

IN THE SUPREME COURT OF OHIO

CASE NO. 06-1914

**DOUGLAS GROCH, et al**  
Petitioners

-vs-

**GENERAL MOTORS CORPORATION, et al.**  
Respondents

**BRIEF OF AMICUS CURIAE,  
OHIO ACADEMY OF TRIAL LAWYERS  
IN SUPPORT OF PETITIONERS, DOUGLAS GROCH, et al.**

Bonnie E. Haims, Esq.  
Kevin J. Boissoneault, Esq.  
Russell W. Gerney, Esq.  
**GALLON, TAKACS, BOISSONEAULT &  
SCHAFFER**  
3516 Granite Circle  
Toledo, Ohio 43617-1172  
(419) 843-2001  
FAX: (419) 841-2608  
*Attorneys for Petitioner, Douglas Groch, et al.*

Paul W. Flowers, Esq. (#0046625)  
**[Counsel of Record]**  
**PAUL W. FLOWERS, CO., L.P.A.**  
50 Public Square, Ste. 3500  
Cleveland, Ohio 44113  
(216) 344-9393  
Fax: (216) 344-9395  
*Amicus Curiae Chairman, Ohio Academy of  
Trial Lawyers*

Elise W. Porter, Esq.  
Office of Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
(614) 466-4195  
FAX: (614) 728-7592  
*Attorney for Defendant/Intervenor, Ohio  
Attorney General, Marc Dann*

Kimberly A. Conklin, Esq.  
**[Counsel of Record]**  
**KERGER & ASSOCIATES**  
33 South Michigan Street, Suite 100  
Toledo, Ohio 43604  
(419) 255-5990  
FAX: (419) 255-5997

Dan E. Cranshaw, Esq.  
David C. Vogel, Esq.  
Patrick N. Fanning, Esq.  
**LATHROP & GAGE**  
2800 Mutual Benefit Life Bldg.  
2345 Grand Avenue  
Kansas City, Missouri 64108-2684  
(816) 292-2000  
FAX: (816) 292-2001  
*Attorneys for Respondent, General Motors  
Corporation*

Robert H. Eddy, III, Esq.  
Anna S. Fister, Esq.  
**GALLAGHER SHARP**  
420 Madison Avenue, Suite 1250  
Toledo, Ohio 43604  
(419) 241-4863  
FAX: (419) 241-4866  
*Attorneys for Respondents, Kard Corporation  
and Racine Federated, Inc.*

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

INTRODUCTION AND INTERESTS OF *AMICUS CURIAE* ..... 1

ARGUMENT ..... 1

    I.    SCOPE OF THE PRODUCTS LIABILITY STATUTE OF REPOSE ..... 1

    II.   CONSTITUTIONALITY OF THE STATUTE OF REPOSE ..... 3

CONCLUSION ..... 15

CERTIFICATE OF SERVICE ..... 16

## TABLE OF AUTHORITIES

Adams v. Sherk (1983), 4 Ohio St.3d 37, 446 N.E.2d 165 .....	5, 6, 13
Adamsky v. Buckeye Loc. Sch. Dist., 73 Ohio St.3d 360, 361-362, 1995-Ohio-298, 653 N.E.2d 212, 214 .....	10, 11
Baird v. Loeffler (1982), 69 Ohio St.2d 533, 433 N.E.2d 194 .....	5, 6
Bartlett v. State (1905), 73 Ohio St. 54, 75 N.E. 939.....	5
Beatty v. Akron City Hosp. (1981), 67 Ohio St.2d 483, 492, 424 N.E.2d 586, 592 .....	10
Benjamin v. City of Columbus (1957), 167 Ohio St. 103, 110, 146 N.E.2d 854, 860 .....	13
Bielat v. Bielat (2000), 87 Ohio St.3d 350, 352-353, 721 N.E.2d 28, 32 .....	4
Board of Edn. of the Cincinnati Sch. Dist. v. Hamilton Cty. Bd. of Rev. (2001), 91 Ohio St.3d 308, 315, 2001-Ohio-46, 744 N.E.2d 751, 757.....	4
Borland v. Corning Glass Works (Oct. 14, 1987), 2nd Dist. No. 1187, 1987 W.L. 18521 .....	5
Brennaman v. R.M.I. Co., 70 Ohio St.3d 460, 466, 1994-Ohio-322, 639 N.E.2d 425, 430.....	6, 7, 8, 9, 10
Burgess v. Eli Lilly & Co., 66 Ohio St.3d 59, 61-62, 1993-Ohio-193, 609 N.E.2d 140, 142.....	7, 8
Byers v. Meridian Printing Co. (1911), 84 Ohio St. 408, 423, 95 N.E. 917, 920.....	14
Collini v. City of Cincinnati, (1st Dist. 1993) 87 Ohio App.3d 553, 556, 622 N.E.2d 724, 726.....	7
Cook v. Matvejs (1978), 56 Ohio St.2d 234, 383 N.E.2d 601 [10 O.O.3d 384 .....	6
Crowe v. Owens Corning Fiberglass (Oct. 29, 1998), 8th Dist. No. 73206, 1998 W. L. 767622 .....	10
Deskins v. Young (1986), 26 Ohio St.3d 8, 9-10, 496 N.E.2d 897, 898 .....	6
Direct Plumbing Supply Co. v. City of Dayton (1941), 138 Ohio St. 540, 544, 38 N.E.2d 70, 72.....	13
Doersam, 45 Ohio St.3d at 119, 543 N.E.2d at 1173.....	11
Froelich v. City of Cleveland (1919), 99 Ohio St. 376, 391, 124 N.E. 212, 216 .....	14
Gaines v. Preterm-Cleveland, Inc. (1987), 33 Ohio St.3d 54, 60, 514 N.E.2d 709.....	passim
Galayda v. Lake Hosp. Sys., Inc., 71 Ohio St.3d 421, 426, 1994-Ohio-64, 644 N.E.2d 2986, 10, 12	10, 12
Gregory v. Flowers (1972), 32 Ohio St.2d 48, 55-59, 290 N.E.2d 181 .....	5
Hardy v. VerMeulen (1987), 32 Ohio St.3d 45, 47, 512 N.E.2d 626 .....	7, 8, 9
Holeton v. Crouse Cartage Co. (2001), 92 Ohio St.3d 115, 121, 2001-Ohio-109, 748 N.E.2d 1111, 1118 .....	14
Kinney v. Kaiser-Alum. & Chem. Corp. (1975), 41 Ohio St.2d 120, 322 N.E.2d 880.....	10
Lawson v. Valve-Trol Co. (9th Dist. 1991), 81 Ohio App.3d 1, 5, 610 N.E.2d 425, 427 .....	5

Little v. Purdue Pharma., L.P. (S.D. Ohio 2002), 227 F.Supp.2d 838, 850-851 .....3

McConnell v. Costco, Inc. (S.D. Ohio 2003), 238 F.Supp.2d 970, 981-982 .....3

Meros v. University Hosp. of Cleveland (1982), 70 Ohio St.2d 143, 435 N.E.2d 1117 .....5

Miller v. Hixson (1901), 64 Ohio St. 39, 59 N.E. 749 .....4

Mominee v. Scherbarth (1986), 28 Ohio St.3d 270, 503 N.E.2d 717..... 6, 13, 14

Park v. Free Press Co. (1888), 72 Mich. 560, 40 N.W. 731 .....14

Patterson v. Zdrilich (Nov. 22, 1994), 7th Dist. No. 93C.A.62, 1994 W.L. 672973.....10

Primes v. Tyler (1975), 43 Ohio St.2d 195, 198-199, 331 N.E.2d 723, 726.....10

Roberts v. George V. Hamilton, Inc. (June 30, 2000), 7th Dist. No. 99JE26, 2000 W.L. 875324.....3

Schwan v. Riverside Methodist Hosp. (1983), 6 Ohio St.3d 300, 302, 452 N.E.2d 1337... 10, 13

Sedar v. Knowlton Constr. Co., 49 Ohio St.3d 193, 551 N.E.2d 1938.....8, 9

Sorrell v. Thevenir, 69 Ohio St.3d 415, 1994-Ohio-38, 633 N.E.2d 504 ..... 10, 12

State ex rel. Doersam v. Industrial Commn. of Ohio (1988), 40 Ohio St.3d 201, 202, 533 N.E.2d 321, 323 .....10

State ex rel. Nyitray v. Industrial Commn. of Ohio (1983), 2 Ohio St.3d 173, 175, 443 N.E.2d 962, 964 .....11

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451, 476-477, 1999-Ohio-123, 715 N.E.2d 1062.....5, 9, 10

State ex rel. Patterson v. Industrial Commn. of Ohio, 77 Ohio St.3d 201, 204, 1996-Ohio-263, 672 N.E.2d 1008, 1011 .....11

Tackett v. Gas Energy, Inc., 10th Dist. No. 04AP-261, 2004-Ohio-6979, 2004 W.L. 2944164 .....3

White v. Crown Equip. Corp. (3rd Dist. 2005), 160 Ohio App.3d 503, 509-510, 2005-Ohio-1785, 827 N.E.2d 859, 863-864.....5

Williams v. Marion Rapid Trans., Inc. (1949), 152 Ohio St. 114, 117, 87 N.E.2d 334, 335.....6

Williams v. Textron, Inc. (June 13, 1988), 12th Dist. No. 87-02-007, 1988 W.L. 62938.....5

## INTRODUCTION AND INTERESTS OF AMICUS CURIAE

This *Amicus Curiae* represents the interests of the Ohio Academy Trial Lawyers ("OATL"). OATL is comprised of approximately two thousand (2, 000) attorneys practicing personal injury and consumer law in the State of Ohio. These lawyers are dedicated to preserving the rights of private litigants and to the promotion of public confidence in the legal system.

This *Amicus Curiae* is intervening in this appeal on behalf of Petitioners, Douglas and Chloe Groch, in support of the constitutional challenges they have raised. Given the public and great general interests at stake, it is imperative that this Court carefully consider the full ramifications that S.B. 80 will have upon the citizens of the State of Ohio. The OATL is particularly concerned with the ten-year statute of repose for products liability claims, which is unlike any other that has been adopted by the legislature in recent memory. As will developed further herein, revised R.C. §2305.10(C) threatens to produce a new class of outdated and dangerous products, devices, and machinery that can be sold and re-sold to unsuspecting customers with complete immunity from civil liability.

## ARGUMENT

The purpose of this Brief is to address the OATL's grave concerns over the product liability statute of repose. Although this *Amicus Curiae* fully supports Petitioners' positions in all regards, the issue surrounding the viability of the workers' compensation subrogation statute and the one subject rule will not be addressed herein. For the reasons which follow, this Court should hold that R.C. §2305.10(C) is unconstitutional on a number of levels.

### **I. SCOPE OF THE PRODUCTS LIABILITY STATUTE OF REPOSE.**

This Court has had several prior occasions to review the validity of statutes of repose. Typically, these enactments prohibit civil actions from being filed under any circumstances

once a set amount of time has elapsed. For example, former R.C. §2305.11(B)(3) (as modified by 1996 H.B. 350) precluded any medical malpractice claims from being filed more than “six years after the occurrence of the act or omission constituting the alleged basis” of liability. This statute of repose still afforded the plaintiff a number of years after the tort was committed in which to commence a medical malpractice claim against the responsible party. In effect, the enactments imposed a cap upon the period that the otherwise applicable statute of limitations could be tolled (such as by the discovery rule).

The new products liability statute of repose that now appears in R.C. §2305.10(C) is strikingly different. The General Assembly has directed, in pertinent part, that:

\*\*\* [N]o cause of action based on a products liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who is not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

Unlike the more typical statute of repose, R.C. §2305.10(C) is not tied to the accrual of the cause of action. Quite clearly, civil claims can be extinguished pursuant to this enactment before they even occur. Unlike former R.C. §2305.11, the victim of the defective product who is injured past the ten (10) year limit has no chance to ever seek redress against a negligent manufacturer or supplier.

The startling impact of R.C. §2305.10(C)(1) is difficult to overstate. Once ten (10) years has elapsed from the date that a product has entered the stream of commerce (other than as a “component” part), it becomes impervious to litigation. The original manufacturer thereafter has little incentive to issue warnings and recalls once hazards are discovered in the

device.<sup>1</sup> More ominously, the machine can be sold, and resold, by suppliers who no longer need to be concerned with adding safety guards and features that are needed to comport with the latest standards.<sup>2</sup> Indeed, such protective safeguards can even be removed. Because of the immunity conferred upon them, outdated and unsafe products that have been in the stream of commerce for more than ten (10) years will become uniquely valuable to those who place profits over safety. As the market for lawsuit-proof devices and machinery flourishes, the individuals who purchase or are required to utilize the hazardous products will be the ultimate losers.

## II. CONSTITUTIONALITY OF THE STATUTE OF REPOSE.

### A. *EX POST FACTO* APPLICATION.

The cause of action accrued in this case when Petitioner, Douglas Groch, was injured on March 3, 2005 on the trim press that had been manufactured by Respondents, Kard Corporation and Racine Federated, Inc. *District Court Certification Order of October 11, 2006, p. 8.* The ten (10) year statute of repose codified in R.C. §2305.10(C)(1) went into effect approximately a month later on April 7, 2005. Respondents contend that Petitioner's employer, Respondent General Motors Corporation, had possessed the trim press for more than ten (10) years. *Preliminary Memorandum of Petitioner, p. 8.* The statute of repose therefore extinguished Petitioner's cause of action before he was maimed by the machinery. At some undisclosed

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<sup>1</sup> Under Ohio's Products Liability Act, manufacturers of dangerous products can be held liable pursuant to R.C. §2307.71 *et seq.*

<sup>2</sup> Pursuant to R.C. §2307.78(A)(1) the supplier of hazardous and dangerous equipment can be held liable for compensatory damages proximately caused by its negligence. *Roberts v. George V. Hamilton, Inc.* (June 30, 2000), 7<sup>th</sup> Dist. No. 99JE26, 2000 W.L. 875324, pp. \* 2-3; *Tackett v. Gas Energy, Inc.*, 10<sup>th</sup> Dist. No. 04AP-261, 2004-Ohio-6979, 2004 W.L. 2944164, pp. \*6-8; *McConnell v. Costco, Inc.* (S.D. Ohio 2003), 238 F.Supp.2d 970, 981-982. Even if the supplier has acted appropriately under the circumstances, liability may still be imposed derivatively under R.C. §2307.78(B)(2) when a culpable manufacturer is insolvent. *Little v. Purdue Pharma., L.P.* (S.D. Ohio 2002), 227 F.Supp.2d 838, 850-851. Notably, the General Assembly left these provisions intact in S.B. 80.

point prior to the accident, the trim press had achieved immunity from liability which thereafter took effect on April 7, 2005.

Section 28, Article II, of the Ohio Constitution is directed against the adoption of *ex post facto* laws.

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

Over a century ago, the Supreme Court of Ohio held that:

A statute which imposes a new or additional burden, duty, obligation, or liability as to past transactions is retroactive, and in conflict with that part of section 28, art. 2, of the constitution which provides that ‘the general assembly shall have no power to pass retroactive laws.’ [emphasis added]

*Miller v. Hixson* (1901), 64 Ohio St. 39, 59 N.E. 749, paragraph one of the syllabus. More recently, Chief Justice Moyer explained for a majority of the Court that:

We recently interpreted Section 28, Article II of the Ohio Constitution, stating that “[t]he retroactivity clause nullifies those new laws that ‘reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time [the statute becomes effective].’ ” *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 352-353, 721 N.E.2d 28, 32, quoting *Miller* [64 Ohio St. at 51]. [emphasis added]

*Board of Edn. of the Cincinnati Sch. Dist. v. Hamilton Cty. Bd. of Rev.* (2001), 91 Ohio St.3d 308, 315, 2001-Ohio-46, 744 N.E.2d 751, 757. At the risk of overstating the obvious, terminating Petitioners’ products liability claim one month after it had accrued imposed “new burdens” on them and severely impacted their substantive rights.

Little credence should be afforded to the General Assembly’s attempt to legislatively decree through revised R.C. §2305.10(G) that the new statute of repose “\*\*\*\* shall be

considered remedial in operation \*\*\*.” Section 32, Article II, of the Ohio Constitution prohibits the legislature from exercising judicial power and the legislature thus has no authority to declare its own Acts to be constitutional. *Bartlett v. State* (1905), 73 Ohio St. 54, 75 N.E. 939, syllabus. It is for the courts alone to determine whether an enactment impermissibly impairs recognized substantive rights *ex post facto*. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 476-477, 1999-Ohio-123, 715 N.E.2d 1062.

While statute of limitations are typically viewed as “remedial,” they have been found to be unconstitutional when applied in a manner that impairs “substantive” rights. *Gregory v. Flowers* (1972), 32 Ohio St.2d 48, 55-59, 290 N.E.2d 181; *Williams v. Textron, Inc.* (June 13, 1988), 12th Dist. No. 87-02-007, 1988 W.L. 62938, p. \*2; *Borland v. Corning Glass Works* (Oct. 14, 1987), 2nd Dist. No. 1187, 1987 W.L. 18521, pp. \*2-3. In the context of choice-of-law issues, civil defendants have successfully convinced Ohio courts that statutes of repose are substantive and not remedial. *Lawson v. Valve-Trol Co.* (9th Dist. 1991), 81 Ohio App.3d 1, 5, 610 N.E.2d 425, 427 (applying Indiana law); *White v. Crown Equip. Corp.* (3rd Dist. 2005), 160 Ohio App.3d 503, 509-510, 2005-Ohio-1785, 827 N.E.2d 859, 863-864 (applying Georgia law).

These principles were applied to the former four (4) year statute of repose for medical malpractice actions, R.C. §2305.11(B), in *Adams v. Sherk* (1983), 4 Ohio St.3d 37, 446 N.E.2d 165. A surgeon had left a metallic object in a patient that was not discovered until she underwent a second procedure approximately thirteen (13) years later. *Id.*, 4 Ohio St.3d at 37. Her claim was plainly barred by the statute of repose. *Id.* The majority proceeded to analyze numerous cases that had previously addressed this enactment, including *Baird v. Loeffler*

(1982), 69 Ohio St.2d 533, 433 N.E.2d 194,<sup>3</sup> and *Meros v. University Hosp. of Cleveland* (1982), 70 Ohio St.2d 143, 435 N.E.2d 1117. *Adams*, 4 Ohio St.3d at 38-39. Significantly for the purposes of the instant action, the Court recognized that completely foreclosing a cause of action cannot be characterized as purely “remedial”.

*Baird* further noted the distinction made in *Cook v. Matvejs* (1978), 56 Ohio St.2d 234, 383 N.E.2d 601 [10 O.O.3d 384], between the operation of an amended statute of limitations which totally obliterates an existing substantive right and one which merely shortens the period of time in which the remedy can be realized. *Baird* [69 Ohio St.2d at 535]. The latter application of an amended statute is not unlawful as long as the claimant is still afforded a reasonable time in which to enforce his right. The concept of reasonableness must accord a reasonable time after the effective date of the amendment. [emphasis added]

*Id.*, 4 Ohio St.3d at 39. One (1) year has been determined to be the “reasonable time” that must be left to the plaintiff following the shortening of the statute of limitations. *Baird*, 69 Ohio St.2d at 535-536; *Adams*, 4 Ohio St.3d at 39; *Mominee*, 28 Ohio St.3d at 278; *Gaines v. Preterm-Cleveland, Inc.* (1987), 33 Ohio St.3d 54, 60, 514 N.E.2d 709. Section 29, Article II, of the Ohio Constitution did not permit the General Assembly to retroactively shorten Petitioners’ time for commencing suit without affording them at least a year to do so following the effective date of the enactment. *Adams*, 4 Ohio St.3d at 39; *Deskens v. Young* (1986), 26 Ohio St.3d 8, 9-10, 496 N.E.2d 897, 898.

#### B. OPEN COURTS/RIGHT TO A REMEDY

Section 16, Article I, of the Ohio Constitution proclaims that:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

<sup>3</sup> *Baird* was eventually overruled, in part, by *Mominee v. Scherbarth* (1986), 28 Ohio St.3d 270, 277-278, 503 N.E.2d 717, which rendered the law even more favorable to Petitioners.

This constitutional provision has been interpreted as providing all citizens with a right to a remedy. *Williams v. Marion Rapid Trans., Inc.* (1949), 152 Ohio St. 114, 117, 87 N.E.2d 334, 335; *Brennaman v. R.M.I. Co.*, 70 Ohio St.3d 460, 466, 1994-Ohio-322, 639 N.E.2d 425, 430; *Galayda v. Lake Hosp. Sys., Inc.*, 71 Ohio St.3d 421, 426, 1994-Ohio-64, 644 N.E.2d 298. "It is fundamental to the law of remedies that parties damaged by the wrongful conduct of others are entitled to be made whole." *Collini v. City of Cincinnati*, (1st Dist. 1993) 87 Ohio App.3d 553, 556, 622 N.E.2d 724, 726 (citations omitted). At a minimum, this provision requires the General Assembly to keep the courthouse doors open. *Brennaman*, 70 Ohio St.3d at 466, 639 N.E.2d at 430. Injured parties must be afforded an opportunity at a reasonable time and in a reasonable manner to seek redress. *Burgess v. Eli Lilly & Co.*, 66 Ohio St.3d 59, 61-62, 1993-Ohio-193, 609 N.E.2d 140, 142.

This fundamental constitutional guarantee requires more than simply allowing the injured party to recover "some" compensation. Rather, "[w]hen the Constitution speaks of remedy and injury to person, property, or reputation, it requires an opportunity granted at a meaningful time and in a meaningful manner." *Hardy v. VerMeulen* (1987), 32 Ohio St.3d 45, 47, 512 N.E.2d 626. (citations omitted). The Court thus explained in *Gaines*, 33 Ohio St.3d at 60, that:

Denial of a remedy and denial of a *meaningful* remedy lead to the same result: an injured plaintiff without legal recourse. This result cannot be countenanced. [emphasis original]

Almost twenty (20) years ago, this Court invalidated a four (4) year statute of repose for medical malpractice actions in *Hardy*, 32 Ohio St.3d 45, syllabus. The plaintiff maintained that he had not discovered that the surgery on his right ear had been botched until roughly ten (10) years after the physician-patient relationship had terminated. *Id.*, at 45. The trial judge

dismissed the action on the basis of former R.C. §2305.11(B) and the appellate court affirmed.

In reversing these decisions, the Ohio Supreme Court sagely reasoned that:

R.C. 2305.11, if applied to those who suffer bodily injury from medical malpractice but do not discover that injury until four years after the act of malpractice, accomplishes one purpose-to deny a remedy for the wrong. In other words, the courts of Ohio are closed to those who are not reasonably able, within four years, to know of the bodily injury they have suffered.

*Id.*, at 46. After examining the Open Courts/Right to a Remedy clause, the majority emphatically declared that:

\*\*\* [A]s applied to the facts in the case *sub judice*, R.C. 2305.11 is in violation of Section 16, Article I of the Ohio Constitution. The language in the Constitution is clear and leaves little room for maneuvering. Our courts are to be open to those seeking remedy for injury to person, property, or reputation. [emphasis added]

*Id.*, at 46.

Apparently, the General Assembly believed that there was indeed plenty of “room for maneuvering,” as a ten (10) year statute of repose was imposed against claims arising from improvements to real property by former R.C. §2305.131. The validity of this enactment was at issue in *Brennaman*, 70 Ohio St.3d at 466-467. The personal injury/wrongful death claims had been filed against a manufacturer of a defective valve (amongst others) that had been installed in a sodium handling facility. The Court observed: “R.C. §23405.131 deprived the plaintiffs of the right to sue before they knew or could have known about their or their decedent’s injuries.” *Id.*, at 466. Citing *Burgess*, 66 Ohio St.3d 59, 609 N.E.2d 140, the Court reaffirmed that “the General Assembly is constitutionally precluded from depriving a claimant of a right to a remedy ‘before a claimant knew or should have known of her injury.’” *Brennaman*, 70 Ohio St.3d at 466. The Court then held that:

At a minimum, Section 16, Article I requires that the plaintiffs

have a reasonable period of time to enter the courthouse to seek compensation after the accident. R. C. 2305.131 conflicts with this constitutional right. As Justice Douglas concluded in his dissent in *Sedar* [*v. Knowlton Constr. Co.*, 49 Ohio St.3d 193, 551 N.E.2d 1938] ‘R.C. 2305.131 effectively closes the courthouse to [Brennaman] and individuals like [her] in contravention of the express language of Section 16, Article I, thereby violating constitutionally protected rights.’ *Sedar, supra*, 49 Ohio St.3d at 205, 551 N.E.2d at 950.

Today, we reopen the courthouse doors by declaring that R.C. 2305.131, a statute of repose, violates the right to a remedy guaranteed by Section 16, Article I of the Ohio Constitution and is, thus, unconstitutional.

*Id.*<sup>4</sup>

A few years after *Brennaman*, H.B. No. 350 was enacted which, among other things, imposed a fifteen (15) year statute of repose for products liability claims. *Sheward*, 86 Ohio St.3d at 476, 715 N.E.2d at 1086. In its statement of legislative intent, the General Assembly expressed its stern disagreement with *Brennaman* and praised the dissenting opinions. *Id.*, at 476-477. The legislature even furnished its own “specific findings” concluding that the statutory time-bar was indeed constitutional. *Id.*, at 477. The Supreme Court majority was unimpressed and reiterated that the General Assembly has no authority to extinguish a cause of action before the claimant knows, or should have known, of the loss. *Id.*, at 476.

The holdings of *Hardy*, *Brennaman* and *Sheward* plainly control in this instance.<sup>5</sup> The General Assembly has attempted through revised R.C. §2305.10(G) to apply the new Statute of Repose to any product liability claim filed after April 7, 2005 “regardless of when the cause of

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<sup>4</sup> In direct defiance of *Brennaman*, the legislature re-enacted the real property improvements statute of repose in 2004 S.B. 80 (eff. April 7, 2005). See R.C. §2305.131. That is, of course, the same legislation that Respondents are championing in the instant case.

<sup>5</sup> The General Assembly fully appreciates that the tort reform enactment embodied in 2004 S.B. 80 is irreconcilable with Ohio Supreme Court precedents. In Section 3(E) of the uncodified portion of the legislation, the General Assembly has implored the high court to “reconsider” *Brennaman*, 70 Ohio St.3d 46, and other controlling decisions.

action accrued.” Understandably, Petitioners were not able to retain counsel, identify and locate the suppliers of the defective equipment, and commence the instant action within the month that remained before S.B. 80 went into operation. Since R.C. §2305.10(C)(1) does not just shorten the period for filing the claim, but actually extinguished it before it occurred, this aspect of S.B. 80 is unconstitutional by authority of *Hardy*, 32 Ohio St.3d at 45-48, *Brennaman*, 70 Ohio St.3d at 466, and *Sheward*, 86 Ohio St.3d at 476; *Patterson v. Zdrilich* (Nov. 22, 1994), 7th Dist. No. 93C.A.62, 1994 W.L. 672973.

### C. EQUAL PROTECTION

Section 2, Article I of the Ohio Constitution guarantees that citizens shall not be denied “equal protection” of the law. *Kinney v. Kaiser-Alum. & Chem. Corp.* (1975), 41 Ohio St.2d 120, 322 N.E.2d 880. All legislative enactments are subject to the limitations imposed by this fundamental right. *State ex rel. Doersam v. Industrial Commn. of Ohio* (1988), 40 Ohio St.3d 201, 202, 533 N.E.2d 321, 323. In particular, the Ohio Supreme Court has recognized that “[w]hile the General Assembly also has the power to define the contours of the state’s liability, it must operate within the confines of equal protection \*\*\*.” *Adamsky v. Buckeye Loc. Sch. Dist.*, 73 Ohio St.3d 360, 361-362, 1995-Ohio-298, 653 N.E.2d 212, 214.

Equal protection analysis requires an initial inquiry into whether the legislation imposes distinctions “between those within and those outside a designated class,” *Schwan v. Riverside Methodist Hosp.* (1983), 6 Ohio St.3d 300, 302, 452 N.E.2d 1337, or between members of the same class. *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 1994-Ohio-38, 633 N.E.2d 504. When the legislation at issue creates classifications involving a “fundamental right,” courts must apply the “strict scrutiny test.” *Primes v. Tyler* (1975), 43 Ohio St.2d 195, 198-199, 331 N.E.2d 723, 726; *Sorrell*, 69 Ohio St.3d at 424-425, 633 N.E.2d at 512; *Crowe v. Owens Corning Fiberglass* (Oct. 29, 1998), 8th Dist. No. 73206, 1998 W. L. 767622. Such a standard is

required in the instant case since the ten year statute of repose directly impacts the constitutional protections against *ex post facto* laws as well as the guarantees of a right to a remedy and a trial by jury. *Sorrell*, 69 Ohio St.3d at 424-425; *Galayda*, 71 Ohio St.3d at 425. In *Beatty v. Akron City Hosp.* (1981), 67 Ohio St.2d 483, 492, 424 N.E.2d 586, 592, the Court explained that:

If the discrimination infringes upon a fundamental right, it becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is justified by a compelling state interest. That is, once the existence of a fundamental right or a suspect class is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional. [citations omitted].

Even when the complaining party is not a member of a specifically protected group, legislation creating class differences must still be rationally based upon legitimate governmental interests. *Adamsky*, 73 Ohio St.3d at 362, 653 N.E.2d at 214. The equal protection clause generally requires that all similarly situated individuals be treated in a similar manner. *State ex rel. Patterson v. Industrial Commn. of Ohio*, 77 Ohio St.3d 201, 204, 1996-Ohio-263, 672 N.E.2d 1008, 1011; *Doersam*, 45 Ohio St.3d at 119, 543 N.E.2d at 1173; *State ex rel. Nyitray v. Industrial Commn. of Ohio* (1983), 2 Ohio St.3d 173, 175, 443 N.E.2d 962, 964.

An equal protection challenge to the four (4) year statute of repose for medical negligence was upheld in *Gaines*, 33 Ohio St.3d at 57-61. The plaintiff alleged claims of fraud and malpractice against the health care facility that was supposed to remove her intrauterine device (IUD) during a procedure that was performed on April 30, 1980. She did not discover that the device was still inside her, and had become embedded in a ligament, until a second procedure was performed on October 18, 1983. *Id.*, at 54. Although the statute of repose was not going to expire for another six (6) months, she did not take any legal action until October

16, 1984. *Id.* Both the trial judge and the appellate court concluded that the claim was barred.  
*Id.*

The high court proceeded to examine the statute of repose under the rational basis test.<sup>6</sup> *Gaines*, 33 Ohio St. 3d at 58. The problem for the plaintiff was that after the discovery of the malpractice, she still had approximately six (6) months left to file her lawsuit before the statute of repose eliminated the claim. The Court still ruled in her favor and explained that:

\*\*\* [A] person injured by malpractice who, in the exercise of reasonable diligence, does not discover his injury until more than three but less than four years after the act constituting the malpractice will have less than a year to institute legal action before the four-year bar intervenes to cut off his rights. This person is unique in the law of medical malpractice. He has the misfortune of belonging to the only class of litigants who do not have a reasonable period for seeking legal recourse. In some cases, the time for instituting suit will be reduced to a few days. A person in this class of plaintiffs is not any less injured than other malpractice victims. Nor has he been less vigilant in monitoring the quality of his medical care. Yet his legal rights are abridged and even cut off completely for no other reason than the fortuity of timing. We fail to discern any rational basis for distinguishing such a plaintiff from other medical malpractice litigants. The injury suffered is no less real, nor is the claim necessarily less meritorious. [emphasis added]

*Id.*, at 58-59. The Court then held that:

No reasonable grounds can be conceived which would justify denying a full year for filing a claim to a single class of litigants based solely on when they were able to discover the existence of a claim. It follows that R.C. 2305.11(B) is not rationally calculated to further the legislature's legitimate objective. Accordingly, as applied in this case, we conclude that R.C. 2305.11(B) is violative of the right to equal protection guaranteed by Section 2, Article I of the Ohio Constitution. [emphasis added]

*Id.*, at 59. Significantly, the opinion's analysis of the equal protection clause was in no way

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<sup>6</sup> This Court had not yet recognized that strict scrutiny applies when the guarantees of open courts and a right to a remedy are implicated. *Sorrell*, 69 Ohio St.3d at 424-425; *Galayda*, 71 Ohio St.3d at 425.

dependent upon the allegations that the plaintiff had been defrauded by the health care facility. It was enough that she only had six (6) months to file her lawsuit while most other claimants enjoyed the benefit of at least a full year. *See also, Schwan*, 6 Ohio St.3d at 301-303 (finding that reduction of a minor's period for bringing a malpractice suit violated equal protection).

*Gaines* is controlling in the instant case. Based upon the version of R.C. §2305.10 in effect at the time of the injury, Petitioners had every reason to believe that they had until March 3, 2007 to commence his lawsuit against Respondents. When S.B. 80 took effect on April 7, 2005, the product liability claim was immediately extinguished since the machinery had entered the stream of commerce over ten (10) years earlier. *R.C. §2305.10(C)(1)*. Those who fall prey to defective products (that were first sold more than ten years earlier) after April 7, 2005 are still entitled to a year, at a minimum, to commence their lawsuits pursuant to *Adams*, 4 Ohio St.3d at 39-40. There is simply no rational basis for the abrupt and drastic reduction of Petitioners' time for filing suit, which in no way furthers legitimate social interests. *Gaines*, 33 Ohio St.3d at 58-59.

#### D. DUE PROCESS OF LAW

Section 16, Article I of the Ohio Constitution guarantees due process of law, which requires that all legislation bear "a real and substantial relation to the public health, safety, morals, or general welfare" and not be "unreasonable or arbitrary." *Benjamin v. City of Columbus* (1957), 167 Ohio St. 103, 110, 146 N.E.2d 854, 860; *Mominee*, 28 Ohio St.3d at 274, 503 N.E.2d at 720-721; *Gaines*, 33 Ohio St.3d at 59, 514 N.E.2d at 714-715. These substantive due process rights are at least as extensive as those afforded under the Fourteenth Amendment to the United States Constitution. *Direct Plumbing Supply Co. v. City of Dayton* (1941), 138 Ohio St. 540, 544, 38 N.E.2d 70, 72. The Supreme Court of Ohio has explained that:

It must be remembered that neither the state in the passage of general laws, nor the municipality in the passage of local laws, may make any regulations which are unreasonable. The means adopted must be suitable to the ends in view, they must be impartial in operation, and not unduly oppressive upon individuals, must have a real and substantial relationship to their purpose, and must not interfere with private rights beyond the necessities of the situation.

*Froelich v. City of Cleveland* (1919), 99 Ohio St. 376, 391, 124 N.E. 212, 216; *see also* *Holeton v. Crouse Cartage Co.* (2001), 92 Ohio St.3d 115, 121, 2001-Ohio-109, 748 N.E.2d 1111, 1118. The guarantees of due process of law apply not just to the manner in which a claim is litigated, but also to the remedy that is available.

\*\*\* [I]t is not competent for the Legislature to give one class of citizens legal exemption for wrongs not granted to others; and it is not competent to authorize any person, natural or artificial, to do wrong to others without answering fully for the wrong. [italics original, underlining added]

*Byers v. Meridian Printing Co.* (1911), 84 Ohio St. 408, 423, 95 N.E. 917, 920, *quoting* *Park v. Free Press Co.* (1888), 72 Mich. 560, 40 N.W. 731.

In *Mominee*, 28 Ohio St.3d 270, the Court held that retroactively shortening an injured minor's period for commencing a medical malpractice claim could not be squared with the guarantee of due process, even where more than a year had been left within which to comply. *Id.*, at 278. Roughly a year later, the majority held that due process was violated when retroactive application of the medical malpractice statute of repose left an adult plaintiff with only six and one-half (6½) months to file suit. *Gaines*, 33 Ohio St.3d at 60. Given these precedents, this Court should also hold that Petitioner cannot be subjugated to revised R.C. §2305.10(C)(1) without violating his due process rights.

**CONCLUSION**

For the foregoing reasons, this *Amicus Curiae* urges this Court to adopt the positions advanced by Petitioners in these proceedings. In particular, the products liability statute of repose appearing in R.C. §2305.10(C)(1) should be held to be unconstitutional both on its face and as applied in the instant action.

Respectfully submitted,



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Paul W. Flowers, Esq. (#0046625)

[Counsel of Record]

**PAUL W. FLOWERS CO., L.P.A.**

*Amicus Curiae* Chairman, Ohio Academy  
of Trial Lawyers

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Brief** was served by regular U.S. Mail on this 26<sup>th</sup> day of February, 2007 upon:

Bonnie E. Haims, Esq.  
Kevin J. Boissoneault, Esq.  
Russell W. Gerney, Esq.  
**GALLON, TAKACS, BOISSONEAULT &  
SCHAFFER**  
3516 Granite Circle  
Toledo, Ohio 43617-1172  
*Attorneys for Petitioner, Douglas Groch, et  
al.*

Elise W. Porter, Esq.  
Office of Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
*Attorney for Defendant/Intervenor, Ohio  
Attorney General, Marc Dann*

Robert H. Eddy, III, Esq.  
Anna S. Fister, Esq.  
**GALLAGHER SHARP**  
420 Madison Avenue, Suite 1250  
Toledo, Ohio 43604  
*Attorneys for Respondents, Kard  
Corporation and Racine Federated, Inc.*

Kimberly A. Conklin, Esq.  
**KERGER & ASSOCIATES**  
33 South Michigan Street, Suite 100  
Toledo, Ohio 43604

Dan E. Cranshaw, Esq.  
David C. Vogel, Esq.  
Patrick N. Fanning, Esq.  
**LATHROP & GAGE**  
2800 Mutual Benefit Life Bldg.  
2345 Grand Avenue  
Kansas City, Missouri 64108-2684  
*Attorneys for Respondent, General Motors  
Corporation*



Paul W. Flowers, Esq. (#0046625)  
**PAUL W. FLOWERS CO., L.P.A.**  
*Amicus Curiae* Chairman, Ohio Academy  
of Trial Lawyers