

# PRESS RELEASE

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For more information, contact:

**Vicki Bendure, APR**

540-687-3360 | 202-374-9259 c | vicki@bendurepr.com

**DRI –*The Voice of the Defense Bar* Files Amicus Brief in  
U.S. Supreme Court Case *Kurns v. Railroad Friction Products Corp. and Viad Corp.***

*Defense Bar Supports Defendants’ Petition for Certiorari*

**CHICAGO – (October 11, 2011)** – DRI – *The Voice of the Defense Bar* filed an amicus curiae brief in the United States Supreme Court in the case of *Kurns v. Railroad Friction Products Corp. and Viad Corp.* (U.S. Supreme Court No. 10-879). In its brief DRI reaffirms the importance of maintaining the doctrine of field preemption.

The case involves a product liability suit. The plaintiffs are survivors of George Corson—Gloria Kurns and Freida E. Jung Corson. George Corson was a railroad worker who repaired locomotives. Some of the locomotive parts contained asbestos and Mr. Corson contracted an asbestos-related disease and died. Plaintiffs claim that the locomotive parts were defective because they contained asbestos and because defendants allegedly did not warn of the danger from the asbestos. The federal district court and Third Circuit held that the claims were preempted by the Locomotive Inspection Act, 49 U.S.C. section 20701 et seq.

The U.S. Solicitor General and the plaintiffs argue that field preemption does not apply to locomotive and locomotive equipment while “off-line” in the repair shop and, in any event, does not extend to protect equipment manufacturers from common law claims. Alternatively, the solicitor general and the plaintiffs argue that failure-to-warn claims are not preempted even if design-defect claims are preempted. DRI is concerned that, if the Supreme Court adopted this distinction, it could effectively eliminate field preemption for many areas of product liability. A preempted design-defect claim could easily be recast as an unpreempted failure-to-warn-of-the-defect claim.

DRI is also concerned with the plaintiffs urging the Supreme Court to discard field preemption. Plaintiffs’ argument is apparently an attack on field preemption generally, not restricted to the locomotive and locomotive equipment, despite specific Supreme Court precedent from 1926. “If the Supreme Court rejects field preemption for petitioners’ claims, other claims currently blocked by field preemption could be revived despite settled expectations by the business community,” cautioned Minneapolis attorney Diane B. Bratvold, author of the DRI brief.

For these reasons DRI – *The Voice of the Defense Bar* identified this case as one of great importance to the interests of DRI’s membership. In supporting the defendants’ petition for certiorari, DRI sends a message to the Supreme Court that this case presents an important issue worthy of its review.

The DRI brief was authored by Diane B. Bratvold with Briggs and Morgan in Minneapolis. She is vice chair of DRI’s Amicus Committee and an appellate lawyer with expertise on a wide range of issues, including constitutional law, employment law and tort liability.

The brief is available in its entirety at [www.dri.org](http://www.dri.org).

**About DRI – *The Voice of the Defense Bar***

DRI – *The Voice of the Defense Bar* is an international organization of defense attorneys and corporate counsel that is recognized as a thought leader and an advocate for the defense bar at the national and state level, as well as in Europe. With more than 22,000 members, DRI provides members and their clients with access to world-class education, legal resources and numerous marketing and networking opportunities that facilitate career and law firm growth. For more information log on to [www.dri.org](http://www.dri.org).

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