

IN THE SUPREME COURT OF OHIO

CASE NO. 2007-1819/2007-1821

BERTHA LOUDEN EXECUTRIX; MARY J. BORDER, EXECUTRIX
Plaintiff-Appellants,

-vs-

A.W. CHESTERTON CO.; GOULD'S PUMPS, INC.; INGERSOLL-RAND CORP., et al.
Defendant-Appellees.

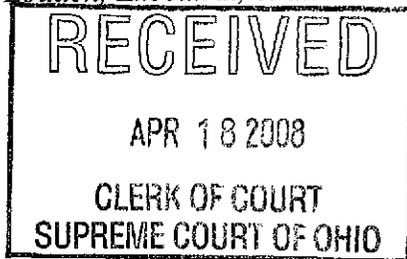
ON APPEAL FROM CUYAHOGA COUNTY
COURT OF APPEALS CASE NOS. 90184 & 90185

MERIT BRIEF OF PLAINTIFF-APPELLANTS,
BERTHA LOUDEN, EXECUTRIX AND MARY J. BORDER, EXECUTRIX

John I. Kittel, Esq. (#0071817)
Bryan M. Frink, Esq. (#0073449)
MAZUR & KITTEL, P.L.L.C.
30665 Northwestern Highway, Suite 175
Farmington Hills, MI 48334
(800) 990-6380
Fax: (248) 432-8010

Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS, Co., L.P.A.
50 Public Square, Suite 3500
Cleveland, Ohio 44113
(216) 344-9393
Fax: (216) 344-9395
pwf@pwfco.com

Attorneys for Plaintiff-Appellants, Bertha Louden, Executrix, et al.



Timothy Fitzgerald, Esq. (#0402734)
John Valenti, Esq. (#0025485)
Holly M. Olarczuk-Smith, Esq. (#0073257)
GALLAGHER SHARP
Bulkley Bldg. - 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115
(216) 241-5310
Fax: (216) 241-1608
jvalenti@gsfn.com

Attorneys for Defendant-Appellees, Gould's Pumps Co. and Ingersoll-Rand Corp.

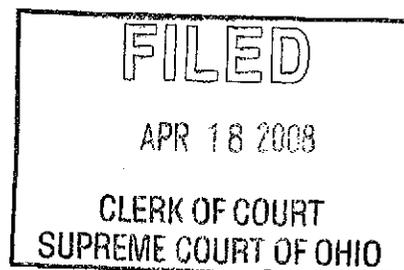


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STATEMENT THE FACTS

The wrongful death claims of the two (2) Plaintiff-Appellants are largely identical. Wayne Border, Deceased, had worked for American Electric Power (AEP) from approximately 1967 through 1996. Roger Loudon, Deceased, was employed at the Cleveland Electric Illuminating (CEI) Plant in Ashtabula from roughly 1977 through 2000. Both men were maintenance workers and were regularly exposed over their careers to asbestos laden products manufactured by Defendant-Appellees, Gould's Pumps, Inc. and Ingersoll-Rand Corp. Both workers eventually died of mesothelioma.

Approximately ten (10) years ago, the Cuyahoga County Court of Common Pleas conducted a series of public hearings with the goal of adopting procedures for adjudicating the avalanche of asbestos-related injury and death claims which were anticipated. The two (2) jurists who had been assigned the "asbestos docket," Judges Harry A. Hanna and James J. Sweeney, issued General Personal Injury Asbestos Case Management Standing Order No. 10 on January 26, 1998, in which they announced that:

The Court has been informed that, by April, 1998, there will be over 10,000 asbestos related cases pending in this Court, and that current methods in processing, serving, and storing the paper will soon be inadequate, and further that the human resources of the Clerk of Courts and the Court Administrator are already strained by this caseload. Therefore, the Court has decided to use the Complex Litigation Automated Docket (CLAD) system provided by LEXIS-NEXIS in order to increase the efficiency of the Court.

Parties' Joint Stipulation to Record Contents filed March 20, 2008 (hereinafter "Stip. Rec."),

Tab 1.

A detailed Case Management Order to Implement Lexis-Nexis File & Serve in Place of CLAD was later issued on July 11, 2003 memorializing the comprehensive procedures and

mechanisms for processing the claims through the “paperless” system. *Stip. Rec., Tab 2.* The Order provided that:

As of the commencement date of this Rule, all asbestos documents filed in the selected cases shall be electronically filed. Additionally, counsel shall serve all documents electronically when service is required among counsel. [emphasis added].

Id., Section B2(2). The Court further directed that:

Any pleading filed electronically shall be considered as filed with the Clerk when the transmission is completed (“authorized date and time”). Any document e-filed with the Clerk by 11:59 p.m. ET shall be deemed filed with the Clerk on that date. *** [emphasis added].

Id., Section B2(5). The Court’s intention to effectively eliminate traditional paper filings could not have been clearer.

For asbestos cases, the clerk shall not accept or file any pleadings or instrument in paper form. *** [emphasis added].

Id., Section B2(7)(b).

In a timely manner, wrongful death actions were commenced in the Cuyahoga County Court of Common Pleas on behalf of the beneficiaries of both Decedents. *Case Nos. 590044 & 592502.* Compensatory damages were sought against numerous asbestos manufacturers and suppliers, including the instant Defendants. *Stip. Rec., Tabs 3 & 4.* Both actions were assigned to the Common Pleas Court’s asbestos docket and consolidated with numerous similar lawsuits. In a timely manner, responsive pleadings were submitted by Defendants. *Id., Tabs 5, 6, 7, & 8.*

Defendants submitted their summary judgment motions through the File & Serve system which simultaneously challenged the claims of several asbestos claimants, including those being pursued by Plaintiffs. Plaintiffs tendered their timely “master” opposition briefs electronically which addressed the Defendant’s general arguments as well as shorter “specific” responses

pertaining to the unique features of their own claims. In separate Orders and Entries of Judgment that were issued on April 5, 2007, the trial judge granted the Defendant's Motions.¹ *Stip. Rec., Tabs 9 & 10.* Included therein was "no just reason for delay" language in accordance with Civ.R. 54(B).

On May 4, 2007 Plaintiffs submitted a Notice of Appeal in both actions through the File & Serve System. *Stip. Rec., Tabs 15 & 16.* The submissions were accepted by the File & Serve System and Plaintiffs' counsel was never warned by the Clerk or anyone else in the weeks that followed that there was any problem. For reasons which are unclear, the trial judge issued orders on May 24, 2007 again granting summary judgment in favor of Defendants. *Id., Tabs 19 & 20.*

When the Clerk had not served the May 4, 2007 Notice of Appeal in accordance with App.R. 3(E), Plaintiffs manually filed Notices of Appeal on July 24, 2007. At approximately the same time, they submitted Motions to Determine Timeliness of their appeal. *Stip. Rec., Tabs 21 & 22.* Defendant opposed both applications. *Id., Tabs 23 & 24.* For the first time in the proceedings, the manufacturer took the position that the appeal was untimely solely because Plaintiffs had submitted the Notice to the trial court electronically instead of manually. *Id.* Plaintiffs then withdrew their motions on July 26, 2007. *Id., Tabs 25 & 26.* Nevertheless, an Entry was issued by the appellate court stating that:

Motion by appellant to determine timeliness of [Ingersoll-Rand's] appeal is denied as moot. *Sua sponte*, the appeal is dismissed per App.R. 3 and App.R. 4. Appellant failed to timely comply with this court's requirements, therefore the appeal is dismissed per App.R. 4(A). ***

¹ Plaintiffs submitted Civil Rule 60(B) Motions for Relief from Order Granting Summary Judgment on April 13, 2007. *Stip. Rec., Tabs 11 & 12.* These requests were opposed by Defendants and denied on May 7, 2007. *Id., Tabs, 13, 14, 17 & 18.*

See Judgment Entries of August 1, 2007, Apx. 00009-00010. Plaintiffs moved for reconsideration on August 10, 2007, which Defendants again opposed. This request was summarily denied in a decision that was rendered on August 20, 2007. *Id.*

Plaintiffs petitioned for further review of the Eighth District's dismissal order in this Court. *Apx. 00001-00008.* Jurisdiction was granted over both appeals in decisions dated January 23, 2008. At Plaintiffs' request, the proceedings were consolidated in an entry dated February 14, 2008. Accordingly, Plaintiffs hereby submit their Merit Brief in support of their Proposition of Law.

ARGUMENT

PROPOSITION OF LAW: WHEN THE TRIAL COURT HAS ORDERED THAT ALL FILINGS MUST BE SUBMITTED TO THE CLERK ELECTRONICALLY, A NOTICE OF APPEAL FILED ELECTRONICALLY IN ACCORDANCE THEREWITH WITHIN THIRTY DAYS OF THE ENTRY OF JUDGMENT SATISFIES THE REQUIREMENTS OF APP. R. 3(A) AND 4(A).

Plaintiffs' appeals were improperly dismissed by the Eighth District because they were, at all times, in full compliance with the applicable Civil Rules and the standing orders which had been issued governing the asbestos docket. As explicitly set forth in App.R. 3(A), notices of appeal are to be filed "**** with the clerk of the trial court ***." The standing Case Management Order which had been issued by the Cuyahoga County Court of Common Pleas on July 11, 2003 directed that LexisNexis File & Serve had been "approved by the Court for filing and service of complaints, petitions, pleadings, briefs, motions, discovery, and other documents via the Internet." *Stip. Rec., Tab 2, Section B2(1)(a)*. One judge who has been handling exclusively asbestos cases in Cuyahoga County has remarked that:

Under the system that we have been functioning, the CLAD, Complex Litigation Automatic Docket, for the last few years, has the overriding principle that filing paper with the clerk is no longer necessary or advisable. We have substituted the computer for the desk of the clerk's office. So all pleadings other than the original complaint have been filed with CLAD since its implementation. [emphasis added].

Shesler v. Consolidated Rail Corp. (June 17, 2004), 8th Dist. No. 83656, 2004-Ohio-3110, 2004 W.L. 1353086, p. *2. Presenting a paper notice of appeal for manual time-stamping actually would have been a violation of the standing order, which warns that for asbestos cases "the clerk shall not accept or file any pleadings or instrument in paper form." *Stip. Rec., Tab 2, Section B2(7)*.

The Eighth District's dismissal orders of August 20, 2007 plainly place form over substance. As previously noted, Defendants do not dispute that Notices of Appeal was processed through the File & Serve System within thirty (30) days of the first summary judgment rulings of April 5, 2007. *Stip. Rec., Tabs 15 & 16*. As a practical matter, there is no meaningful distinction between such electronic submissions and a notice that has been printed and presented to a clerk employee for time-stamping. It seems to have been forgotten in these proceedings that courts are expected to resolve legitimate disputes whenever possible upon the merits instead of procedural grounds. *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 431 N.E.2d 644, 647; *National Mut. Ins. Co. v. Papenhagen* (1987), 30 Ohio St.3d 14, 15, 505 N.E.2d 980, 981; *Barksdale v. Van's Auto Sales, Inc.* (1988), 38 Ohio St.3d 127, 128, 527 N.E.2d 284, 285.

Plaintiffs fully appreciate that the thirty (30) day deadline established by App.R. 4(A) is both mandatory and jurisdictional. *Transamerica Ins. Co. v. Nolan* (1995), 72 Ohio St.3d 320, 322, 649 N.E.2d 1229, 1231. There is nothing, however, within App. R. 3 or 4, or Loc. App. R. 3, which suggests that an electronic notice is unacceptable.² Submitting court documents

² App. R. 3(A) provides simply that:

Filing the notice of appeal. An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. ***

Likewise, App. R. 4(A) states that:

Time for appeal. A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

Finally, Loc. App. R. 3(B)(1) directs that:

through such mediums is now widely accepted and has been recognized and addressed in many procedural rules. *See e.g.* Civ. R. 10(E) (confirming that the requirements established therein for pleadings, motions, briefs, and other papers include “those filed by electronic means”); Civ. R. 33 (requiring an “electronic copy” of interrogatories); Civ. R. 51 (allowing jury instructions to be reduced to an “electronic” medium). Interestingly, App. R. 18(B) was revised effective July 1, 2001 to provide that:

*** If the court by local rule adopted pursuant to App.R. 13 permits electronic filing of court documents, then the requirements for filing copies [of appellate briefs] with the clerk required in this division may be waived or modified by the local rule so adopted.

Appellate courts are thus no strangers to electronic filing.

For those courts prepared to take such a step, electronic filing has been approved in Rule 27 of the Rules of Superintendence for the Courts of Ohio. A Temporary Provision specific to Cuyahoga County imposes certain requirements for electronic filing, but fails to suggest that notices of appeal must always be presented manually. *Id.* Perhaps more significantly, Civ. R. 5(E) (“filing with the court defined”) has been revised to add certain requirements for electronic filings throughout Ohio, without including any exceptions for which only printed documents will be allowed.

What is most strikingly unfair about the Eighth District’s “paper only” ruling is that no one could have reviewed the applicable rules and standing orders and anticipated that electronically filing a notice of appeal would be unacceptable. To the contrary, the Court had

The notice of appeal must individually name each party taking the appeal and must have attached to it a copy of the judgment or order appealed from (journal entry) signed by the trial judge and bearing the clerk’s stamp “Received for Filing” with the date of receipt by the clerk and a copy of Affidavit of Indigency where relevant. The subject attachments are not jurisdictional but their omission may be the basis for a dismissal.

clearly provided a procedure for transferring electronic dockets to the appellate court through Loc. App. R. 11 (eff. Aug. 1, 2005). Noticeably absent from this detailed Rule is any suggestion that the Notice of Appeal must be filed manually. *Id.* Any reasonable person consulting the Local Appellate Rules of Procedure would logically be drawn to the conclusion that not only has electronic filing been embraced in the Eighth District, but also that the Common Pleas Court's standing order prohibiting manual filing of paper documents (following the complaint) applied with equal force to Notices of Appeal. *Stip. Rec., Tab 2.* Such notices are, of course, submitted in the first instance to the trial court and not the appellate court. *App. R. 3(A).*

A federal appellate decision which was reported a few months ago, *United States of Am. V. Harvey* (7th Cir. 2008), 516 F.3d 553, is instructive. In *Harvey*, the appellate court concluded it had jurisdiction over the appeal even though defense counsel failed to file the notice of appeal on paper. The attorney timely filed electronically a notice of appeal, but failed to file the paper notice until two months later. The court opined:

Harvey tendered the notice of appeal to the clerk within the period specified by Rule 4. Although his submission did not conform to local rules, the difference between a hard copy and an electronic submission is a mere error of form. We hold that Harvey timely filed his notice of appeal when he submitted it electronically to the clerk's office. *See also* Fed.R.Civ.P. 83(a)(2) (explaining that a court should not deprive a party of a right because of a non-willful failure to comply with a rule of form required by a local rule).

Id. at 556. *See also In re Patel* (Jan. 30, 2006), U.S. Dist. Ct., M.D. Ga. No. 4:05-CV-118, 2006 W.L. 318613, p. *3 (complaint filed electronically prior to filing deadline was timely, even though paper copy was filed after the deadline had expired).

In the proceedings below, Defendant failed to cite a single rule supporting the antiquated view that there is somehow something more preferable, and indispensable, about a piece of paper bearing the inked impression of a clerk's time stamp. One of the authorities that was cited, *State*

of *Ohio v. Domers* (1991), 61 Ohio St.3d 592, 575 N.E.2d 832, was decided sixteen (16) years ago when the internet was still in its infancy. In a two-sentence ruling, all this Court held was that no final appealable order existed because the judgment entry had not “been filed-stamped by the trial court clerk.” This result was required by Civ.R. 58(A), which applies only to the entry of judgment (“A judgment is effective only when entered by the clerk upon the journal.”). The more recent Eighth District decision that Defendant has identified, *Shesler*, 2004-Ohio-3110, involved the electronic asbestos docket through which “all filings” must be processed in Cuyahoga County. *Id.*, p. *3. Far from holding that manual submissions were necessary, the panel simply concluded that post-judgment interest began to accrue on the date that the clerk entered the judgment in the journal in accordance with Civ. R. 58(A). *Id.*, p. *2.

Both *Domers* and *Shesler* stand only for the proposition that a judgment entry must still be signed and journalized in accordance with Civ. R. 58(A). In *Shesler*, the Eighth District was very careful to distinguish between “dockets” and “journals.” *Id.*, 2004-Ohio-3110, pp. *3-4. After holding that the “entry of judgment” still needed to be recorded upon the journal, the panel explained that:

The January 7, 1999 trial court order directing that all filings in asbestos cases be made on the CLAD system does not change this result. The January 7, 1999 order pertains only to “filings” in asbestos cases; it does not change the separate and independent requirement of Civ. R. 58(A) that, to be effective, judgments must be entered by the clerk upon the journal. [emphasis added].

Id., p. *2. At the risk of overstating the obvious, the Notices of Appeal that Plaintiffs filed electronically on May 4, 2007 were a “filings” and not “judgments.” *Stip. Rec., Tabs 15 & 16*. Under the Eighth District’s own precedent, the notice should have been recognized as proper since it complied with the trial court’s standing order that all “filings” in asbestos cases need to be submitted solely through the computerized system. *Id., Tab 2, Section B2*.

Other than the jurisdictional thirty (30) day deadline (which Plaintiffs maintain they have satisfied), Ohio courts have never afforded a strict and unyielding construction to App.R. 3 & 4. Quite the contrary, “the Ohio Supreme Court has consistently adhered to a policy of liberally construing App.R. 3(D) in order to prevent the right of appeal from being lost due to a mere technicality.” *Belcher v. Lesley* (Dec. 12, 1995), 10th Dist. No. 95APE05, 1995 W.L. 739898, p. *2, citing *Maritime Manufacturers, Inc. v. Hi-Skipper Marina* (1982), 70 Ohio St.2d 257, 258. 436 N.E.2d 1034. *See also Barksdale*, 38 Ohio St.3d at 128 (“[C]ases should be determined on their merits and not on mere procedural technicalities.”).

In *Hanson v. City of Shaker Hts.* (8th Dist. 2003), 152 Ohio App.3d 1, 2003-Ohio-749, 786 N.E.2d 487, the court rejected a similar argument to the one posited by Defendants here. In that case, the defendants argued that the trial court lacked appellate jurisdiction over an appeal from a board of zoning appeals decision where the board received notice via facsimile and certified mail, rather than an “original” notice. Writing for the court, the late Judge Anne L. Kilbane forcefully rejected that contention where the operative statute did not require an “original” notice and where the board indisputably received timely notice of the appeal: “[I]t is ridiculous to base a dismissal upon the petty gripes raised here.” *Id.*, 70 Ohio App.3d 1, 5.

Similarly, here, Defendant was sufficiently and timely apprised of the Notices of Appeal filed in the proceedings below. *Stip. Rec., Tabs 15 & 16*. A refusal to entertain the Plaintiffs’ appeal simply because the timely filed notice occurred electronically, consistent with local standing order for receiving filings, not only elevates form over substance, but also visits an unduly harsh result on litigants who made every reasonable effort to comply with the operative rules. The Eighth District would have been well-advised to follow instead the sound logic expressed by Judge Kilbane in *Hanson*, 152 Ohio App.3d 1.

The bottom line is that the days of voluminous, unsearchable, and unmanageable paper dockets are drawing to a close. Few courts possess the space for such ever-growing files and are no longer inclined to employ the personnel necessary to collect, index, store, and retrieve countless manual filings. In order to both facilitate and encourage electronic filing, this Court should take the opportunity to confirm that such submissions will not be afforded “second tier” status. Until the “paper prevails” mentality is eradicated, no plaintiff, defendant, relator, claimant, or respondent can ever be completely confident that an electronic filing will satisfactorily respond to a pending dispositive motion, preserve a vital affirmative defense, satisfy an applicable statute of limitations, or – as here – timely commence an appeal.

CONCLUSION

For the foregoing reasons, this Court should adopt the Proposition Law that has been submitted, reverse the Eighth District's dismissal order of August 20, 2007, and remand these actions to the appellate court for resolution of the merits of the appeals.

Respectfully submitted,

John I. Kittel (per authority)
John I. Kittel, Esq. (#0071817)
Brian A. Calandra, Esq.
MAZUR & KITTEL, P.L.L.C.

Attorneys for Plaintiff-Appellants

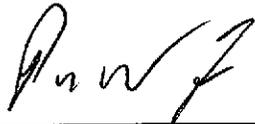


Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS CO., L.P.A.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Brief** was served by regular U.S. Mail on this 17th day of April, 2008 upon:

John Valenti, Esq.
GALLAGHER SHARP
Bulkley Bldg. – 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115
Attorney for Defendant-Appellees



Paul W. Flowers, Esq. (#0046625)
PAUL W. FLOWERS CO., L.P.A.
Attorneys for Plaintiff-Appellants

IN THE SUPREME COURT OF OHIO

07-1819

BERTHA LOUDEN, EXECUTRIX,)
et al.)

Plaintiff-Appellants,)

vs.)

A.W. CHESTERTON CO., et al.)

Defendant-Appellees)

ON APPEAL FROM THE CUYAHOGA
COUNTY COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT

SUPREME COURT
CASE NO.

COURT OF APPEALS
CASE NO. 90184

**NOTICE OF APPEAL OF PLAINTIFF-APPELLANTS,
BERTHA LOUDEN, EXECUTRIX AND MARY BORDER, EXECUTRIX**

John I. Kittel, Esq. (#0071817)
Bryan M. Frink, Esq. (#0073449)
MAZUR & KITTEL, P.L.L.C.
30665 Northwestern Highway, Suite 175
Farmington Hills, MI 48334
(800) 990-6380
Fax: (248) 432-8010

Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS, CO., L.P.A.
50 Public Square, Suite 3500
Cleveland, Ohio 44113
(216) 344-9393
Fax: (216) 344-9395
pwf@pwfco.com

Attorneys for Plaintiff-Appellants, Bertha Louden, Executrix, et al.

John Valenti, Esq. (#0025485)
Holly M. Olarczuk-Smith, Esq. (#0073257)
GALLAGHER SHARP
Bulkley Bldg. - 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115
(216) 241-5310
Fax: (216) 241-1608
jvalenti@ggsfn.com

Attorneys for Defendant-Appellee, Gould's Pumps, Inc.

FILED
OCT 04 2007
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE

Plaintiff-Appellants, Bertha Loudon, Individually and as Executrix of the Estate of Roger Loudon, Deceased, and Mary J. Border, Individually and as Executrix of the Estate of Wayne Border, Deceased, *et al.*, hereby serve notice of their appeal to the Supreme Court of Ohio from the Judgment of the Cuyahoga County Court of Appeals, Eighth Judicial District, entered in Case Nos. 90184 on August 20, 2007, a copy of which is appended hereto as *Exhibit A*. This action involves issues of great general and public importance.

Respectfully submitted,

John I. Kittel (per authority)

John I. Kittel, Esq. (#0071817)
Bryan M. Frink, Esq. (#0073449)
MAZUR & KITTEL, P.L.L.C.
30665 Northwestern Highway, Suite 175
Farmington Hills, MI 48334
(800) 990-6380
Fax: (248) 432-8010

Attorneys for Plaintiff-Appellants, Bertha Loudon, Executrix, et al.

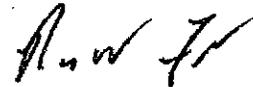
Paul W. Flowers

Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS CO., L.P.A.
50 Public Square, Suite 3500
Cleveland, Ohio 44113
(216) 344-9393
FAX: (216) 344-9395
pwf@pwfco.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice has been sent by regular U.S. Mail on this 3rd day of October, 2007 upon:

John Valenti, Esq.
GALLAGHER SHARP
Bulkley Bldg. - 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115
Attorney for Defendant-Appellee



Paul W. Flowers, Esq. (#0046625)
PAUL W. FLOWERS CO., L.P.A.
Attorney for Plaintiff-Appellants

AUG 20 2007

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

BERTHA LOUDEN, EXECUTOR, ETC., ET AL.

Appellant

COA NO.
90184

LOWER COURT NO.
CP CV-590044
CP CV-592502

COMMON PLEAS COURT

-vs-

A.W. CHESTERTON COMPANY, ET AL.

Appellee

MOTION NO. 399329

Date 08/01/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 399174.

FILED AND JOURNALIZED
PER APP. R. 22(E)

AUG 20 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] GEP

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

AUG - 1 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge JAMES J. SWEENEY, Concur

[Signature]
Administrative Judge
FRANK D. CELEBREZZE, JR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

CA07090184
47179902

641 00667

EXHIBIT
00004

A

07-1821

IN THE SUPREME COURT OF OHIO

BERTHA LOUDEN, EXECUTRIX,)
et al.)
)
 Plaintiff-Appellants,)
)
 vs.)
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 A.W. CHESTERTON CO., *et al.*)
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ON APPEAL FROM THE CUYAHOGA
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 SUPREME COURT
 CASE NO.
 COURT OF APPEALS
 CASE NO. 90185

NOTICE OF APPEAL OF PLAINTIFF-APPELLANTS,
 BERTHA LOUDEN, EXECUTRIX AND MARY BORDER, EXECUTRIX

John I. Kittel, Esq. (#0071817)
 Bryan M. Frink, Esq. (#0073449)
MAZUR & KITTEL, P.L.L.C.
 30665 Northwestern Highway, Suite 175
 Farmington Hills, MI 48334
 (800) 990-6380
 Fax: (248) 432-8010

John Valenti, Esq. (#0025485)
 Holly M. Olarczuk-Smith, Esq. (#0073257)
GALLAGHER SHARP
 Bulkley Bldg. - 6th Floor
 1501 Euclid Avenue
 Cleveland, Ohio 44115
 (216) 241-5310
 Fax: (216) 241-1608
 jvalenti@gsfn.com

Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS, Co., L.P.A.
 50 Public Square, Suite 3500
 Cleveland, Ohio 44113
 (216) 344-9393
 Fax: (216) 344-9395
 pwf@pwfco.com

Attorneys for Defendant-Appellee,
Ingersoll-Rand Corp.

Attorneys for Plaintiff-Appellants, Bertha Louden, Executrix, et al.

FILED
 OCT 04 2007
 CLERK OF COURT
 SUPREME COURT OF OHIO

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NOTICE

Plaintiff-Appellants, Bertha Louden, Individually and as Executrix of the Estate of Roger Louden, Deceased, and Mary J. Border, Individually and as Executrix of the Estate of Wayne Border, Deceased, *et al.*, hereby serve notice of their appeal to the Supreme Court of Ohio from the Judgment of the Cuyahoga County Court of Appeals, Eighth Judicial District, entered in Case Nos. 90185 on August 20, 2007, a copy of which is appended hereto as *Exhibit A*. This action involves issues of great general and public importance.

Respectfully submitted,

John I. Kittel (per authority)

John I. Kittel, Esq. (#0071817)
Bryan M. Frink, Esq. (#0073449)
MAZUR & KITTEL, P.L.L.C.
30665 Northwestern Highway, Suite 175
Farmington Hills, MI 48334
(800) 990-6380
Fax: (248) 432-8010

Attorneys for Plaintiff-Appellants, Bertha Louden, Executrix, et al.



Paul W. Flowers, Esq. (#0046625)
[Counsel of Record]
PAUL W. FLOWERS CO., L.P.A.
50 Public Square, Suite 3500
Cleveland, Ohio 44113
(216) 344-9393
FAX: (216) 344-9395
pwf@pwfco.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice has been sent by regular U.S. Mail on this 3rd day

of October, 2007 upon:

John Valenti, Esq.
GALLAGHER SHARP
Bulkley Bldg. -- 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115
Attorney for Defendant-Appellee



Paul W. Flowers, Esq. (#0046625)
PAUL W. FLOWERS CO., L.P.A.
Attorney for Plaintiff-Appellants

AUG 20 2007

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

BERTHA LOUDEN, EXECUTOR, ET AL.

Appellant

COA NO.
90185

LOWER COURT NO.
CP CV-590044
CP CV-592502

COMMON PLEAS COURT

-VS-

A.W. CHESTERTON COMPANY, ET AL.

Appellee

MOTION NO. 399333

Date 08/01/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 399175.

FILED AND JOURNALIZED
PER APP. R. 22(E)

AUG 20 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

AUG - 1 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge JAMES J. SWEENEY, Concurs

[Signature]
Administrative Judge
FRANK D. CELEBREZZE, JR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

CA07090185
47179904

VAL 641 00668

EXHIBIT
00008
A

AUG 20 2007

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

BERTHA LOUDEN, EXECUTOR, ETC., ET AL

Appellant

COA NO.
90184

LOWER COURT NO.
CP CV-590044
CP CV-592502

COMMON PLEAS COURT

-vs-

A.W. CHESTERTON COMPANY, ET AL.

Appellee

MOTION NO. 399329

Date 08/01/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 399174.

FILED AND JOURNALIZED
PER APP. R. 22(E)

AUG 20 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

AUG - 1 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP

Judge JAMES J. SWEENEY, Concur

[Signature]
Administrative Judge
FRANK D. CELEBREZZE, JR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

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AUG 20 2007

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

BERTHA LOUDEN, EXECUTOR, ET AL.

Appellant

COA NO.
90185

LOWER COURT NO.
CP CV-590044
CP CV-592502

COMMON PLEAS COURT

-vs-

A.W. CHESTERTON COMPANY, ET AL.

Appellee

MOTION NO. 399333

Date 08/01/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 399175.

FILED AND JOURNALIZED
PER APP. R. 22(E)

AUG 20 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(E), 22(D) AND 26(A)
RECEIVED

AUG - 1 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge JAMES J. SWEENEY, Concur

[Signature]
Administrative Judge
FRANK D. CELEBREZZE, JR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

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#913874

IN THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA, OHIO
ASBESTOS DOCKET

IN RE:

KITTEL GROUP 7

MARY K. BORDER, fiduciary of the estate of)
WAYNE BORDER)

CASE NO. 592502

Plaintiff,)

JUSTICE FRANCIS E. SWEENEY

-vs-)

ORDER AND ENTRY OF
JUDGMENT

AEP OHIO, et al.)

Defendants)

This matter came before the Court upon an oral hearing on Defendant, Goulds Pumps, Inc.'s motion for summary judgment, and the arguments and authority filed by the parties in support and in opposition thereto. This Court finds said motion to be well-taken.

It is therefore ordered, adjudged and decreed that Defendant, Goulds Pumps, Inc., is entitled to judgment in its favor as a matter of law pursuant to Civ.R. 56. Judgment is entered in favor of Goulds Pumps, Inc. on all of Plaintiff's claims.

THERE IS NO JUST REASON FOR DELAY PURSUANT TO CIV.R. 54(B).

IT IS SO ORDERED.

Francis E. Sweeney
JUSTICE FRANCIS E. SWEENEY

*Pursuant to Civ.R. 58(B), the Clerk is instructed to serve all parties not in default for failure to appear.

RECEIVED FOR FILING

APR 05 2007

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GERALD E. FURST, CLERK
By: *[Signature]* Deput

#913872

IN THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA, OHIO
ASBESTOS DOCKET

IN RE:

KITTEL GROUP 7

MARY K. BORDER, fiduciary of the estate of
WAYNE BORDER

CASE NO. 592502

Plaintiff,

JUSTICE FRANCIS E. SWEENEY

-vs-

ORDER AND ENTRY OF
JUDGMENT

AEP OHIO, et al.

Defendants

This matter came before the Court upon an oral hearing on Defendant, Ingersoll Rand Company's motion for summary judgment, and the arguments and authority filed by the parties in support and in opposition thereto. This Court finds said motion to be well-taken.

It is therefore ordered, adjudged and decreed that Defendant, Ingersoll Rand Company, is entitled to judgment in its favor as a matter of law pursuant to Civ.R. 56. Judgment is entered in favor of Ingersoll Rand Company on all of Plaintiff's claims.

THERE IS NO JUST REASON FOR DELAY PURSUANT TO CIV.R. 54(B).

IT IS SO ORDERED.

Francis E. Sweeney
JUSTICE FRANCIS E. SWEENEY

*Pursuant to Civ.R. 58(B), the Clerk is instructed to serve all parties not in default for failure to appear.

APR 05 2007

GERALD E. FUERST, CLERK
By *G. Furst* Deputy

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#918846

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROGER LOUDEN)

Plaintiff,)

v.)

A.W. CHESTERTON, INC., et al.)

Defendant.)

CASE NO. 590044

JUSTICE FRANCIS E. SWEENEY

ORDER AND ENTRY OF
JUDGMENT

On December 4, 2006, Defendant, Gould's Pump, filed its Motion for Summary Judgment. Plaintiffs, Wayne Border and Roger Louden, filed both their Master Response and their specific response on January 26, 2007. Gould's Pump filed its Reply Brief on February 12, 2007, and its Notice of Supplemental Authority on March 20, 2007. This Court heard oral arguments on Defendant's Motion for Summary Judgment on March 22, 2007, and granted Defendant's Motion on April 2, 2007. Plaintiffs filed their Civil Rule 60(B) Motion for Relief from Order Granting Summary Judgment in Favor of Gould's Pump on April 13, 2007.

In granting Defendant's Motion for Summary Judgment, the Court relied on Vince v. Crane Co. (2007), No. 87955, March 15, 2007, Goldman v. Johns-Manville Sales Corp. (1987), 33 Ohio St.3d 40, and Lindstrom v. A.W. Chesterton, et al., 424 F.3d 488 (6th Cir.). Accordingly, Plaintiffs' Civil Rule 60(B) Motion for Relief from Order Granting Summary Judgment in Favor of Gould's Pump is denied. IT IS SO ORDERED.

Francis E. Sweeney
JUSTICE FRANCIS E. SWEENEY

*Pursuant to Civ.R. 58(B), the Clerk is instructed to serve all parties not in default for failure to appear.

RECEIVED FOR FILING

MAY 07 2007

GERALD P. FURST, CLERK
By *[Signature]* Deputy

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#918837.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROGER LOUDEN)

Plaintiff,)

v.)

A.W. CHESTERTON, INC., et al.)

Defendants.)

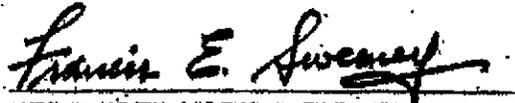
CASE NO. 590044

JUSTICE FRANCIS E. SWEENEY

ORDER AND ENTRY OF
JUDGMENT

On December 4, 2006, Defendant, Ingersoll-Rand, filed its Motion for Summary Judgment. Plaintiffs, Wayne Border and Roger Louder, filed their Master Response on January 26, 2007, and their specific response on January 29, 2007. Ingersoll-Rand filed its Reply Brief on February 12, 2007, and its Notice of Supplemental Authority on March 20, 2007. This Court heard oral arguments on Defendant's Motion for Summary Judgment on March 22, 2007, and granted Defendant's Motion on April 2, 2007. Plaintiffs filed their Civil Rule 60(B) Motion for Relief from Order Granting Summary Judgment in Favor of Ingersoll-Rand on April 13, 2007.

In granting Defendant's Motion for Summary Judgment, the Court relied on Vince v. Crane Co. (2007), No. 87955, March 15, 2007, Goldman v. Johns-Manville Sales Corp. (1987), 33 Ohio St.3d 40, and Lindstrom v. A.W. Chesterton, et al., 424 F.3d 488 (6th Cir.). Accordingly, Plaintiffs' Civil Rule 60(B) Motion for Relief from Order Granting Summary Judgment in Favor of Ingersoll-Rand is denied. IT IS SO ORDERED.


JUSTICE FRANCIS E. SWEENEY

*Pursuant to Civ.R. 58(B), the Clerk is instructed to serve all parties not in default for failure to appear.

RECEIVED FOR FILING

MAY 07 2007

GERALD E. FUERST, CLERK
By:  Deputy

000014