

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel.
David M. Gross,

Appellee,

v.

The Industrial Commission
of Ohio, et al.,

Appellants.

Case No. 05-1689

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

Court of Appeals Case No. 04AP-756

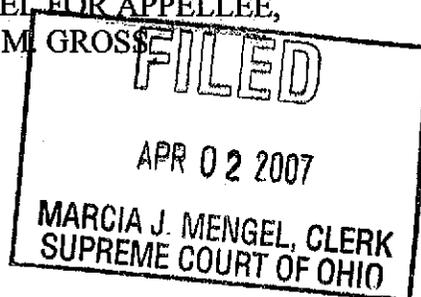
BRIEF OF THE UNITED AUTO AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
REGION 2-B, AS *AMICUS CURIAE*,
IN SUPPORT OF APPELLEE'S, DAVID M. GROSS',
MOTION FOR RECONSIDERATION

Stephen E. Mindzak (0058477)
(COUNSEL OF RECORD)
Shareef S. Rabaa (0076867)
STEPHEN E. MINDZAK LAW OFFICES, LLC
51 North High Street, Suite 888
Columbus, Ohio 43215
Telephone: (614) 221-1125
Facsimile: (614) 221-7377

COUNSEL FOR AMICUS CURIAE,
UNITED AUTO AEROSPACE &
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, REGION 2-B

Gary D. Plunkett (0046805)
(COUNSEL OF RECORD)
Brett R. Bissonnette (0076527)
Todd T. Miller (0063169)
HOCHMAN & PLUNKETT CO., L.P.A.
3077 Kettering Blvd.
Point West, Suite 210
Dayton, Ohio 45439
Telephone: (937) 228-2666
Facsimile: (937) 228-0508

COUNSEL FOR APPELLEE,
DAVID M. GROSS



MARC DANN
Attorney General of Ohio
Andrew Alatis (0042401)
(COUNSEL OF RECORD)
Assistant Attorney General
150 E. Gay St., 22nd Floor
Columbus, OH 43215
Telephone: (614) 466-6696
Facsimile: (614) 752-2538

COUNSEL FOR APPELLANT,
THE INDUSTRIAL COMMISSION OF OHIO

Philip J. Fulton (0008722)
(COUNSEL OF RECORD)
PHILIP J. FULTON LAW OFFICE
89 E. Nationwide Blvd., Suite 300
Columbus, OH 43215
Telephone: (614) 224-3838
Facsimile: (614) 224-3933

COUNSEL FOR AMICUS CURIAE,
OHIO ACADEMY OF TRIAL LAWYERS

Thomas R. Sant (0023057)
(COUNSEL OF RECORD)
BRICKER & ECKLER, LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2790

COUNSEL FOR AMICI CURIAE,
OHIO CHAPTER OF THE NATIONAL
FEDERATION OF INDEPENDENT
BUSINESS AND OHIO
MANUFACTURERS' ASSOCIATION

Edna Scheuer (0010467)
(COUNSEL OF RECORD)
Salvator A. Gilene (0075562)
SCHEUER, MACKIN & BRESLIN LLC
11025 Reed Hartman Highway
Cincinnati, OH 45242
Telephone: (513) 984-2040
Facsimile: (513) 984-6590

COUNSEL FOR APPELLANT,
FOOD, FOLKS & FUN, INC.

Robert A. Minor (0018371)
(COUNSEL OF RECORD)
VORYS, SATER, SEYMOUR & PEASE,
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
Telephone: (614) 464-6410
Facsimile: (614) 719-4874

COUNSEL FOR AMICI CURIAE,
OHIO SELF-INSURERS ASSOCIATION
AND OHIO COUNCIL OF RETAIL
MERCHANTS

Preston J. Garvin (0018641)
Michael J. Hickey (0021410)
(COUNSEL OF RECORD)
GARVIN & HICKEY, LLC
181 East Livingston Avenue
Columbus, OH 43215
Telephone: (614) 225-9000
Facsimile: (614) 225-9080

COUNSEL FOR AMICUS CURIAE,
OHIO CHAMBER OF COMMERCE

Stewart R. Jaffy (0011377)
Marc J. Jaffy (0046722)
STEWART R. JAFFY & ASSOCIATES
CO., LLP
306 East Gay Street
Columbus, OH 43215
Telephone: (614) 228-6148
Facsimile: (614) 228-6140

COUNSEL FOR AMICUS,
OHIO AFL-CIO

N. Victor Goodman (0004912)
Mark D. Tucker (0036855)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF, LLP
88 East Broad Street, 9th Floor
Columbus, OH 43215-3506
Telephone: (614) 223-9300
Facsimile: (614) 223-9330

COUNSEL FOR AMICUS CURIAE,
OHIO STATE BUILDING AND
CONSTRUCTION TRADES COUNCIL

LAW AND ARGUMENT

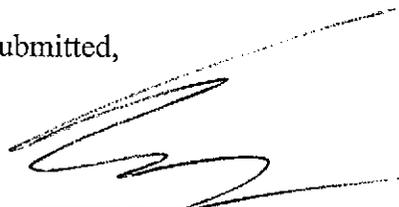
The UAW, Region 2-B, hereby adopts and incorporates in full, as if completely re-written herein, the arguments set forth in its “Memorandum of the United Auto Aerospace & Agricultural Implement Workers of America, Region 2-B, as *Amicus Curiae*, in Support of David M. Gross’, Motion for Reconsideration,” filed with this Court on January 8, 2007.

As noted, this is an issue of first impression for this Court. As such, it should be accompanied by the utmost in careful deliberation with the express intention of not disturbing the almost ninety five (95) year bargained for exchange wherein the Ohio General Assembly, in 1912, amended the Ohio Constitution to enact the legislatively-based Workers’ Compensation Act. This new “bargained for” statutory creation was to replace the previously common law based theory of recovery for work-related injuries on a showing of fault or negligence. As a result, the Workers’ Compensation Act eliminated fault and negligence as the bases of loss allocation. Thus, questions of blame, wrongdoing, fault, wrongful acts or omissions, dereliction, or neglect became irrelevant in the workers’ compensation system. Consequently, the bargain was set- employees gave up their right to sue at common law for work-related injuries and employers were guaranteed that the statutorily prescribed benefits would constitute the workers’ exclusive remedy for such injuries. This compromise was to be the bedrock principle underlying Ohio’s workers’ compensation system

Given the majority decision in the instant case, the foregoing principle is in danger of being entirely dismantled by this Court. At a time in Ohio when public confidence in workers’ compensation may be at an all time low due to the public scandals which were exposed and thus became the topic of popular discussions du jour, decisions from this honorable Court may be all

that the citizens of this great state are left to believe in. Any decision which would have the effect of disturbing long-standing principles would clearly serve to further undermine the already compromised integrity of the workers' compensation system. Besides chaos and confusion, public outcry will likely be the order of the day in workers' compensation in Ohio in the previous decision in this case stands. Reconsideration should be granted by this Court so that an adequate exploration and explanation of the issues can be had.

Respectfully submitted,



Stephen E. Mindzak (0058477)
(COUNSEL OF RECORD)
Shareef S. Rabaa (0076867)
STEPHEN E. MINDZAK LAW OFFICES, LLC
51 North High Street, Suite 888
Columbus, Ohio 43215
Telephone: (614) 221-1125
Facsimile: (614) 221-7377

COUNSEL FOR AMICUS CURIAE,
UNITED AUTO AEROSPACE &
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, REGION 2-B

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Brief of the United Auto Aerospace & Agricultural Implement Workers of America, Region 2-B, as *Amicus Curiae*, in Support of Appellee's David M. Gross', Motion for Reconsideration was served upon the parties listed below, by regular U.S. Mail, postage prepaid, this 2nd day of April, 2007.

Gary D. Plunkett (0046805)
(COUNSEL OF RECORD)
Brett R. Bissonnette (0076527)
Todd T. Miller (0063169)
HOCHMAN & PLUNKETT CO., L.P.A.
3077 Kettering Blvd.
Point West, Suite 210
Dayton, Ohio 45439
Telephone: (937) 228-2666
Facsimile: (937) 228-0508

COUNSEL FOR APPELLEE,
DAVID M. GROSS

MARC DANN
Attorney General of Ohio
Andrew Alatis (0042401)
(COUNSEL OF RECORD)
Assistant Attorney General
150 E. Gay St., 22nd Floor
Columbus, OH 43215
Telephone: (614) 466-6696
Facsimile: (614) 752-2538

COUNSEL FOR APPELLANT,
THE INDUSTRIAL COMMISSION OF OHIO

Edna Scheuer (0010467)
(COUNSEL OF RECORD)
Salvator A. Gilene (0075562)
SCHEUER, MACKIN & BRESLIN LLC
11025 Reed Hartman Highway
Cincinnati, OH 45242
Telephone: (513) 984-2040
Facsimile: (513) 984-6590

COUNSEL FOR APPELLANT,
FOOD, FOLKS & FUN, INC.

Philip J. Fulton (0008722)
(COUNSEL OF RECORD)
PHILIP J. FULTON LAW OFFICE
89 E. Nationwide Blvd., Suite 300
Columbus, OH 43215
Telephone: (614) 224-3838
Facsimile: (614) 224-3933

COUNSEL FOR AMICUS CURIAE,
OHIO ACADEMY OF TRIAL LAWYERS

Thomas R. Sant (0023057)
(COUNSEL OF RECORD)
BRICKER & ECKLER, LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2790

COUNSEL FOR AMICI CURIAE,
OHIO CHAPTER OF THE NATIONAL
FEDERATION OF INDEPENDENT
BUSINESS AND OHIO
MANUFACTURERS' ASSOCIATION

Stewart R. Jaffy (0011377)
Marc J. Jaffy (0046722)
STEWART R. JAFFY & ASSOCIATES
CO., LLP
306 East Gay Street
Columbus, OH 43215
Telephone: (614) 228-6148
Facsimile: (614) 228-6140

COUNSEL FOR AMICUS,
OHIO AFL-CIO

Robert A. Minor (0018371)
(COUNSEL OF RECORD)
VORYS, SATER, SEYMOUR & PEASE,
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
Telephone: (614) 464-6410
Facsimile: (614) 719-4874

COUNSEL FOR AMICI CURIAE,
OHIO SELF-INSURERS ASSOCIATION
AND OHIO COUNCIL OF RETAIL
MERCHANTS

Preston J. Garvin (0018641)
Michael J. Hickey (0021410)
(COUNSEL OF RECORD)
GARVIN & HICKEY, LLC
181 East Livingston Avenue
Columbus, OH 43215
Telephone: (614) 225-9000
Facsimile: (614) 225-9080

COUNSEL FOR AMICUS CURIAE,
OHIO CHAMBER OF COMMERCE

N. Victor Goodman (0004912)
Mark D. Tucker (0036855)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF, LLP
88 East Broad Street, 9th Floor
Columbus, OH 43215-3506
Telephone: (614) 223-9300
Facsimile: (614) 223-9330

COUNSEL FOR AMICUS CURIAE,
OHIO STATE BUILDING AND
CONSTRUCTION TRADES COUNCIL



Stephen E. Mindzak (0058477)