

IN THE SUPREME COURT OF OHIO

EURAND AMERICA, INC.

CASE NO. 07-0640

Appellant,

vs.

RANDALL J. DOHME

Appellee.

On Appeal from the Montgomery
County Court of Appeals,
Second Appellate District

Court of Appeals
Case No. 21520

MERIT BRIEF OF APPELEE DOHME

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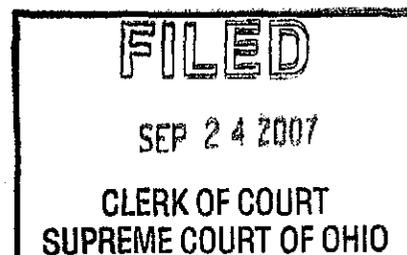


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SUMMARY OF THE ARGUMENT

Following a year measured by Dohme's consistent complaints and concerns directed to Eurand management and others regarding the company's workplace safety and environment, Dohme was wrongfully discharged on March 27, 2003. Since then, and in an apparent effort to hide from the public policy now before this Court, Eurand has argued from an impressive façade of innuendo and self-serving perception inaccurately portrayed as evidence.

But Eurand's consistent omission and/or ignorance of the several probative facts and circumstances surrounding Dohme's discharge, which are necessary to properly evaluate the root of the jeopardized public policy, flatly discredits Eurand's two propositions of law. Each proposition fails not for the legal proposal advanced, but upon the simple explanation that the full record actually satisfies each proposition. Cognizable jeopardy attached because Dohme did "apprise" Eurand of his workplace concerns, and did voice his concerns to his supervisors, and at times, to appropriate governmental authorities. As such, the propositions are cleverly founded on a flawed and handpicked set of circumstances that belies the totality of conduct engaged in by Eurand and suffered by Dohme.

Eurand has repeatedly attempted to minimize the scope of the relevant record – as indicated presently, by at least its' separately filed Supplement, which cherry-picks snippets of preferred statements and circumstances presumably supportive of its' blindly narrow interpretation of this lawsuit. By comparison, and if inclined to adopt Eurand's

strategy, Dohme would be required to “supplement” his merit brief with the full weight of the record – because therein lies the gist of Dohme’s lawsuit and the repeatedly voiced workplace safety concerns.

When this Court considers the complete record on appeal, objectively and collectively, it should observe several, material and contradicted facts inexplicably ignored by Eurand within its’ jurisdictional memorandum. From the same, this Court should conclude that the Second District Court of Appeals decision was not erroneous, but instead rested upon firmly established law as shaped by a particular and unique set of facts. The public policy of Ohio would surely be jeopardized if this Court supports Eurand’s clever argument and offensive action.

Finally, this Court should conclude that based on its’ review of the complete record on appeal, Eurand’s appeal was improvidently granted, and that this factually charged matter is not appropriate to interpret Eurand’s would-be propositions of law.

STATEMENT OF FACTS

Though this appeal turns on whether the public policy of Ohio is supported by protecting an employee who makes his concerns about workplace safety known to his employer, the underbelly of the lawsuit helps contextualize Eurand’s actions.

During the latter months of 2000, and the early days of January 2001, Eurand actively courted Dohme to assume its’ engineering supervision position, which had experienced incredible turnover over the course of the previous several years, *e.g.*, six supervisors in seven years. (Kevin Winter Depo. at 76) At that time, Dohme was employed with Chapel Electric as a general foreman, and had worked on-site at Eurand’s facility for approximately ten months. (Randy Dohme Depo. at 20) He was charged with

supervising 24 Chapel employees assigned to the Eurand plant, was well compensated, and was protected by his bargaining unit position at Chapel. (Id. at 20, 21)

Accordingly, Dohme did not quickly accept Eurand's offer "to solve its problems in maintenance." (Dohme Depo. at 22, 26-27, 31) Rather, Dohme investigated the possibility for three weeks, making a point to speak with each maintenance technician then employed. (Id. at 28) Though his observations revealed that Eurand's maintenance department was "disorganized," Dohme was buoyed by the fact that all the technicians were receptive to his hire, and the consistent representations made by Eurand's representative, Tim Grinstread, that Dohme would be afforded significant leeway to "shore things up" and to establish some rules and guidelines in the maintenance department. (Id. at 26, 28, 31)

Dohme began working for Eurand on January 12, 2001 as the engineering supervisor, and was initially responsible for organizing the maintenance department, helping implement a preventive maintenance plan, facilitating interaction between other departments, and providing customer service. (Id. at 35-36) Within a month or two, however, and apparently reflective of Dohme's performance, Eurand consistently added responsibilities beyond the scope of "traditional maintenance," and more in line with a "facility management" role. (Id. at 37-38)

During this period of time, maintenance technician Ralph Lindon, the longest tenured employee in the department, began a series of events and disturbances that materially and purposefully affected Dohme's supervision of the maintenance department (just like he had done to the previous six since-departed supervisors.) As Eurand employee, Kevin Winter testified, "[Lindon] is the center of all the commotion. If

something is not right in the shop, it always seems to go back to him.” (Winter Depo. at 23) Worse, and inexplicable, a different set of rules was consistently applied to Lindon’s conduct. (Id. at 69-71) Confronted one day by a frustrated Winter, Bert Cruz, the director of engineering, advised that if he challenged Lindon, it would end his career with Eurand. (Id. at 70; Dohme Depo. at 92-93) Lindon clearly possessed (and presumably still possesses) an unspoken leverage over the company. (Winter Depo. at 71)

Per Grinstead’s instructions from the time Eurand pursued Dohme’s hire, the imposition of maintenance department rules, regulations and discipline was a core requirement. But, when Dohme attempted to implement the same, Lindon and Tolliver balked, and Eurand never backed Dohme. Regardless, “[Dohme] never gave up.” (Winter Depo. at 29) Dohme tried to spend time with each [technician] * * * I know he took [Lindon] to a ballgame. * * * I know he offered [Tolliver] some football tickets. He was trying individual things also away from work, * * * to have good relations and in hopes that would help the relations inside the company.” (Id. at 28)

Dohme also repeatedly requested input from his superiors and the human resources department’s intervention and assistance to deal with the “commotion.” See, e.g., (Dohme Depo. at 67-71; Dohme Deposition Exhibits B, C, and E, filed by Eurand at Docket Entry # 15) Not only was the requested relief not provided, Karen Waymire, director of Eurand’s human resources department, specifically advised the technicians to document *their* manufactured concerns *about* Dohme. (Dohme Depo. 52; Tolliver Depo. at 40-42) Like his real concerns expressed about workplace safety, Dohme’s inability to supervise has been unfairly portrayed, and inaccurately described.

Had Eurand consistently applied the company regulations to each employee, and had it permitted Dohme to accomplish the principle task for which he was hired – to “shore up” the maintenance department, the company may have avoided its “sixth or seventh” supervisory change in as many years in its maintenance department, and it may have taken measurable steps towards curing the workplace safety concerns. (Winter Depo. at 76)

Eventually succumbing to technician Lindon’s demands, and “frustrated with Dohme’s ineffectiveness,” Eurand demoted, reassigned and removed Dohme’s supervisory responsibilities on July 9, 2002 (replaced by Toby Larned - an individual with no engineering maintenance experience.) Thereafter, Dohme’s new position was Facilities/CMMS Administrator, which read impressively, but in daily practice, was an overreaching description of his MP2 responsibilities - a environmental software program that Eurand had failed to install since 1997.

While certainly one component of Dohme’s responsibilities during his employment, (Dohme Depo. at 100) the MP2 system never arose to the level of “importance” frequently articulated by Eurand. Summarized fairly, Winter testified when asked if the MP2 was important to the company: “It couldn’t have been that important if it had been in place since ’97 or ’98 and hadn’t gone very far [Dohme was hired some four years after its inception]. I think it was – it’s necessary, but I don’t know how important based on priorities and stuff were getting arisen – how it got followed through because when we get to a certain place where we were getting it in gear [*Cf.*, Winter Depo, at 56-60], the floor would fall out, then it might be another six months, ten months, a year down the road and people realize we got to get this going. We’d get it going and

the floor would fall out.” (Winter Depo. at 87) Even at the time of this Court’s review, the MP2 system, which assists, in part, in administering Eurand’s work environment, is still not functioning as intended.

As a result of the continued stressful work environment condoned by Eurand, Dohme was forced to take medical leave. Upon his return, Dohme’s already reduced responsibilities were further scaled back and “delegated” to other individuals. For the last three months of his employment, Dohme was the “glorified parts clerk,” responsible for tracking the tools/parts that the maintenance department used, but never wavered on his concern of plant safety.

During the two-day field visit by the insurance representative, Peter Lynch, Dohme did not actively seek out the insurance representative, or subsequently engage the representative to further his own personal interests. In fact, Dohme did not meet Lynch until the second day – and then only at the request of Eurand. (Dohme Depo. at 251-252) Nor was the encounter surreptitious or overtly improper, as it has been portrayed. Instead, Dohme was summoned by Eurand to the lobby to greet and welcome Lynch only after Toby Larned could not be found. (Dohme Depo. at 247, 250)

The trial court concluded that Eurand lawfully terminated Dohme “for disobeying a specific order from his employer to not speak with a representative from a private insurance company.” *See*, Decision at 7. Too much has been made of Eurand’s curious directive, and not enough of Eurand’s incongruent behavior.

Eurand points to a company e-mail as the only basis for its termination of Dohme. (Dohme Depo. at 248, Exhibit DD) In its entirety, the e-mail read:

An inspector for our property insurance firm will be here on March 24 through 25 to do a site survey and risk assessment. He will be

working with Engineering, EH&S and Finance. There should be minimal interaction required of other departments. However, this inspection is similar to an external audit, therefore any responses to him should be directed through Toby Larned, Dane Marsee or me.

Asked whether he received this e-mail prior to meeting with the insurance representative (Lynch), Dohme answered, "I'm sure I received it, but I'm not sure if I pulled it up and read it by then or not. They could go back in the e-mail records and see." (Dohme Depo. at 248) Despite its presumed ready access to Dohme's company e-mail account, Eurand never demonstrated when Dohme opened and read the e-mail. Given that such timing is critical to the legitimacy assigned by Eurand to Dohme's termination, and materially relied upon by the trial court, (Decision at 7) the absence of such proof materially affects the determination of whether Dohme violated a company directive.

If Dohme did not read the e-mail until after his interaction with Lynch, he did not violate Eurand's directive, nor was he otherwise operating far a field of his responsibilities. Importantly, the appropriate nexus between Dohme's job duties and his interaction with Lynch has always existed. Stated differently, Dohme was not performing outside the scope of his duties at the time he met with Lynch. But it has always been curious why Eurand even attempted to curtail Dohme's interaction.

Until at least July 2002, Dohme was responsible for overseeing the type of on-site insurance inspections and assessments conducted by Lynch. (Dohme Depo. at 247) At the time of Lynch's visit in March 2003, Dohme's latest job description could still be interpreted to require Dohme's administration, or at least, some level of involvement with the inspection. (Id at 162, Exhibit N, Major Responsibilities, ¶¶ 1, 4, 9, 11, and 14.)

But for the e-mail, as a member of the engineering department, and as the purported Facilities/CMMS (Computerized Maintenance Management System)

Administrator, Dohme's interaction with Lynch would have been customary, if not welcomed by the insurance industry. Assuming Dohme had not seen the e-mail before Lynch's visit, he would have expected, and seemingly been expected, to meet with Lynch as part of his job duties. (Dohme Depo. at 162, Exhibit N, Major Responsibilities, ¶¶ 1, 4, 9, 11, and 14.))

And as part of those job duties, he could have properly advised Lynch of the work place safety concerns detailed in the MP2 printouts, which plainly documented overdue fire alarm inspections at the facility. Dohme had already experienced first hand the dangers associated with this defect. *See, e.g.*, Dohme's Affidavit, attached to his Memorandum in Opposition, ¶¶ 3-8. Although a responsible company would welcome such cautionary counsel, the law nevertheless prohibits any company from terminating an employee for raising these types of concerns.

Even if Dohme had opened and read the e-mail prior to Lynch's visit (which speculation on appeal is moot, *cf.*, *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207), reasonable minds could disagree as to what intervening affect Eurand's inclusion of Dohme during Lynch's visit had on Eurand's allegedly contradictory directive. Eurand's subsequent inclusion of Dohme could reasonably be construed to have caused Eurand's waiver of its' employees restricted access to Lynch. The law routinely contemplates that when one party opens the door, it may no longer control the flow of information through that opening.

Reasonable minds could conclude, and the law would reasonably support, that Eurand proximately caused Dohme's interaction with Lynch, which thereby precluded

Eurand's subsequent strict reliance on its e-mail directive. Eurand cannot be permitted to have it both ways.

On the second day of his investigation, Lynch was thought to be waiting in the lobby too long for Toby Larned, who, despite the apparent import of Lynch's visit, could not be located in his office or on site. (Dohme Depo. at 252) Worried about the delay, Eurand called Dohme at his office number, explained the situation, and invited his role. Dohme agreed to greet Lynch on behalf of Eurand. After greeting Lynch, Dohme attempted several times to locate Larned, but never could. (Id.) Eurand did not object or act to prevent Dohme's meeting with Lynch. (Id.)

During the brief interaction, Dohme presented Lynch with certain MP2 printouts, which detailed his long expressed concerns for Eurand's workplace safety.

Because Dohme's job duties had, by this time, become so convoluted due to Eurand's daily manipulation that it was unclear what Dohme should or should not be doing, Eurand jumped on this interaction as a means to rid itself of Dohme. Throughout the final stages of Dohme's employment, and continuing through this litigation, Eurand has continually advanced conflicting and contradictory assertions about Dohme's job duties in an effort to disguise its unlawful conduct. By arguing from this perspective, Eurand cast Dohme as a troublemaker, a violator of company directives, and as an employee intent only on his own self-preservation and job security. But in its contrived process, Eurand has completely ignored the actual content of Dohme's discussion with Lynch – workplace safety.

From Dohme's perspective, he raised reasonable and documented workplace safety concerns to Lynch in effort to promote a cure for the MP2 system - which was

never properly utilized during Dohme's employment tenure due to Eurand's inability or refusal to provide effective oversight. While one affect of his discussion with Lynch may have tangentially assisted his self interests, the intended result was to bring attention to his ongoing safety concerns. And this was not an issue created by Dohme to steer Eurand away from his alleged culpability.

Dohme had frequently addressed Eurand's workplace safety issues to those who would listen. On August 17, 2001, the plant caught fire. When Dohme tried to pull the fire alarm in the Old Energy Center, it failed. As a result, Dohme was forced to race to another pull station nearly eighty yards away. Due to the defective system, Dohme was taken by ambulance to the hospital for treatment related to his smoke inhalation. *See, Dohme's Affidavit, supra* at ¶¶ 3-5.

Dohme also expressed other workplace safety concerns to Richard Francisco, a captain with the Vandalia Fire Department. (Dohme Depo. 134-141) As a result of those conversations, an investigation of the plant was conducted. (Id.) And while that particular investigation returned no city code violations, given Dohme's considerable concerns, which included cyclohexane leaks (a highly volatile hazardous material), improper exhausting, deteriorating wires leading to the pump in the 1000 gallon suite, etc., (Id.), Francisco advised Dohme to consult with an attorney. (Dohme Depo. at 137) Aside from the investigation above identified, Francisco has been in the building "several" other times. (Id.)

Based on Francisco's recommendation, Dohme's attorneys were involved, and his workplace safety concerns were relayed to Eurand. (Dohme Depo. at 141) Eurand was

fully aware of Dohme's several concerns related to workplace safety. Under the law crafted by *Pytlinski, infra* nothing more is required.

Though Eurand has understandably sought to defuse and minimize its workplace safety issues, Dohme's fears were real, documented and routinely expressed to Eurand. Reasonable minds could debate whether Dohme's advocated concerns were proximately related to his discharge, and whether Eurand's sole basis for discharge - Dohme's interaction with Lynch - was more pretext than violation.

Eurand has effectively exploited a few comments made by Dohme during his deposition, which when isolated appear to be more significant than they actually are. And while Dohme's deposition is susceptible to such efforts, these comments cannot operate to eliminate the much broader context described by Dohme during his deposition, and well understood by Eurand, which enveloped Dohme's interaction with Lynch on March 25, 2003.

ARGUMENT

A. Appellant's Propositions of Law:

Proposition of Law No. I: To satisfy the jeopardy element of a wrongful discharge claim upon an alleged retaliation for voicing concerns regarding workplace safety an employee must voice the concerns to a supervisory employee of the employer or to a governmental body.

Proposition of Law No. II: To satisfy the jeopardy element of a wrongful discharge claim based upon an alleged retaliation an employee must advise the employer or act in a manner that reasonably apprises the employer that the employee's conduct implicates a public policy.

B. Appellant's Propositions of Law are Substantively Flawed:

Prior to reaching the legal propriety of Eurand's propositions of law, it must be acknowledged that each proposition is substantively flawed. For this Court to adopt either of Eurand's proposals, it, like Eurand, must unreasonably limit its' review of the record to a five-minute conversation on March 25, 2005, and elect to ignore the balance and totality of the other circumstances that caused Dohme's claim.

The issue is not and should not turn on whether Dohme's conversation with an insurance agent violated a curious company directive; it should turn on why Eurand instructed Dohme not to talk to the agent, and why Eurand refuses to recognize the countless other occasions Dohme advised Eurand of his workplace concerns.

When the totality of the record is considered, as normally is the custom, Dohme's actions and conduct plainly satisfy Eurand's two propositions of law. But, by ignoring the totality of the record, Eurand cleverly engaged in an end-round jurisdictional play to arrive before this Court in hopes of enticing this Court's review of two arguably colorable issues, which ultimately lack the proper factual foundation in this case.

Mindful of Dohme's entire work experience at Eurand, and as the record capably establishes, Dohme "voice[d] concerns" to both his supervisor(s) and an appropriate "governmental body." Such advice and conduct by Dohme reasonably "advise[s] and/or apprise[s] the employer that the employee's conduct implicates a public policy." Eurand should not be heard to argue that Dohme's concerns caught the company by surprise, or that Dohme's concerns were only manufactured to fuel Dohme's wrongful discharge claim.

C. Dohme's Answer to Appellant's Propositions of Law:

Throughout Dohme's employment with Eurand, Dohme repeatedly questioned and challenged Eurand on its' fire safety protocol. And more directly, Dohme personally experienced Eurand's workplace safety flaws when he was caught in a plant fire and first observed and then suffered the affects of the plant's fire alarm deficiency.

Then, when the MP2 system purchased and installed by Eurand to monitor and control several workplace issues, including, but not limited to fire safety, failed to properly be implemented and utilized, Dohme continued to voice his concerns to his supervisors and neighborhood fire chief. Not lost on Eurand, Dohme was precisely the employee companies loathe; one that is familiar with the expected protocols, and vocal enough to raise a fuss; such that a company has to incur undesired overhead and cost, as well as answer for a malfunctioning and ill-equipped piece of equipment. Dohme's antics were to sure to cost Eurand thousands and thousands of dollars – as demanded by any number of statutes, codes and regulations. But, some companies are not necessarily in the business to follow the law; they are in the business to make money. All of which explains Eurand's strategies and approach to Dohme's lawsuit; but not of it is satisfactory or excusable.

It is no secret that large companies routinely roll the dice and push the envelope to maximize their profits; especially when the protected action called for is as innocuous as fire safety safeguards. Akin to insurance; it is (supposed to be) a necessary evil that must be endured in the event of an accident. No bottom-line driven company seeking to go public likes to pay for services that it can never be assured of needing - that's contrary to the understood push to maximize the profit.

But in this instance, Eurand's hesitance towards government mandated compliance was more alarming given its' near past experience of at least one plant fire (personally observed by Dohme), and Dohme's supported concern that it could happen again. Dohme's discharge was deemed more cost effective by Eurand than insuring the plant safety of its' employees.

* * *

In *Kulch*, this Court followed the suggestion of the court in *Painter* and applied the analysis of Villanova Law Professor H. Perritt, who set forth the elements of a wrongful discharge claim in violation of public policy. *Kulch v. Structural Fibers, Inc.* (1997), 78 Ohio St.3d 134, 150-151, 677 N.E.2d 308, 321; *Painter v. Graley* (1994), 70 Ohio St.3d 377, 384, 634 N.E.2d 51, 57 at fn. 8. The elements of the tort do not include a requirement that there be a complaint to a specific entity, only that the discharge by the employer be related to the public policy. *Pytlinski v. Brocar Prod., Inc.* (2002) 94 Ohio St.3d 77, 80 at fn. 3, 2002-Ohio-66; *see, also*, H. Perritt, *The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie?* (1989), 58 U.Cin.L.Rev. 397, 398-399.

Accordingly, this Court in *Pytlinski* specifically "disagree[d] with any contention * * * that [the employee's] claim fail[ed] because his complaints were not filed with OSHA * * * [I]t is the retaliatory action of the employer that triggers an action for violation of the public policy favoring workplace safety." *Pytlinski*, 94 Ohio St.3d at 80. And like *Pytlinski*, Dohme's complaint "clearly sets forth the allegation that [Eurand] retaliated against him for lodging complaints regarding workplace safety." *Id.*

Dohme's Complaint is equally clear and discernible. *See, e.g.*, Complaint at ¶ 7 ("As Engineering Supervisor, Plaintiff would routinely notice Defendant as to ongoing organizational concerns, employee performance, overtime issues, plant safety and a flawed chain of communication or command in an effort to better maximize Defendant's business operation and encourage workplace safety"); ¶ 30 ("In the course of his employment and following a fire at the facility on February 10, 2002, Plaintiff became aware of environmental safety concerns related to diaphragm pumps and their attendant venting that he reasonably believed posed an imminent risk of physical harm to employees and the physical integrity of the facility itself"); ¶ 31 ("Plaintiff informed Cruz and Larned [his supervisors] of his concerns, and following a discussion regarding the same, was instructed to keep the matter confidential"); ¶ 32 ("During the next several months, Plaintiff continued to express concerns to Cruz and periodically requested additional meetings to further discuss Plaintiff's workplace safety concerns"); ¶ 33 ("On or about June 17, 2002, a meeting was scheduled and was to include Plaintiff, Cruz and Dan Salain, vice president of plant operations, in order to further explore the safety concerns. Despite the same, Cruz failed to attend the meeting, purportedly upon the earlier expressed sentiments on or about May 30, 2002 that Plaintiff was a "troublemaker" and that Plaintiff's continued disagreement as to workplace safety concerns would lead to termination"); and ¶ 37 ("On or about March 27, 2003, Plaintiff was wrongfully terminated in contravention of public policy for his perceived role in an on-site insurance adjuster's discovery of certain violations relative to Defendant's fire alarm system, which, upon information and belief, jeopardized workplace safety and placed employees in an unreasonable and dangerous setting. Despite reasonable

concerns to the aforementioned system, the site and the employees themselves, Defendant actively attempted to prevent employee communication with said adjuster pursuant to an interoffice email sent by management personnel to all employees, including Plaintiff, days prior to the adjuster's arrival, which expressly prohibited communication with said adjuster").

These allegations were neither "generic" nor the type of hyperbole argued by Eurand. Though the expansive legal theories contrived by Eurand certainly appear logical, they are not derivative of the underlying facts of this case, nor descriptive of the arguments placed before the Second District Court of Appeals.

Ironically, Eurand claims that it was deprived the benefit of claim specificity, when it is often the employer that fosters a convenient misperception of the claim. Too often, like present, the true identity of the employee's claim is lost in the employer's pigeon holed discovery technique: ask and seek only that information that is employer friendly and that may embolden the inevitable summary judgment motion. Often, the first opportunity the employee receives to communicate his complete position, is on the date of the trial. Eurand cannot have it both ways.

Finally, despite its feigned benevolence on behalf of all Ohio's employers, Eurand is only asked presently to defend against a well-rooted exception to at-will employment already found to exist: workplace safety. Regardless of Eurand's convenient perspective of the state of wrongful discharge law in Ohio, it matters little on the limited issues involved in this case, made only narrower by an actual review of the record.

Further still, the Second District Court of Appeals did not award judgment to Dohme; that much still remains for a jury's deliberation. What the appellate court did,

however, was look beyond Eurand's subjective interpretation of Dohme's public policy claim, and determine that Dohme's articulated claim not only touched a cognizable public policy, but is one that should be determined by a jury capable of assessing the parties' true intentions.

As contemplated by this Court, that is how public policy is to be developed:

We note as well that a finding of a "sufficiently clear public policy" is only the first step in establishing a right to recover for the tort of wrongful discharge in violation of public policy. In cases where this required element of the tort is met, a plaintiff's right of recovery will depend upon proof of other required elements. Full development of the elements of the tort of wrongful discharge in violation of public policy in Ohio will result through litigation and resolution of future cases, as it is through this means that the common law develops. *Painter, supra*, 70 Ohio St.3d at 384.

The Second District Court of Appeals did no more than what has long been contemplated, intended and favored by this Court.

From the beginning of this litigation, and continuing throughout the briefing and memoranda filed with the lower courts, Eurand has consistently ignored the specific identity of Dohme's public policy claim, as if its' blissful ignorance might actually make the pink elephant in the room disappear. Eurand continues this posture within its' jurisdictional motion. *Cf.*, Motion at 4-6.

Dohme, however, did not offer a grab bag of policies for the lower courts' consideration, nor did he conjure up a "generic" claim. His *Greeley* claim, was, and has always been based upon the public policy favoring workplace safety, and specifically the danger associated with Eurand's administration of its' fire alarm system. *Greeley v. Miami Valley Maintenance Contractors, Inc.* (1990), 49 Ohio St.3d 228, 234, 551 N.E.2d 981, 987; *cf.* Complaint at ¶¶ 7, 30-33, 37.

Corroborative of Dohme's sufficient specificity - both originally pleaded and consistently argued - and despite the "abundance" of supportive authority related to workplace safety, the Second District Court of Appeal's cited to narrowly confined statutes involving fire safety. *See*, Opinion at 9, citing, R.C. 3737.82; O.A.C. 1301:7-7-01 *et seq.* and 29 C.F.R. §§1910.164, 1910.165 ("Ohio's Fire Code includes rules relating to the installation, inspection and location of fire protection equipment * * * Further, there are federal laws relating to fire protection and employee alarm systems.")

As this Court has consistently held, "We have confidence that the courts of this state are capable of determining as a matter of law whether alleged grounds for a discharge, if true, violate a 'clear public policy' justifying an exception to the common-law employment-at-will doctrine, thereby stating a claim." *Painter, supra*.

Further, while discussing the origin of the exception to Ohio's at-will employment doctrine, this Court in *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, 68-69, 652 N.E.2d 653, observed:

In adopting the exception, it is often pointed out that the general employment-at-will rule is a harsh outgrowth of outdated and rustic notions. The rule developed during a time when the rights of an employee, along with other family members, were considered to be not his or her own but those of his or her paterfamilias. The surrender of basic liberties during working hours is now seen "to present a distinct threat to the public policy carefully considered and adopted by society as a whole. As a result, it is now recognized that a proper balance must be maintained among the employer's interest in operating a business efficiently and profitably, the employee's interest in earning a livelihood, and society's interest in seeing its public policies carried out" (citations omitted).

Eurand's clear attempt to restrict either the continued maturity of the pertinent public policy exception, or the deference extended by this Court to the state courts'

concerning their collective construal of the underlying affected policies is inapposite to the direction outlined by this Court.

CONCLUSION

For these reasons, Dohme respectfully requests that this Court reject Eurand's argument, and affirm the Second District Court of Appeals Decision. Eurand ignores the totality of the work environment negatively experienced and realized by Dohme. This case is a fact-sensitive matter arising from a firmly rooted exception to the employment at-will doctrine.

Respectfully submitted,

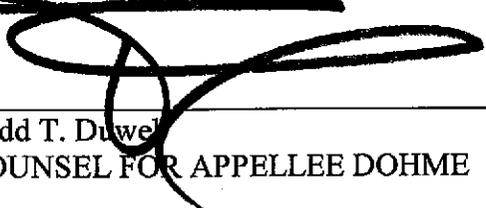

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Dohme's Merit Brief has been served via regular U.S. mail upon counsel for Appellant, Todd D. Penney, 11025 Reed Hartman Highway, Cincinnati, OH 45242, Defendant's counsel, via regular U.S. mail, this 21st day of September 2007.


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COUNSEL FOR APPELLEE DOHME