

IN THE SUPREME COURT OF OHIO

Rose Kaminiski,

Appellee,

v.

Metal & Wire Products Company, et al.,

Appellants.

Case No.

08-0857

On appeal from the Court  
of Appeals for Columbiana County  
Seventh Appellate District  
No. 07-60-15

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**MEMORANDUM OF AMICI CURIAE  
OHIO CHAMBER OF COMMERCE, OHIO CHAPTER OF THE  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS, OHIO  
COUNCIL OF RETAIL MERCHANTS AND OHIO SELF-INSURERS ASSOCIATION  
IN SUPPORT OF APPELLANT'S MEMORANDUM IN  
SUPPORT OF CLAIMED JURISDICTION**

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David A. Forrest (0006673)  
Jarrett J. Northup (0080697)  
Jeffries, Kube, Forrest & Monteleone  
Co., L.P.A.  
1650 Midland Building  
101 Prospect Ave. West  
Cleveland, Ohio 44115  
Telephone: (216) 771-4050  
Facsimile: (216) 771-0732  
E-mail: [dforrest@jkfmlaw.com](mailto:dforrest@jkfmlaw.com)  
[jnorthup@jkfmlaw.com](mailto:jnorthup@jkfmlaw.com)

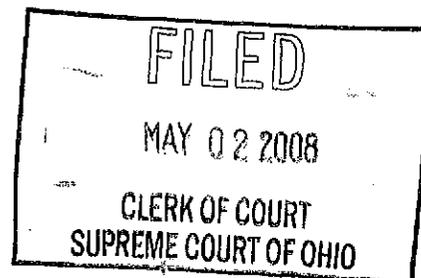
*Lead Counsel for Appellee  
Rose Kaminski*

Dennis A. DiMartino (0039270)  
6004 Market Street  
Boardman, Ohio 44512  
Telephone: (330) 758-7313  
Facsimile: (330) 758-4938  
E-mail: [Dimartino@zoominternet.net](mailto:Dimartino@zoominternet.net)

*Co-Counsel for Appellee Rose Kaminski*

Irene C. Keyse-Walker (0013143)  
(Counsel of Record)  
Benjamin C. Sassé (0072856)  
Tucker Ellis & West LLP  
1150 Huntington Bldg.  
925 Euclid Avenue  
Cleveland, Ohio 44115-1414  
Telephone: (216) 592-5000  
Facsimile: (216) 592-5009  
E-mail: [ikyse-walker@tuckerellis.com](mailto:ikyse-walker@tuckerellis.com)  
[bsasse@tuckerellis.com](mailto:bsasse@tuckerellis.com)

*Attorneys for Appellant Metal & Wire  
Products Company*



Preston J. Garvin (0018641)  
Michael J. Hickey (0021410)  
Garvin & Hickey, LLC  
236 East Town Street, Suite 112  
Columbus, Ohio 43215  
Telephone: (614) 225-9000  
Facsimile: (614) 225-9080  
E-mail: [wclaw@garvin-hickey.com](mailto:wclaw@garvin-hickey.com)

*Counsel for Amicus Curiae,  
Ohio Chamber of Commerce*

Thomas R. Sant (0023057)  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2790  
E-mail: [tsant@bricker.com](mailto:tsant@bricker.com)

*Counsel for Amicus Curiae,  
Ohio Chapter of the National  
Federation of Independent Business*

Robert A. Minor (0018371)  
Vorys, Sater, Seymour and Pease, LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: (614) 464-6410  
Facsimile: (614) 719-4874  
E-mail: [raminor@vssp.com](mailto:raminor@vssp.com)

*Counsel for Amici Curiae,  
Ohio Self-Insurers' Association and  
Ohio Council of Retail Merchants*

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## 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 vitally concerned about the imposition of additional liability created by the decision in this case.

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 in legislative and administrative proceedings and as *amicus curiae* in issues involving employer liability.

The Ohio Self-Insurers Association (OSIA) was formed in 1974 to represent Ohio's self-insuring employers in workers' compensation and employer liability issues. It is the only statewide organization that represents self-insured employers exclusively and is devoted to the issue of workers' compensation and employer liability. There are over one thousand self-insured employers in the State of Ohio. Ohio's self-insured employers represent a significant part of the Ohio workforce and its payroll. OSIA routinely files *amicus* briefs to present its members interests to the Ohio Supreme Court as well as other courts throughout the state.

The Ohio Council of Retail Merchants is a business trade association with more than 3,200 members. The Council represents companies from all levels of the business supply chain before the offices of State government.

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 Statement of the Case and Facts presented and in the Argument made in the Memorandum of Appellant Metal & Wire Products Company.

### **ARGUMENT**

#### **Proposition of Law**

**THIS CASE PRESENTS A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST WITHIN THE MEANING OF RULE II OF THE RULES OF PRACTICE OF THE SUPREME COURT OF OHIO.**

The Court below found R.C. 2745.01, the Ohio "employment intentional tort law", to be unconstitutional based on its interpretation of Sections 34 and 35, Article II, of the Ohio Constitution. The appeal from the decision involves both a claimed appeal of right and a discretionary appeal. In accordance with Section 1(A)(2) of Rule II of the Rules of Practice of the Supreme Court of Ohio (hereinafter also, "Rule \_\_\_\_"), a claimed appeal of right includes a case that involves a "substantial constitutional question". In this instance, the Court of Appeals found that the employment intentional tort statute violated Sections 34 and 35 of Article II of the Ohio Constitution. By definition, this case

involves a substantial constitutional question: whether an employment intentional tort statute that affects every Ohio employer is constitutional.

The appeal also would invoke the discretionary jurisdiction of the Supreme Court because it involves a question of public or great general interest. Section 1(A)(3), Rule II. This case involves the constitutionality of a law specifying under which circumstances an Ohio employer might be liable to pay twice for an industrial injury: once through the workers' compensation system; the other in a direct liability action. Quite literally every Ohio employer could be affected by this decision. When this Court decided Blankenship v Cincinnati Milacron Chemicals, Inc. (1982), 69 Ohio St. 2d 608, the constitutionally and statutorily prescribed exclusivity of the Ohio workers' compensation remedy vanished. Two years later, in Jones v VIP Development (1984), 15 Ohio St. 3d 90, the Court not only defined the concept of an intentional tort in the employment setting, but also held that an injured worker could recover workers' compensation benefits and pursue a direct liability claim and, in essence, recover twice for the same injury. The General Assembly has now responded on four occasions to address the abrogation of the constitutional immunity for work-related injuries. While the actions of the legislature may not always constitute an expression of public or great general interest, in this instance the lower court's dispatching with the elected representatives' fourth effort to limit the potential of double recovery should be viewed as a matter of public or great general interest.

**CONCLUSION**

For the above reasons, and those set forth in the memorandum of Appellant Metal & Wire Products Company, amici curiae respectfully request that the Court accept the appeal.

Respectfully submitted,



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Preston J. Garvin (0018641)  
Michael J. Hickey (0021410)  
Garvin & Hickey, LLC  
236 East Town Street, Suite 112  
Columbus, Ohio 43215  
Telephone: (614) 225-9000  
Facsimile: (614) 225-9080  
E-mail: [wclaw@garvin-hickey.com](mailto:wclaw@garvin-hickey.com)

Counsel for Amicus Curiae,  
Ohio Chamber of Commerce



---

Thomas R. Sant (0023057)  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2790  
E-mail: [tsant@bricker.com](mailto:tsant@bricker.com)

Counsel for Amici Curiae,  
Ohio Chapter of the National Federation  
of Independent Business



---

Robert A. Minor (0018371)  
Vorys, Sater, Seymour and Pease, LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: (614) 464-6410  
Facsimile: (614) 719-4874  
E-mail: [raminor@vssp.com](mailto:raminor@vssp.com)

Counsel for Amici Curiae,  
Ohio Self-Insurers' Association and  
The Ohio Council of Retail Merchants

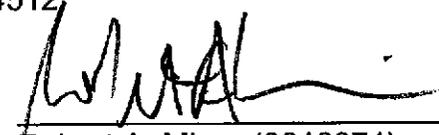
**CERTIFICATE OF SERVICE**

A copy of the foregoing has been served upon the following counsel by regular  
U.S. Mail, postage prepaid, on this 2nd day of May, 2008:

David A. Forrest  
Jarrett J. Northup  
Jeffries, Kube, Forrest & Monteleone Co., L.P.A.  
1650 Midland Building  
101 Prospect Ave. West  
Cleveland, Ohio 44115

Irene C. Keyse-Walker  
Benjamin C. Sassé  
Tucker Ellis & West LLP  
1150 Huntington Bldg.  
925 Euclid Avenue  
Cleveland, Ohio 44115-1414

Dennis A. DiMartino  
6004 Market Street  
Boardman, Ohio 44512



---

Robert A. Minor (0018371)