

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, *ex rel.*  
THE TOLEDO BLADE CO.  
541 North Superior Street  
Toledo, OH 43660,

Relator,

- vs -

Case Number: 07-1694

SENECA COUNTY BOARD OF  
COMMISSIONERS  
111 Madison Street  
Tiffin, OH 44883

ORIGINAL ACTION IN MANDAMUS  
(Public Records)

Respondent.

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RELATOR'S RESPONSE TO THE COURT'S APRIL 21, 2008 ORDER

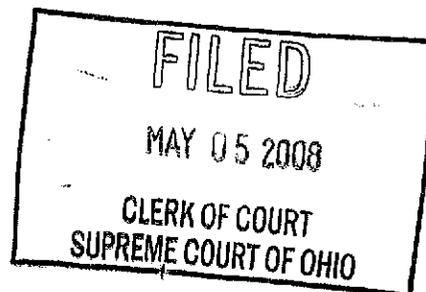
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Counsel for Respondent



## RESPONSE

Relator, The Toledo Blade Company, requests that this case be returned to the regular docket and assigned for oral argument and disposition. With the assistance of the Court's mediator, the parties have exchanged settlement positions and have engaged in substantial discussion toward possible settlement. Although it is not appropriate to inform the Court of the content of those discussions, the undersigned represents that the parties have made progress toward resolution. But a procedural impediment has prevented further progress, and since the Relator has been informed that this impediment is ineradicable, further discussions would be unavailing.

In particular, from the outset of discussions the Relator has expressed the view that the ultimate resolution should be reflected in the form of an order, or consent decree, to be presented to the Court for review, approval, and entry. Such a resolution is appropriate, indeed extremely common, in public litigation of this kind generally, and is particularly appropriate where, as here, the resolution would entail covenants of the parties that affect the public interest and that entail ongoing obligations. But the Court's mediator has informed the parties that the Court would not approve or enter such an order, explaining that the Court's settled practice in litigation of this kind is that all resolutions, even those achieved through court-ordered mediation, must be reflected entirely in agreements that are solely between the parties.

Such a resolution does not suffice in this case. The commitments the parties would undertake in settlement of this action are not amenable to enforcement

through contract litigation, even litigation seeking a decree of specific performance or other equitable relief. Indeed, in the context of this mandamus action, settlement through a private agreement, without court approval, provides the Relator with less ability to enforce its statutory public-record rights, and those of the public, than Relator has under the statute itself.<sup>1</sup>

Counsel for Relator has discussed this matter several times with the Court's mediator and has made clear that the unavailability of Supreme Court approval and entry of the final resolution in the form of a consent decree is an insurmountable impediment to resolution. But, to date, counsel has been told repeatedly and consistently of the Supreme Court's unalterable practice in this regard and has been told that this practice is not subject to change, or even reconsideration, in this case.

Accordingly, Relator has reluctantly concluded that further settlement discussions would be unavailing. And Relator thus requests that the case be returned to the Court's regular docket.

*Fritz Byers* / *Jillie C* 0055908  
*per written authority*  
*5.5.08*  
Fritz Byers (0002337)

Counsel for Relator

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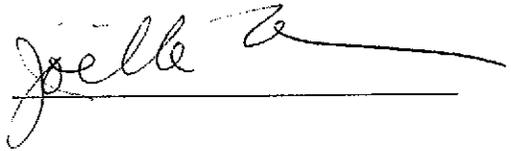
<sup>1</sup> Counsel understands that this description is somewhat cryptic. But further explanation of the problem would require disclosure to the Court of the substantive terms of the discussion, a disclosure that would be inappropriate.

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the foregoing Relator's Response to the Court's April 21, 2008 Order was served by ordinary U.S. Mail, postage prepaid, on the following counsel of record this 3<sup>rd</sup> day of

May, 2008:

Mark Landes  
Mark H. Troutman  
ISAAC, BRANT, LEDMAN & TEETOR  
250 East Broad Street  
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A handwritten signature in cursive script, appearing to read "Joelle", is written over a horizontal line.