

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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LISA SYKES, et. al.	:	
	:	
Plaintiffs,	:	
	:	Case No: 3:07-CV-660
v.	:	(E.D. Virginia, Richmond Division)
	:	
BAYER CORPORATION	:	
	:	
Defendant.	:	
	:	

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DECLARATION OF DR. E. WILLIAM COLGLAZIER

1. I, Dr. E. William Colglazier, am over the age of eighteen and make this declaration based on personal knowledge, in support of Dr. McCormick’s Motion to Quash Subpoena in the above-captioned proceeding.

2. I am the Executive Officer of the National Academy of Sciences (“Academy”), a private non-profit membership corporation established under a charter granted to it by Congress.

3. I received my B.S. and Ph.D. in Theoretical Physics from the California Institute of Technology in 1966 and 1971, respectively. I joined the staff of the Academy in 1991 as Executive Director of the Office of International Affairs. Prior to joining the staff of the Academy, I was Professor of Physics and Director of the Energy, Environment and Resources Center and the Waste Management Research and Education Institute, The University of Tennessee. Previously, I was a Research Fellow with the Center for Science and International Affairs, Kennedy School of Government, Harvard University, and in that position, I served as the Associate Director of Program in Science, Technology and Humanism with the Aspen Institute

for Humanistic Studies. I was a Congressional Science Fellow with Representative George Brown of the U.S. House of Representatives.

4. My background includes five years as a researcher in theoretical physics at the Institute for Advanced Study, Princeton, and at the Stanford Linear Accelerator Center. I am the author of over 50 publications in physics, energy, and environmental policy and international affairs, nuclear and hazardous waste management, arms control and international security, and risk assessment.

5. In my current position as Executive Officer of the Academy, my responsibilities include, *inter alia*, providing oversight and management for program development and coordination, external contacts with federal agencies on behalf of the Academy, and the submission of proposals to the government for the performance of studies or preparation of reports by the Academy. I am familiar with the operations and procedures of the Academy, the review committee operations, and report review processes.

6. The Academy is one of the world's most prestigious scientific organizations, and selection for membership is a significant honor. The Academy is dedicated to the furtherance of science and its use for the general welfare. The Academy has approximately 2,100 members who are leading scientists in virtually all significant scientific disciplines. The Academy has established the National Academy of Engineering as a parallel organization of approximately 2,400 outstanding engineers. In addition, the Institute of Medicine (IOM) was established by the Academy to secure the services of eminent members of appropriate professions in examining policy matters pertaining to the health of the public. The IOM, which has approximately 1,680 members, acts under the responsibility given to the Academy by its federal charter.

7. The National Research Council is the principal operating arm of the Academy. More than 12,000 other distinguished scientists, engineers, health professionals, and others are associated with the Academies and the Institute. Working through the National Research Council, the Academy examines scientific and technological questions of national importance.

8. The Academy is not a federal agency. No federal funds are directly appropriated to the Academy for its activities. The Academy has no vested regulatory authority, has no power to implement its own recommendations, and lacks authority to impose any governmentally enforceable sanctions. The government has consistently treated the Academy as private: the Academy is not entitled to the franking privilege, is recognized as a non-governmental corporation by the Internal Revenue Service, and its officers and employees are not persons holding employment or appointment by the United States.

9. The Academy prepares reports of a scientific and technical nature, primarily for the federal government pursuant to contracts, grants, and cooperative agreements with sponsoring federal agencies. All of the Academy's agreements with the federal government for the performance of studies and/or the preparation of reports are of a contractual nature. Although a majority of the studies or reports of the Academy are prepared pursuant to contracts, grants, and cooperative agreements with federal sponsors, the Academy also performs many studies which are supported solely with Academy funds and some studies which are supported by private foundations and state agencies.

10. Volunteer experts associated with the Academy are organized into approximately 1,200 committees or boards and assist in the preparation of these reports.

11. Under standard Academy procedures, when the Academy, pursuant to a contract, grant, or other cooperative agreement with a sponsor, agrees to provide the sponsor with a

comprehensive report on the topic of interest, or when the Academy funds a study, the Academy typically will establish a study committee with expertise in the subject area which, with assistance from staff, will conduct a study and prepare a draft report. The study committee is composed of volunteers, drawn from some of the nation's most competent scientists in the particular field under study; both Academy members and non-members may be included. The study committee usually meets several times as it explores the issues and hammers out a draft. The study committee reviews the relevant scientific literature, research, and data, and engages in an extended series of deliberations involving the candid exchanges of views by the study committee members in closed sessions. This give-and-take culminates in the preparation of draft reports, which are revised until the study committee members reach consensus and a final draft is prepared.

12. Once a final draft has been prepared, the Academy provides a detailed and rigorous internal review of that draft report by a review panel of independent experts. The review panel members volunteer their services to the Academy. The review panel for a report is selected by the governing body of the division under which the report was produced, in consultation with the Report Review Committee. The review panel considers (i) whether a report's conclusions and recommendations derive from adequate data; (ii) whether uncertainties in the data are recognized; (iii) whether the report appears to be complete, fair and responsive to the charge given to the committee; and (iv) whether the presentation is clear and concise. There are detailed procedures and substantive criteria for conducting the report reviews, which typically result in revisions to the draft report.

13. The reviews of a report are considered to be privileged communications in order to encourage individual reviewers to express their views freely and to permit committee

members to modify their positions when convincing arguments to the contrary are presented. To protect the confidentiality of the deliberative process, review panel members, study committee members, and staff are asked to refrain from disclosing any contents of the draft report or review comments. The reviewers are cautioned not to discuss drafts publicly. Further, reviewers are assured that the deliberations of the review panel are confidential. As a matter of Academy policy, review comments are not disclosed outside the Academy. Academy policy mandates that the names (and other identifiers) of the individual reviewers are removed when their review comments are provided to the study committee. This procedure of providing blind reviews to the committee is designed to promote candor on the part of the reviewers and thereby enhance the quality of the final report.

14. The review panel's comments are furnished to the study committee for consideration, further deliberations, and drafting and revision, as the circumstances may require. In the process, the study committee responds to the review panel's comments. Guided by that review, the Academy determines when and if the report is ready for release. The final report is released only when the Chairman of the Academy's Report Review Committee, in consultation with the Report Review Monitor, determines that the Academy review has been satisfactorily completed and the report manuscript has been approved by the division director of the study committee's parent unit within the Academy. In the rare event that the study committee and review panel are unable to resolve differing reviews in a draft report, the Academy will not issue a report. It is only the final report which carries the imprimatur of the Academy.

15. The Academy assumes full responsibility for performance of the work. The Academy exercises its own judgment in naming committee members, and it takes special steps to

guarantee that the resulting report meets the Academy's high standards. It selects and appoints members of the committee, monitors the progress of the committee's work and provides support staff to the committee.

16. The Academy's internal deliberative processes, including drafts and review panel members' comments, are confidential. Except in the narrowest circumstances (e.g., matters where national security would be prejudiced by public disclosure), the resulting final reports, which are the fruits of the deliberations, are normally made available to the public. However, drafts, internal reviews of reports, correspondence of reviewers, and any material that reflects the study committee's deliberative process or the review process are not released to the public.

17. The deliberations of a study committee involve a candid exchange of views over an extended period of time in which study committee members often test hypotheses and preliminary ideas. The purpose of the deliberative process is to formulate conclusions and recommendations based on the evaluation of scientific data. It is designed to facilitate discussions and to permit persuasion and the changing of the minds and the achievement of a consensus. Confidentiality of its deliberative processes is crucial to the work of the Academy. Disclosure of Academy documents which reflect the Academy's confidential deliberative processes, such as drafts of reports, documents reflecting the internal deliberations of the Committee, and review comments, would have serious deleterious effects on the Academy's report process.

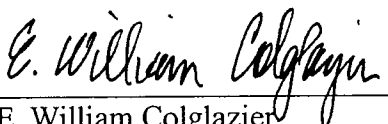
18. The Academy utilizes its confidential review process in order to ensure that the report is of the highest quality. The purpose of the review is to assure that the report is accurate, clear, well-reasoned and responsive to the charge. Maintaining the confidentiality of the review

process is essential if the process is to achieve the objective of producing a report of the highest quality, because the assurance of confidentiality given to reviewers ensures that the Academy receives honest, candid comments concerning drafts. The threat of even limited disclosure would disrupt the essential give-and-take between study committee members, and disclosure of critical review comments would disrupt many working relationships. If review panel members thought that their review comments, made in an atmosphere of vigorous internal review, would be subject to disclosure, they would be inclined to be less frank in their comments. That would chill the review process, and diminish the rigor of the final report. Many individuals would be discouraged from serving on Academy study committees and review panels, or from providing candid views, if they knew that their preliminary, untested views would be disclosed and subject them to a defense of those views at a later date in an unrelated matter. If the Academy were unable to convince volunteers to serve on its study committees and review panels, or to obtain candid assessments and reviews, its standard procedures would be adversely affected and its ability to produce reports of the highest standards would be seriously impaired. Disclosure of this confidential information would adversely affect the Academy's ability to produce the best possible reports, thereby endangering the public interest as well.

19. Moreover, disclosure of documents reflecting the Academy's confidential deliberative processes, which are by their nature preliminary, would unnecessarily confuse and mislead the public. This would be a particular problem were actual drafts of reports to be disclosed given that such drafts may often contain incorrect information. Finally, unlike drafts and other preliminary deliberative documents (which represent incomplete assessments), the Academy's final report on a given subject is the product of careful deliberations after

consideration of all the evidence. It is the only document which carries the imprimatur of the Academy.

I hereby declare under penalty of perjury that the foregoing is true and correct.



E. William Colglazier

April 9, 2008