

<p>COLORADO SUPREME COURT 2 East 14th Avenue, Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;">Case No. 2013SC576</p>
<p>COLORADO COURT OF APPEALS Case No. 2012CA1251 Opinion by Judge Taubman (Román J. and Kapelke J. concurring)</p>	
<p>DISTRICT COURT FOR CITY AND COUNTY OF DENVER Case No. 2011cv2218 The Honorable Ann B. Frick</p>	
<p>Petitioner/Appellees: ANTERO RESOURCES CORPORATION, ANTERO RESOURCES PICEANCE CORPORATION, CALFRAC WELL SERVICES, CORP., and FRONTIER DRILLING LLC v. Respondents/Appellants: WILLIAM G. STRUDLEY and BETH E. STRUDLEY, Individually, and as the Parents and Natural Guardians of WILLIAM STRUDLEY, a minor, and CHARLES STRUDLEY, a minor</p>	
<p>Lee Mickus, No. 23310 Jessica E. Yates, No. 38003 Snell & Wilmer L.L.P. 1200 17th Street, Suite 1900 Denver, CO 80202 Telephone: (303) 634-2000 Facsimile: (303) 634-2020 E-mail: lmickus@swlaw.com; jyates@swlaw.com</p> <p>Attorneys for Amici Curiae Colorado Civil Justice League, Denver Metro Chamber of Commerce, Chamber of Commerce of the United States of America, Coalition For Litigation Justice, Inc., and American Tort Reform Association</p>	
<p style="text-align: center;">MOTION FOR LEAVE TO FILE <i>AMICI CURIAE</i> BRIEF OF COLORADO CIVIL JUSTICE LEAGUE, DENVER METRO CHAMBER OF COMMERCE, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, COALITION FOR LITIGATION JUSTICE, INC., AND AMERICAN TORT REFORM ASSOCIATION</p>	

Pursuant to C.A.R. 29, the Colorado Civil Justice League (“CCJL”), Denver Metro Chamber of Commerce (“Denver Chamber”), Chamber of Commerce of the United States of America (“U.S. Chamber”), Coalition For Litigation Justice, Inc. (“Coalition”), and American Tort Reform Association (“ATRA”) (collectively “*Amici*”), through undersigned counsel, respectfully move for leave to proceed as *amici curiae* in support of Petitioners’ position and urging reversal, respectfully stating as follows:

A. Description Of *Amici*

CCJL is a voluntary non-profit organization dedicated to improving Colorado’s civil justice system through a combination of public education and outreach, legal advocacy and legislative initiative. It is a diverse coalition of large and small businesses, trade associations, individual citizens and private attorneys. Founded in 2000, CCJL has been actively involved in legislative reform of Colorado’s civil liability system and has submitted *amicus curiae* briefs to this Court on several occasions.

The Denver Chamber is a leading voice for over 3,000 Denver-area businesses and their 300,000 employees, providing advocacy for more than 150 years at the federal, state and local levels and helping shape Colorado’s economic and public policy. An important function of the Denver Metro Chamber is to

represent the interests of its members in matters before the Colorado Legislature, the Administration and State Agencies, and federal and state courts. To that end, the Denver Chamber occasionally files *amicus curiae* briefs in cases that raise issues of vital concern to the state's business community.

The U.S. Chamber is the world's largest business federation. The U.S. Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the executive branch, and federal and state courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in – or it initiates – cases that raise issues of vital concern to the nation's business community.

The Coalition is a nonprofit association formed by insurers in 2000 to address and improve the litigation environment for toxic tort claims. The Coalition files *amicus curiae* briefs in important cases that may have a significant impact on the toxic tort litigation environment. The Coalition includes Century Indemnity Company; Chubb & Son, a division of Federal Insurance Company; Fireman's Fund Insurance Company; Liberty Mutual Insurance Group; Great American Insurance Company; and Nationwide Indemnity Company.

ATRA was founded in 1986 as a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed amicus curiae briefs in cases before state and federal courts that have addressed important liability issues.

B. Why This Case Concerns An Issue Of Interest To The *Amici*

This case concerns an issue of interest to members of each of the putative *amici*, as well as civil litigants generally, because it involves the authority of trial courts to enter case management orders tailored for specific case needs. The type of order at issue in this case is a *Lone Pine* order, which federal courts can use where there are technical or scientific issues that form the basis of the plaintiff's proof of causation. Such orders require a plaintiff to produce evidence, such as expert affidavits, for certain details of a plaintiff's claim to make a baseline evidentiary showing. Typically a court will enter a *Lone Pine* order early enough to avoid unwarranted discovery.

Each of the putative *amici* has an interest in civil justice reforms that will reduce undue burdens in litigation and mitigate the skyrocketing costs of discovery, while ensuring fairness to all parties. The Denver Chamber and U.S.

Chamber have a particular interest in addressing the impact of litigation on businesses. The Coalition likewise has an interest in minimizing unnecessary litigation costs that adversely affect insurers.

C. Why A Brief By The *Amici* Would Be Helpful In This Matter

A brief of *Amici* is desirable in this case to explain how the Court of Appeals' decision in this matter is erroneous. Instead, the case management discretion already afforded trial courts in Colorado is sufficiently broad to include the authority to issue *Lone Pine* orders. A brief of *Amici* also can explain the public policy ramifications of failing to find such authority.

If *Amici* are authorized to proceed as *amici curiae* in this case, they will make the following principal arguments:

a. The Court of Appeals' decision here is in tension with this Court's decisions reinforcing the need for active case management, particularly in defining the scope of discovery. *See DCP Midstream, LP v. Anadarko Petroleum Corp.*, 303 P.3d 1187, 1190 (Colo. 2013) (requiring trial courts to manage discovery to achieve "proportionality" with respect to the costs and benefits of discovery).

b. The Court of Appeals' decision also is inconsistent with the 1995 amendments to the Colorado Rules of Civil Procedure. Revisions to C.R.C.P. 16 were accompanied by commentary emphasizing the need for trial courts to take a

leadership role in managing their cases and take a more flexible approach where needed to avoid undue burdens on the parties. Likewise, the advent of mandatory initial disclosures in C.R.C.P. 26(a)(1) made at least some discovery unnecessary, and each party benefits from the exchange of information early in the case. These revisions mean that it is not unfair to use *Lone Pine* orders as a case management tool or to require a plaintiff to make a *prima facie* showing prior to full blown discovery.

c. The Court of Appeals' decision will chill case management reforms across the state, as well as trial courts' use of discretion in managing their cases. The decision effectively holds that a trial court has no authority to enter a non-traditional case management orders if C.R.C.P. 16 does not expressly provide for its use. That rationale also undermines the goals of the Civil Access Pilot Project and Chief Justice Directive 11-02, which reflect a mandate for more active – and more flexible – case management. Under the Court of Appeals' decision in *Strudley*, trial courts will be discouraged from doing anything that might be perceived as “active case management” if a plaintiff can later claim to be prejudiced by the court's action.

D. Conclusion, Conferral Status, and Request for Relief

Counsel for *Amici* contacted the attorneys of record for Petitioners and Respondents to confer regarding this Motion. Petitioners consent to *Amici*'s participation as *amici curiae*. Respondents oppose *Amici*'s participation as *amici curiae*.

Attached hereto is the proposed brief of *Amici*, which *Amici* conditionally file with this Motion pursuant to C.A.R. 29. This Motion and Brief are being filed within the amount of time allotted to Petitioners to file their petition for *certiorari*.

WHEREFORE, *Amici* respectfully request that this Court grant their Motion for Leave to Proceed as *Amici Curiae* and Conditional Submittal of Brief Urging

///

///

///

Reversal, and that *Amici*'s Brief filed simultaneous with this Motion be accepted and deemed filed as of the date of this Motion.

Dated this 18th day of June, 2014.

s/ Jessica E. Yates

Lee Mickus, No. 23310
Jessica E. Yates, No. 38003
Snell & Wilmer L.L.P.
1200 17th Street, Suite 1900
Denver, CO 80202
Telephone: (303) 634-2000
Facsimile: (303) 634-2020

**Attorneys for *Amici Curiae*
Colorado Civil Justice League
Denver Metro Chamber of Commerce,
Chamber of Commerce of the United
States of America, Coalition For
Litigation Justice, Inc., and American
Tort Reform Association**

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2014, a true and correct copy of the above **MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF COLORADO CIVIL JUSTICE LEAGUE, DENVER METRO CHAMBER OF COMMERCE, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, COALITION FOR LITIGATION JUSTICE, INC., AND AMERICAN TORT REFORM ASSOCIATION** was served via ICES or E-mail on the following:

Daniel J. Dunn
Andrew C. Lillie
David A. DeMarco
HOGAN LOVELLS US LLP
One Tabor Center, Suite 1500
Denver, CO 80202
E-mail: dan.dunn@hoganlovells.com
E-mail: andrew.lillie@hoganlovells.com
E-mail: david.demarco@hoganlovells.com

Catherine E. Stetson
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
E-mail: cate.stetson@hoganlovells.com

Robert M. Schick
James D. Thompson III
VINSON & ELKINS LLP
1001 Fannin, Suite 2500
Houston, TX 77002-6760
E-mail: rschick@velaw.com
E-mail: jthompson@velaw.com
Attorneys for Petitioners Antero Resources Corporation and Antero Resources Piceance Corporation

Gail L. Wurtzler
Shannon Wells Stevenson
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
E-mail: gail.wurtzler@dgsllaw.com
E-mail: shannon.stevenson@dgsllaw.com
Attorneys for Petitioner Calfrac Well Services Corp.

Matthew B. Dillman
Sarah M. Shechter
Burns Figa & Will P.C.
6400 S. Fiddler's Green Cr., Ste. 1000
Greenwood Village, CO 80111
E-mail: mdillman@bfiw-law.com
E-mail: sshechter@bfiw-law.com
Attorneys for Petitioner Frontier Drilling LLC

Corey T. Zurbuch
Frascona, Joiner, Goodman and
Greenstein, P.C.
4750 Table Mesa Drive
Boulder, CO 80305
E-mail: corey@frascona.com

Peter W. Thomas
Thomas Genshaft LLP
39 Boomerang Road, Suite 8130
Aspen, CO 81611
E-mail: peter@thomasgenshaft.com

Marc Jay Bern
Tate J. Kunkle
Napoli Bern Ripka & Associates, LLP
350 Fifth Avenue, Suite 7413
New York, NY 10118
E-mail: mbern@napolibern.com
E-mail: tkunkle@napolibern.com
***Attorneys for Respondents Beth E.
Strudley and William G. Strudley,
individually and as the parent and
natural guardian of William Strudley and
Charles Strudley, both minors***

Bennett Cooper
Steptoe & Johnson LLP
201 E. Washington Street, Suite 1600
Phoenix, AZ 85004-2382
E-mail: bcooper@steptoe.com

Mark Fitzsimmons
Jared Butcher
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
E-mail: mfitzsimmons@steptoe.com
E-mail: jbutcher@steptoe.com
***Attorneys for Amicus Curiae
American Petroleum Institute***

Terry Cipoletti
Fennemore Craig, P.C.
1700 Lincoln Street, Suite 2900
Denver, CO 80203
E-mail: TCIPOLET@FCLAW.com

Richard Faulk
Hollingsworth LLP
1350 I Street, NW
Washington, DC 20005
***Attorneys for Amici Curiae
American Chemistry Council, American
Coatings Association, American Fuels
and Petrochemical Manufacturers,
Independent Petroleum Association of
America; and National Association of
Manufacturers***
E-mail: rfaulk@Hollingsworthllp.com

Jeffrey Clay Ruebel
Ruebel & Quillen, LLC
9191 Sheridan Blvd., Suite 205
Westminster, CO 80031
E-mail: Jeffrey@rq-law.com
***Attorneys for Amicus Curiae
Colorado Defense Lawyers Association***

Christopher Neumann
Gregory Tan
Harriet McConnell
Greenberg Traurig LLP
1200 Seventeenth Street, Suite 2400
Denver, CO 80202
E-mail: neumannc@gtlaw.com
E-mail: mcconnellh@gtlaw.com
Attorneys for Amicus Curiae
Colorado Petroleum Association

s/Martha McCleery
Martha McCleery

19523229.1