

IN THE SUPREME COURT OF OHIO
ON CERTIFIED QUESTIONS FROM
THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Douglas Groch, et al.,	:	
	:	
Plaintiffs-Petitioners,	:	Case No. 2006-1914
	:	
v.	:	[United States District Court
	:	Northern District of Ohio
General Motors Corp., et al.,	:	Western Division Case
	:	No. 3:06-CV-1604]
	:	
Defendants-Respondents.	:	

BRIEF OF AMICI CURIAE
OHIO CHAMBER OF COMMERCE,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
OHIO MANUFACTURERS ASSOCIATION
AND OHIO SELF-INSURERS ASSOCIATION
IN SUPPORT OF RESPONDENTS

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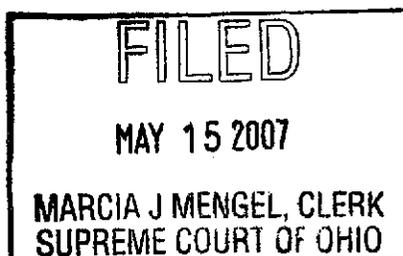
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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF INTEREST	1
STATEMENT OF THE CASE AND FACTS.....	3
ARGUMENT	3
Substitute Senate Bill 227	3
CONCLUSION.....	5
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

PAGE

CASES

Holeton v Crouse Cartage Co. (2001), 92 Ohio State 3d 115.....3, 4, 5

STATUTES

R.C. 4123.9313, 4, 5

CONSTITUTIONAL PROVISIONS

Art. I, § 165

Art. I, § 195

Art. I, § 25

STATEMENT OF INTEREST

The Ohio Chapter of the National Federation of Independent Business (NFIB) is an association with more than 36,000 members, making it the state's largest association dedicated exclusively to the interests of small and independent business owners. NFIB's members typically employ fewer than ten (10) people and record annual gross sales of less than \$250,000. NFIB's members are almost exclusively state fund employers.

The Ohio Manufacturers Association (OMA) is a statewide association of more than 2,200 manufacturing companies who collectively employ the majority of the 1.1 million men and women who work in manufacturing in the State of Ohio. The OMA's members have a vital interest in the interpretation and application of workers' compensation statutes and regulations as manufacturing companies are required to comply with these laws.

The Ohio Chamber of Commerce (OCC) is a trade association of businesses and professional organizations in the State of Ohio with direct business membership in excess of 4,500 business firms and individuals. A non-profit corporation organized and existing under the laws of the State of Ohio, the OCC represents business, trade, and professional organizations doing business within the State and has frequently participated as *amicus curiae*.

The Ohio Self-Insurers Association (OSIA) was formed in 1974 to represent Ohio's self-insuring employers in workers' compensation issues. It is the only statewide organization that represents self-insured employers exclusively and is devoted to the issue of workers' compensation. There are over one thousand self-insured employers in the State of Ohio. Ohio self-insured employers represent one-third of the Ohio work

force and over 40 percent of the Ohio payroll. OSIA also routinely files *amicus* briefs to assist its members in presenting arguments to the Ohio Supreme Court as well as other courts throughout the state.

All of these organizations and their members are vitally concerned about the issues presented in this case.

STATEMENT OF THE CASE AND FACTS

Amici curiae concur in the recitation of the case as set forth in the Introduction and Statement of Facts and the description of the case in the Brief of Respondent General Motors Corp. ("GMC").

ARGUMENT

Amici curiae concur in the arguments made in the Brief of Respondent GMC and would add only the following. By 1993, virtually all states provided for subrogation of workers' compensation benefits. That year, the General Assembly passed House Bill No. 107 to provide for subrogation in Ohio. Two years later, the General Assembly modified the subrogation provisions of the workers' compensation law with the passage of House Bill No. 278. In Holeton v Crouse Cartage Co. (2001), 92 Ohio State 3d 115, a narrow majority of this Court held the 1995 statute to be unconstitutional. However, that same majority was quick to point out that the General Assembly has a "legitimate interest in preventing double recoveries". Holeton, at page 121. Justice Resnick, writing for the majority, noted further that it would be constitutionally permissible to have legislation which would prevent a "tort victim from recovering twice for the same item of loss or type of damage." Holeton, at page 121.

The legislation challenged in this case, Substitute Senate Bill No. 227, addressed the Court's constitutional concerns plainly and simply. When a person is injured due to the negligent conduct of a third party, that injured person may suffer a variety of losses. The person may lose wages, may incur medical costs, may suffer damage to property, may have his or her earning capacity impaired so that there will likely be future lost wages, may require ongoing medical care, and the like. R.C. 4123.931 reflects the recognition that there are different types of losses and that, when someone is injured

while working due to a third-party's negligence, those losses may be separated into two categories. First, there are losses which are compensated in whole or in part through the workers' compensation system. For example, medical benefits are customarily paid so that there is no expense for the injured worker, such as through a co-pay. The workers' compensation system provides a partial replacement for lost wages. There are also losses that are not fully compensated through the workers' compensation system. Loss of enjoyment of life, that is "pain and suffering", is not compensated. The workers' compensation system does not provide for full reimbursement for lost wages in most cases. Property damage is not covered. The legislation distinguished between losses that are compensated through the workers' compensation system from those that are not compensated through the system.

The majority in Holeton was concerned that, under the 1995 statute, those injured workers who settled claims were treated differently than those who litigated claims. That distinction was eliminated in the current subrogation statute in direct response to the Court's concerns. Where a court awards damages or where there is a settlement, R.C. 4123.931 provides that these two types of losses – compensated losses and non-compensated losses – be recognized. The Bureau of Workers' Compensation or a self-insuring employer may apply its subrogation interest only to that portion of the recovery representing losses that have been compensated by the workers' compensation system. That portion of the jury award or the settlement for uncompensated losses such as pain and suffering, property damage, loss of earnings above workers' compensation payments, and the like, are not subject to subrogation. Thus, the Court's observation that double recovery is something that the General Assembly may enact legislation to prevent was squarely addressed by the legislation.

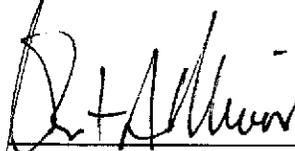
The majority of the Court in Holeton also expressed concern that providing subrogation for future losses might be too speculative. The current law provides that the injured worker may, at his election, have a fund established by which future awards would be deducted if and when the workers' compensation system pays for a future loss. The legislation served what Justice Resnick characterized as the state's "legitimate interest in preventing double recoveries" in a fair and reasonable manner, mindful of the Court's admonition.

In conclusion, in Holeton the Court declared the 1995 subrogation statute to be unconstitutional citing specific concerns. The General Assembly's response was not to enact legislation to override the Court's concerns but, rather, to address the concerns and comply with the guidance given by the Court.

CONCLUSION

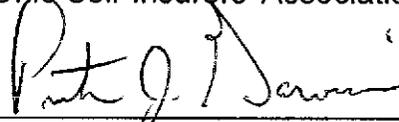
For the above reasons, and those set forth in the brief of Respondent GMC, amici curiae respectfully request that the Court answer the questions presented by the United States District Court for the Northern District of Ohio, Western Division, finding that R.C. 4123.931 does not violate Article I, Section 2, Article I, Section 16, nor Article I, Section 19 of the Ohio Constitution.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing has been served upon the following counsel by regular

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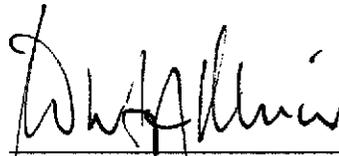
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