



**B. Brief Statement of the Facts.**

The Complaint alleges that on March 13, 2006, while employed by Defendant R.J. Corman Derailment Services LLC, Plaintiff Carl Stetter was injured while working in the course and scope of his employment. Plaintiff Carl Stetter applied for and received workers' compensation benefits as a result of the injuries he sustained on March 13, 2006.

Plaintiffs' filed their Complaint in the Wood County Common Pleas Court. Defendants removed the action to the United States District Court for the Northern District of Ohio, Western Division. Federal jurisdiction is based upon 28 U.S.C. § 1332 because there is diversity between the parties and the amount in controversy exceeds \$75,000.

Plaintiffs' Complaint alleges that Defendants committed an employer intentional tort. On February 29, 2008, pursuant to an order of this Court, Defendants filed an Amended Answer in which they asserted that Plaintiffs are unable to establish any deliberate intent by the Defendants to cause Plaintiffs' injuries and therefore Plaintiffs' claims are barred by R.C. 2745.01. On March 17, 2008, pursuant to an Order of this Court, Plaintiffs filed their Motion to Strike and/or For Declaratory Judgment asserting that R.C. 2745.01 is unconstitutional. To fully adjudicate this matter and determine the rights and liabilities of each party, this Court needs a determination by the Ohio Supreme Court regarding the constitutionality of R.C. 2745.01 under the Ohio Constitution. The Supreme Court of Ohio has not yet had opportunity to issue a decision on the constitutionality of R.C. 2745.01, as amended by Senate Bill 80 effective April 7, 2005. Therefore, this Court certifies the following questions 1 through 8 to the Ohio Supreme Court.

**C. The Certified Questions.**

1. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to trial by jury?

2. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to a remedy?
3. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to an open court?
4. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to due process of law?
5. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to equal protection of the law?
6. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the separation of powers?
7. Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for conflicting with the legislative authority granted to the General Assembly by §34 and §35, Article II, of the Ohio Constitution?
8. Does R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, do away with the common law cause of action for employer intentional tort?

**D. Counsel for the Parties.**

Counsel for each party is provided below:

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Counsel for Defendants  
R.J. Corman Derailment Services LLC and R.J. Corman Railroad Group, LLC

**E. Moving Party.**

The Plaintiffs Carl and Doris Stetter are designated as the moving party.

/s/ James G. Carr

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Chief Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**CERTIFICATE OF SERVICE**

3:07cv866

In re: Carl Stetter v. RJ Corman Derailment Services, LLC

This is to certify that copies of the foregoing Order Certifying Question of State Law to the Supreme Court of Ohio was filed electronically on the 24th day of April, 2008, to all counsel of record listed below:

**Gregory R. Elder**  
**James M. Tuschman**  
**R. Ethan Davis**

**Robert J. Gilmer, Jr.**  
**Sarah E. Pawlicki**

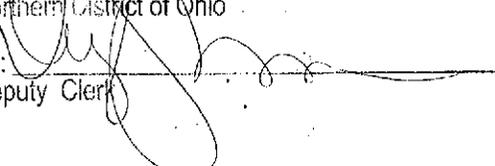
Geri M. Smith, Clerk of Court  
Northern District of Ohio

S/ Amy L. Schroeder  
Courtroom Deputy Clerk

Toledo, Ohio

I hereby certify that this document  
document no. 26 filed on 5/6/08 is a true  
and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio

By:   
Deputy Clerk

Cat08, Standard

**U.S. District Court  
Northern District of Ohio (Toledo)  
CIVIL DOCKET FOR CASE #: 3:07-cv-00866-JGC  
Internal Use Only**

Stetter, et al. v. R J Corman Derailment Services LLC et al  
Assigned to: Judge James G. Carr  
Demand: \$25,000  
Case in other court: Wood County, 2007 CV0192  
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 03/23/2007  
Jury Demand: Both  
Nature of Suit: 360 P.I.: Other  
Jurisdiction: Diversity

**Plaintiff**

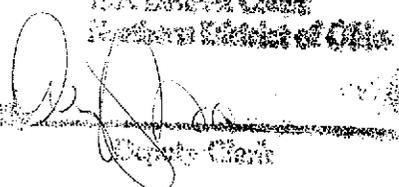
**Carl F Stetter**

represented by **Gregory R. Elder**  
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*I hereby certify that this  
document is a true and  
correct copy of the original  
as filed in my office.*

*Attest Carl M. Smith, Clerk*  
U.S. District Court  
Northern District of Ohio  
  
Deputy Clerk

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Plaintiff**

**Doris Stetter**

represented by **Gregory R. Elder**  
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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**James M. Tuschman**  
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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**R. Ethan Davis**  
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V.

**Defendant**

**R J Corman Derailment Services  
LLC**

represented by **Robert J. Gilmer, Jr.**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**R J Corman Railroad Group L.L.C.**

represented by **Robert J. Gilmer, Jr.**  
(See above for address)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Sarah E. Pawlicki**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**John Doe Companies**

(1-3)

**Defendant**

**John Does**

(1-2)

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
03/23/2007	<u>1</u>	<b>**FILING ERROR - SHOULD BE NOTICE OF REMOVAL**</b> Complaint with jury demand against R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C. (Filing fee \$350 receipt number 2391353). Filed by Doris Stetter, Carl F Stetter. (Attachments: # <u>1</u> Summons # <u>2</u> Civil Cover Sheet)(Pawlicki, Sarah) Modified on 3/23/2007 (L, V). (Entered: 03/23/2007)
03/23/2007	<u>2</u>	Notice of Removal from Wood County Common Pleas Court, case number 2007CV0192. with jury demand (Filing fee \$350; receipt number 2391353). Filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C. (Attachments: # <u>1</u> Complaint# <u>2</u> Summons State Court# <u>3</u> Civil Cover Sheet)(Pawlicki, Sarah) Modified on 3/27/2007 (A, P). (Entered: 03/23/2007)
03/23/2007	<u>3</u>	Corporate Disclosure Statement filed by R J Corman Derailment Services LLC. (Pawlicki, Sarah) (Entered: 03/23/2007)
03/23/2007	<u>4</u>	Corporate Disclosure Statement filed by R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 03/23/2007)
03/23/2007		(Court only) Utility Event adding attorney Robert J. Gilmer, Jr for R J Corman Derailment Services LLC and R J Corman Railroad Group LLC. (M,C) (Entered: 03/23/2007)
03/23/2007		(Court only) Utility Event adding attorneys Gregory R. Elder, R. Ethan Davis, James M. Tuschman for Carl F Stetter and Doris Stetter. (M,C) (Entered: 03/23/2007)
03/23/2007		Judge James G. Carr assigned to case. (M,C) (Entered: 03/23/2007)
03/27/2007		(Court only) Utility Event adding parties John Doe Companies, and John Does. (M,L) (Entered: 03/27/2007)
04/02/2007	<u>5</u>	Motion for extension of time until April 25, 2007 to answer <i>complaint</i> filed by R J Corman Derailment Services LLC, R J Corman Railroad

		Group L.L.C.. (Attachments: # <u>1</u> Proposed Order)(Pawlicki, Sarah) (Entered: 04/02/2007)
04/06/2007	<u>6</u>	Order granting <u>5</u> Motion for Extension of Time to Answer: R J Corman Derailment Services LLC and R J Corman Railroad Group L.L.C.'s answer due 4/25/2007. Signed by Judge James G. Carr on 4/5/2007. (S,AL) (Entered: 04/06/2007)
04/13/2007	<u>7</u>	Answer to Complaint (Related Doc # <u>1</u> ) filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 04/13/2007)
05/14/2007	<u>8</u>	Case Management Conference Scheduling Notice: case management conference to be held on 6/18/2007 at 11:30 AM before Judge Hon. James G. Carr. Recommended Track: standard. Out of town counsel may participate by phone; parties need not attend.. Signed by (Attachments: # <u>1</u> Consent Package)(S,AL) (Entered: 05/14/2007)
06/13/2007	<u>9</u>	Report of Parties' Planning Meeting. Parties do not consent to this case being assigned to the magistrate judge. filed by Carl F Stetter, Doris Stetter. (Elder, Gregory) (Entered: 06/13/2007)
06/21/2007	<u>10</u>	Order of Case Management Conference held on 6/18/2007. Track: standard. Discovery due by 12/30/2007. Dispositive Motions due by 2/1/2008; opposition due 2/29/08; reply due 3/14/08. Settlement Conference set for 6/9/2008 at 4:00 PM. Jury Trial set for 6/24/2008 at 8:30 AM with Voir Dire set for 6/23/2008 at 01:30PM before Magistrate Judge Vernelis K. Armstrong. Leave granted to parties to submit proposed order(s) of certification under Rule XVIII of the Rules of Practice of the Ohio Supreme Court by 8/1/07. Signed by Judge James G. Carr on 6/21/2007.(S,AL) (Entered: 06/21/2007)
06/26/2007	<u>11</u>	Notice of Service of <i>Defendants' First Set of Interrogatories to Plaintiffs and First Set of Requests for Production of Documents to Plaintiffs</i> filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 06/26/2007)
07/16/2007	<u>12</u>	Notice of Service of <i>Defendants' Rule 26 Initial Disclosures</i> filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 07/16/2007)
07/16/2007	<u>13</u>	Initial Disclosures Pursuant to Rule 26(A) filed by all plaintiffs. (Elder, Gregory) (Entered: 07/16/2007)
08/23/2007	<u>14</u>	Notice of Service filed by all plaintiffs. (Elder, Gregory) (Entered: 08/23/2007)
08/31/2007	<u>15</u>	Notice of Service of <i>Plaintiffs' First Set of Interrogatories, Request for Production of Documents, and Request for Admissions to Defendants</i> filed by all plaintiffs. (Elder, Gregory) (Entered: 08/31/2007)
10/01/2007	<u>16</u>	Notice of Certificate of Service for <i>Defendants' Answers and Objections to Plaintiff's First Set of Interrogatories, Request for Production of Documents, and Request for Admissions</i> filed by R J Corman Derailment

		Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 10/01/2007)
12/13/2007		<b>Minutes of proceedings</b> [Non Document]. Pretrial Conference held before Judge James G. Carr (Court Reporter None.) (S,AL) (Entered: 12/13/2007)
02/14/2008		Notice of Hearing [Non Document]: Pretrial Conference (re. 2/13/08 letter) set for 2/21/2008 at 11:00 AM in Chambers 210 before Judge James G. Carr. (S,AL) (Entered: 02/14/2008)
02/26/2008	<u>17</u>	<b>Order</b> of Pretrial Conference held on 2/21/2008. Leave granted to defendant to file amended answer on or before February 29, 2008. Leave granted to plaintiff to file motion to strike affirmative defense[s] on or before March 15, 2008. Leave granted to parties to submit proposed question[s] for certification to the Ohio Supreme Court pursuant to Rule XVIII of the Rules of Practice of the Supreme Court by April 1, 2008. Signed by Judge James G. Carr on 2/26/2008. (S,AL) (Entered: 02/26/2008)
02/29/2008	<u>18</u>	Amended <b>Answer</b> filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 02/29/2008)
03/17/2008	<del>18</del> <u>19</u>	<b>Motion</b> to strike <i>and/or</i> , <b>Motion</b> for declaratory judgment filed by Carl F Stetter, Doris Stetter. (Elder, Gregory) (Entered: 03/17/2008)
03/31/2008	<u>20</u>	<b>Motion</b> for extension of Opposition to Motion to Strike until further order from the court filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 03/31/2008)
03/31/2008	<u>21</u>	Joint <b>Motion</b> for extension of Submission of Questions for Certification until April 7, 2008 filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Pawlicki, Sarah) (Entered: 03/31/2008)
04/03/2008	<u>22</u>	<b>Marginal Order</b> granting <u>20</u> motion for extension of time. Filing of opposition to plaintiff's motion to strike is held in abeyance until further order of this court. Signed by Judge James G. Carr on 4/3/08. (S,JM) (Entered: 04/03/2008)
04/03/2008	<u>23</u>	<b>Marginal Order</b> granting <u>21</u> motion for extension. Leave is granted to submit proposed questions for certification until 4/15/08. Signed by Judge James G. Carr on 4/3/08.(S,JM) (Entered: 04/03/2008)
04/15/2008	<u>24</u>	Joint <b>Motion</b> for to Certify Constitutional Questions to the Supreme Court of Ohio filed by R J Corman Derailment Services LLC, R J Corman Railroad Group L.L.C.. (Attachments: # <u>1</u> Proposed Order)(Gilmer, Robert) (Entered: 04/15/2008)
04/24/2008	<u>25</u>	<b>Order</b> Certifying Questions 1 through 8 to the Ohio Supreme Court. (Related Doc # <u>24</u> ). Signed by Judge James G. Carr on 4/24/08.(G,D) (Entered: 04/24/2008)
05/06/2008	<u>26</u>	Notice of Certificate of Service of filing certified questions to the Ohio Supreme Court by Amy Schroeder, Courtroom Deputy Clerk. (S,AL)

	(Entered: 05/06/2008)
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