leave to file the brief.

### **CONCLUSION**

*Amici* respectfully urge the Court to consider the brief previously filed by *Amici* in support of the Initial Petition, and for the reasons set forth in that brief and in the Renewed Petition, grant the Renewed Petition.

Dated: November 14, 2022,

Respectfully submitted,

ANDREW R. VARCOE  
JENNIFER B. DICKEY  
U.S. CHAMBER LITIGATION CENTER  
1615 H Street, NW  
Washington, DC 20062

JAMES C. STANSEL  
MELISSA B. KIMMEL  
THE PHARMACEUTICAL RESEARCH AND  
MANUFACTURERS OF AMERICA  
950 F Street, NW, Suite 300  
Washington, DC 20004

s/ William R. Stein  
WILLIAM R. STEIN  
HUGHES HUBBARD & REED LLP  
1775 I Street, NW  
Washington, DC 20006  
(202) 721-4600  
william.stein@hugheshubbard.com

THOMAS H. LEE  
THEODORE V.H. MAYER  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, NY 10004  
thomas.lee@hugheshubbard.com

*Counsel for Amici Curiae Chamber  
of Commerce of the United States of  
America, The Pharmaceutical  
Research and Manufacturers of  
America, and the Products Liability  
Advisory Council, Inc.*

## CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 27(d)(2). This document contains 361 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point, Times New Roman font.

Dated November 14, 2022

s/ William R. Stein

WILLIAM R. STEIN

HUGHES HUBBARD & REED LLP

1775 I Street, NW

Washington, DC 20006

(202) 721-4600

william.stein@hugheshubbard.com

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on November 14, 2022, I electronically filed the foregoing Motion with the Clerk of Court for the United States Court of Appeals for the eleventh Circuit by using the appellate CM/ECF system. I certify that the foregoing document is being served this day on all counsel of record, and that service will be accomplished by the appellate CM/ECF system.

Dated November 14, 2022

s/ William R. Stein  
*Counsel for Amici Curiae*