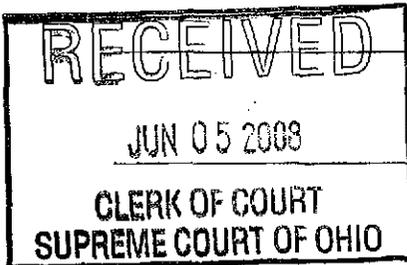

IN THE OHIO SUPREME COURT



CASE NO. 08-0972

Carl F. Stetter, *et al.*, Plaintiffs-Petitioners

vs.

R.J. Corman Derailment Services LLC, *et al.*, Defendants-Respondents

Preliminary Memorandum on Certified Question of Law From
the United States District Court for the Northern District of Ohio

**MEMORANDUM OF DEFENDANTS-RESPONDENTS R.J. CORMAN
DERAILMENT SERVICES LLC AND R.J. CORMAN RAILROAD
GROUP LLC IN SUPPORT OF THE COURT'S JURISDICTION
TO ANSWER THE CERTIFIED QUESTIONS OF LAW**

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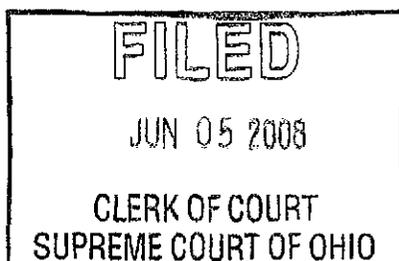


TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT.....	1
STANDARD OF REVIEW.....	2
FACTUAL AND PROCEDURAL BACKGROUND.....	3-4
LAW AND ARGUMENT.....	5-13
Certified Question No. 1.....	5-6
<i>Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to trial by jury?</i>	
Certified Question Nos. 2 and 3.....	6-8
<i>Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to a remedy?</i>	
<i>Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to an open court?</i>	
Certified Question No. 4.....	8-9
<i>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?</i>	
Certified Question No. 5.....	9-10
<i>Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to equal protection?</i>	
Certified Question No. 6.....	10-12
<i>Is R.C. §2745.01, as amended by Senate Bill 80, effective April 7, 2005, unconstitutional for violating the right to separation of powers?</i>	
Certified Question No. 7.....	12-13
<i>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?</i>	
Certified Question No. 8.....	13
<i>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</i>	
CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

STATE CASES

Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ. (1999),
87 Ohio St. 3d 55..... 15

Arbino v. Johnson & Johnson (2007),
116 Ohio St. 3d. 468..... 2, 4, 5, 6, 7, 8, 9, 10

Bolles v. The Toledo Trust Co. (1944),
144 Ohio St. 195, 58 N.E.2d 381..... 13

Brady v. Safety-Kleen Corp. (1991),
61 Ohio St. 3d 624, 576 N.E.2d 722..... 4, 10, 11

State ex rel., Dickman v. Defenbacher (1955),
164 Ohio St. 142..... 2

Groch v. General Motors Corp. (2008),
117 Ohio St. 3d 192..... 4, 8

Johnson v. BP Chemicals, Inc. (1998),
85 Ohio St. 3d 298, 707 N.E.2d 1107..... 4, 10, 12

Jones v. VIP Dev Co. (1984),
15 Ohio St.3d 90, 472 N.E.2d 1046..... 13

State, ex rel. Lourin v. Indus. Comm. (1941),
138 Ohio St. 618, 21 O.O. 490, 37 N.E.2d 595..... 8

Mominee v. Scherbarth (1986),
28 Ohio St. 3d 270, 503 N.E. 2d 717..... 6

Morris v. Savoy (1991),
61 Ohio St.3d 684, 576 N.E. 2d 765..... 6, 7

Smith v. The Cleveland Trust Co. (1961),
172 Ohio St. 489, 179 N.E.2d 60..... 13

Sorrel v. Thevenir (1994),
69 Ohio St.3d 415, 423, 633 N.E.2d 504..... 6

Van Fossen v. Babcock & Wilcox Co. (1988),
36 Ohio St.3d 100, 522 N.E.2d 489..... 13

<i>State, ex rel. Yaple v. Creamer</i> (1912), 85 Ohio St. 349, 404-405, 97 N.E. 602, 608.....	8
---	---

CONSTITUTIONAL PROVISIONS

Ohio Revised Code §1.47(C)	13
Ohio Revised Code §2315.18	4, 7
Ohio Revised Code §2745.01.....	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Section 1, Article I, Ohio Constitution	5
Section 2, Article I, Ohio Constitution.....	8
Section 16, Article I, Ohio Constitution.....	6
Section 32, Article II, Ohio Constitution.....	9
Section 34 Article II, Ohio Constitution.....	1, 10, 11, 12
Section 35, Article II, Ohio Constitution.....	1, 10, 11, 12

PRELIMINARY STATEMENT

Pursuant to S.Ct. Prac. R. XVIII(6), Respondent R.J. Corman Derailment Services, LLC (“Respondent”) submits its memorandum addressing the following questions of law certified by the United States District Court for the Northern District of Ohio:

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?

The Court should accept and address all of these certified questions. These questions involve the constitutionality of the Ohio intentional tort statute, R.C. §2745.01. They present pure questions of law determinative of Petitioner’s intentional tort claim against Respondent. There is no controlling precedent from this Court regarding the constitutionality of

R.C. §2745.01.¹ Moreover, the certified questions are not only important to the parties in this case, but literally to every employer in the State of Ohio as well as to many employees who are injured on the job. A ruling by this Court will avoid the possibility of conflicting interpretations by federal district judges and state appellate judges as to the constitutionality of R.C. §2745.01.

At this stage, of course, the only issue is whether the Court should review the certified questions. As is apparent by the fact that the parties jointly moved the federal court to certify the questions, both parties urge this Court to answer the questions. Further, as the brief preview contained in this preliminary memorandum demonstrates, Respondent urges the Court to answer these questions in favor of the constitutionality of R.C. §2745.01.

STANDARD OF REVIEW

It is difficult to prove that a statute is unconstitutional. All statutes have a strong presumption of constitutionality. *See, e.g., Arbino v. Johnson & Johnson* (2007), 116 Ohio St. 3d. 468, 473, 2007-Ohio-6948, ¶25 (citations omitted). Before a court may declare unconstitutional an enactment of the legislative branch, “it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.” *State ex rel., Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59, ¶1 of syllabus.

¹ Petitioner notes, however, that a case that has recently been commenced on this Court’s docket raises the same issue, *i.e.* the constitutionality of R.C. §2745.01. *See Kaminski v. Metal & Wire Products Company*, Case No. 2008-0857. At the date of filing the instant memorandum, that case’s docket reflected the filing of a notice of appeal, a memorandum in support of jurisdiction and a response thereto, as well as a jurisdictional memorandum filed by a group of *amici curiae*.

FACTUAL AND PROCEDURAL BACKGROUND

This action is brought by Petitioners Carl Stetter and his wife, Doris Stetter (collectively, "Petitioners"). On March 13, 2006, Carl Stetter was injured while employed by Respondent. He applied for and received workers' compensation benefits as a result of his injuries. On March 12, 2008, Petitioners filed a complaint in the Wood County Common Pleas Court alleging an intentional tort on behalf of Carl Stetter, products liability claims against John Doe defendants on behalf of Carl Stetter, and a loss of consortium claim on behalf of Doris Stetter. Respondent timely removed the case to the United States District Court for the Northern District of Ohio, Western Division.

On February 29, 2008, with appropriate leave of court, Respondent filed an Amended Answer in which it asserted, among other defenses, a Fifteenth Defense which states as follows:

Plaintiffs' claims against Defendant Derailment Services and Defendant Railroad Group are governed by R.C. §2745.01, effective April 7, 2005, which requires that plaintiff prove these defendants acted with deliberate intent to cause Plaintiff Carl Stetter an injury, disease, condition, or death. Plaintiffs' claims against these defendants are barred because plaintiffs are unable to establish any deliberate intent on the part of these defendants to cause plaintiffs' injuries.

On March 17, 2008, Petitioners filed a Motion to Strike and/or Motion for Declaratory Judgment. In that pleading, the Petitioners moved the District Court to strike the above-quoted Fifteenth Defense in the Amended Answer for the reason that R.C. §2745.01 is "unconstitutional, unenforceable and void / voidable." Further, Petitioners moved for a declaratory judgment declaring that R.C. §2745.01 did not abrogate the common law intentional tort claim.

Pursuant to leave granted by the district court, on April 15, 2008, the parties filed a Joint Motion to certify Constitutional Questions to the Supreme Court of Ohio. On April 24, 2008, Chief Judge James G. Carr issued an order certifying the eight questions set forth above and on May 16, 2008, that order was filed with this Court.²

Also important in the instant case is the background of R.C. §2745.01. This court declared unconstitutional two previous attempts by the General Assembly to codify an intentional tort cause of action. *Johnson v. BP Chemicals, Inc.* (1998), 85 Ohio St. 3d 298, 707 N.E.2d 1107; *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St. 3d 624, 576 N.E.2d 722. The current version of R.C. §2745.01 is part of a tort reform package that includes several provisions besides the intentional tort statute, including one regarding damage caps and one regarding statutes of repose in addition to R.C. §2745.01. This court has already declared other portions of S.B. 80 **constitutional**. See, *Groch v. General Motors Corp.* (2008), 117 Ohio St. 3d 192, 2008 Ohio 192 (R.C. §§2305.10(C) and 2305.10(F) are constitutional); *Arbino v. Johnson & Johnson* (2007), 116 Ohio St. 3d 468, 2007 Ohio 6948 (R.C. §§2315.18 and 2315.21 are constitutional on their faces). Respondent urges this Court, like the *Groch* and *Arbino* courts, to find the portion of the tort reform bill at issue in the instant case constitutional.

LAW AND ARGUMENT

This court should rule on the certified questions because the federal court must rule on the questions in the case before it, and it should do so with this Court's guidance. Each question will be briefly addressed below.

² A copy of that Order is attached hereto as Exhibit A.

Certified Question No. 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?

This court should answer this question in the negative. Clearly, there is a right to a trial by jury. Section 5, Article I, Ohio Constitution. R.C. §2745.01 does not interfere with that right. An injured party with a case that meets the dictates of R.C. §2745.01 can have his or her case heard and determined by a jury, just as an injured party bringing a common law claim for intentional tort prior to the enactment of R.C. §2745.01 could present his or her claim to a jury, assuming the claim survived summary judgment review. While previous attempts at codifying the intentional tort cause of action may have denied a plaintiff a jury with respect to damages, that is not the case with R.C. §2745.01. The right to a jury trial is not abrogated by this statute and the Court should answer this question in the negative.

Certified Question Nos. 2 and 3

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

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

Respondent urges this Court to answer these two questions in the negative. Section 1, Article I of the Ohio Constitution provides that all citizens shall have remedy by due course of law and shall have justice administered without denial or delay for any injury to lands, goods, person or reputation. As the *Arbino* court stated, the definition of open courts and a right to remedy prohibits statutes that effectively prevent individuals from pursuing relief for their injuries. *Arbino*, 116 Ohio St.3d at 477 (citations omitted). The right to an open court and to a remedy is not violated by R.C. §2745.01. So long as a plaintiff meets the requirements of the

statute, he or she may obtain a remedy as determined by a jury. R.C. §2745.01 does not deny or delay a remedy to a worker with an intentional tort claim against his or her employer. Accordingly, Certified Question No. 3 must be answered in the negative.

Certified Question No. 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?

The Court should answer this question in the negative. The Ohio Constitution provides a right to due process of law. Section 16, Article I, Ohio Constitution. When reviewing a statute on due process grounds, courts apply a rational basis test unless the statute restricts the exercise of fundamental rights. *Arbino* at 478; *Sorrel v. Thevenir* (1994), 69 Ohio St.3d 415, 423, 633 N.E.2d 504; *Morris v. Savoy* (1991), 61 Ohio St.3d 684, 688-89, 576 N.E. 2d 765. Because, as set forth briefly above, R.C. §2745.01 violates neither the right to a jury trial nor the right to a remedy, this Court must find it valid under a rational basis test (1) if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and (2) if it is not unreasonable or arbitrary. *Mominee v. Scherbarth* (1986), 28 Ohio St. 3d 270, 274, 503 N.E. 2d 717 (citations omitted).

Looking at the first prong of this test, this Court must determine whether R.C. §2745.01 bears a real and substantial relation to the public health, safety, morals or general welfare of the public. As a thorough examination of the legislative history of the tort reform package of which R.C. §2745.01 is a part will demonstrate, the General Assembly enacted this statute out of a concern that Ohio's civil litigation system represents a challenge to the economy of the State of Ohio. *Arbino*, 116 Ohio St.3d at 479. The General Assembly reviewed evidence showing that the uncertainty relating to the existing civil litigation system and rising costs

associated with it were harming the economy and therefore the general welfare of the public. *Id.* There is a clear connection between limiting intentional tort recoveries and the economic problems demonstrated in the evidence reviewed by the General Assembly. In seeking to correct the economic problems brought on by Ohio's civil litigation system, the General Assembly acted in the public's interest, which is all that is required under the first prong of the due process analysis. *Id.* at 480.

Under second prong of the due process analysis, the court must determine whether the statute in question is arbitrary or unreasonable. R.C. §2745.01 is neither. A review of *Arbino* is instructive. The *Arbino* court found that R.C. 2315.18 alleviated the *Sheward and Morris* courts' concerns that damage caps imposed the cost of the intended public benefit solely upon the most severely injured by permitting limitless noneconomic damages for those suffering catastrophic injuries, stating that, at some point, the General Assembly must be able to make a policy decision to achieve a public good. The same logic mandates the conclusion that R.C. §2745.01 is neither arbitrary nor unreasonable. The General Assembly, in R.C. §2745.01, allows recovery in egregious situations where the employer committed the tortuous act with the intent to injure another or with the belief that the injury was substantially certain to occur, as that term is defined by R.C. §2745.01(B). Just as the General Assembly in R.C. 2315.18 made a policy decision to achieve a public goal, so too did it make such a decision in R.C. §2745.01 – the decision to allow recovery in an intentional tort action only when the employer acts “with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.” R.C. §2745.01(B). Like the decision in drafting R.C. 2315.18, this decision is tailored to maximize benefits to the public while limiting recovery to litigants. That logic, as the court held in *Arbino*,

is neither unreasonable nor arbitrary. Hence, R.C. §2745.01 is not unconstitutional for violating the right to due process of law.

Certified Question No. 5

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

The Court should answer this question in the negative. The Equal Protection Clause of the Ohio Constitution provides, “All political power is inherent in the people. Government is instituted for their equal protection and benefit.” Section 2, Article I, Ohio Constitution.

In the instant case, because no fundamental right or suspect class is implicated, so the Court must review the intentional tort statute under the rational basis test. *See, e.g., Groch* at 82. Under this test, a challenged statute will be upheld if the classifications it creates bear a rational relationship to a legitimate government interest or are grounded “on a reasonable justification, even if the classifications are not precise.” *Groch*, 117 Ohio St.3d at 206; *Arbino*, 116 Ohio St.3d at 481. It is presumed that a legislative classification is reasonable, fair, and is based on a legitimate distinction. *State, ex rel. Lourin v. Indus. Comm.* (1941), 138 Ohio St. 618, 21 O.O. 490, 37 N.E.2d 595.

Petitioners are likely to argue that they have been denied equal protection because R.C. §2745.01 creates two classes of intentional tort victims and discriminates against one of those classes. That is, that R.C. §2745.01 discriminates against intentional tort victims who are employees of the tortfeasor. Yet it has long been the case in Ohio that distinctions drawn by the General Assembly in the workers’ compensation arena between employer-employee situations and others are reasonable and legitimate. *See, e.g., State, ex rel. Yaple v. Creamer* (1912), 85 Ohio St. 349, 404-405, 97 N.E. 602, 608 (limitation of the applicability of the Workers’

Compensation Act to workers and operators and to certain employers was not an improper classification). Drawing a distinction between intentional tort victims in an employer-employee context and intentional tort victims outside this context no more violates equal protection than the same distinction drawn by the General Assembly between victims of negligent torts. The reasonable justification for holding employees in intentional tort actions to a higher standard than a non-employee in an intentional tort action is that the employee, unlike the non-employee, is covered by the workers' compensation system and entitled to all rights and benefits thereby provided. Hence, R.C. §2745.01 does not violate that protection.

The General Assembly is charged with making and codifying the difficult policy decisions on issues such as the balancing of an employee's right to recovery for an intentional tort with the public interest in having a predictable civil justice system that does not prohibit job growth or economic stability. This forum is not the appropriate place to second-guess such legislative choices.

Certified Question No. 6

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

The Court should answer this question in the negative. Ohio's Constitution states that: "The general assembly shall grant no divorce, nor exercise any judicial power, not herein expressly conferred." Section 32, Article II, Ohio Constitution. Petitioner believes that R.C. §2745.01 is a violation of this separation of powers. Such an argument was found meritless in *Arbino* and must be rejected here as well.

While it is a judicial function to decide the facts in a civil case, that function is not being impinged upon by the General Assembly in the enactment of R.C. §2745.01. That statute

merely sets forth the law. There are countless statutes establishing the elements that must be proved in an action. Such states do not violate the separation of powers.

Similarly, the fact that the General Assembly has previously enacted intentional tort statutes that have been deemed unconstitutional does not mean that this current version of the statute violates the separation of powers. Such an argument must be premised on this Court's pronouncement in *Sheward* that the General Assembly's actions amounted to an attempt "to establish itself as the final arbiter of the validity of its own legislation." *Sheward* at 492.

As the *Arbino* court held, to conclude as it did in *Sheward* necessitates a determination that the General Assembly passed statutory provisions so similar to those previously deemed unconstitutional that its actions could only be interpreted as an invasion of the solely judicial right to interpret the Constitution. (*Id.* at 493-494.) Yet R.C. §2745.01 is sufficiently different from the previous versions declared unconstitutional in *Brady* and *Johnson* to warrant a fresh review of the merits and a determination that the current statute is constitutional. No longer does R.C. §2745.01 require a higher standard of "clear and convincing evidence" that the employer deliberately committed all the elements of an intentional tort. Further, the current statute creates a rebuttable presumption in favor of the employee that an employer acted with deliberate intent (thereby establishing substantial certainty) to injury when a safety guard is removed or when an employer misrepresents a toxic substance. Thus, the current statute differs from its predecessors in sufficient ways so as not to violate the separation of powers.

Certified Question No. 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?

Section 34, Article II of the Ohio Constitution provides that:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety, and general welfare of all employees; and no other provision of the Constitution shall impair or limit this power.

Section 35, Article II of the Ohio Constitution provides:

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease.

Contrary to Petitioner's argument, R.C. §2745.01 does not conflict with the authority granted in these sections. Section 34, Article II, provides that laws **may** be passed "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety, and general welfare of all employees." Section 34 **does not** state that the General Assembly may pass **only** laws that provide for the comfort, health, safety and general welfare of employees. Moreover, it does not say that no law may ever be passed that **does not** provide for the comfort, health, safety, and general welfare of employees. Section 34 is a grant of authority, not a limitation on authority. This Court has made such a point many times. For example, in Justice Brown's concurrence in *Brady*, he stated the Section 34 does not even apply to intentional tort claims and explained that this does not mean "that the General Assembly has *no* power to modify intentional tort law by *legislation*." 61 Ohio St.3d at 690 (Brown, J., concurring) (emphasis in original). More recently, in *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.* (1999), 87 Ohio St. 3d 55, this Court opined that it "has repeatedly interpreted

Section 34, Article II as a broad *grant* of authority to the General Assembly, not as a limitation on its power to enact legislation.” *Id.* at 61 (emphasis in original).

In addition, Petitioner’s argument with respect to Section 34 is internally inconsistent. Section 34 is aimed at **employee** welfare, yet employer intentional torts supposedly fall outside the scope of employment.

Similarly, Section 35 is a grant of authority rather than a restraint upon it. Simply because Section 35 grants authority to the General Assembly to enact laws regarding injuries occurring within the employment context, that does not mean that Section 35 prohibits the passing of any laws affecting injuries outside the scope of employment. To interpret Section 35 any other way defies logic. “Section 35, Article II cannot be inapplicable to employer intentional torts and, at the same time offended by any legislation regulating such torts.” *Johnson*, 85 Ohio St.3d at 311-312 (Cook, J., dissenting).

The bottom line is that the General Assembly has the authority, within constitutional limitations, to change the common law by legislation. *Johnson v. BP Chemicals, Inc.* (1998), 85 Ohio St.3d at 303. Since Section 35, Article II does not preempt common-law or statutory actions for employer intentional torts, *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St. 2d 608, 23 Ohio Op. 3d 504, 433 N.E.2d 572, the General Assembly has the authority to legislate in this area. Any other conclusion would be contradictory.

Certified Question No. 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

This Court should answer this question in the affirmative. Petitioner believes that, in enacting R.C. §2745.01, the General Assembly left intact the common law cause of action for intentional tort. Such a suggestion is ludicrous. As an examination of the legislative history of

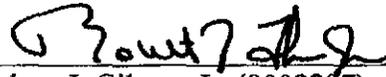
R.C. §2745.01 will show, the General Assembly intended to supersede the Court's decisions in *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St. 2d 608, 433 N.E.2d 572; *Jones v. VIP Dev Co.* (1984), 15 Ohio St.3d 90, 472 N.E.2d 1046, and *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 522 N.E.2d 489. To suggest that the General Assembly provided plaintiffs with an additional and duplicative cause of action with more stringent requirements is unreasonable. In enacting a statute, it is presumed that a "just and reasonable result is intended." R.C. §1.47(C). When the General Assembly codifies the law on a subject, the statute governs unless there is a clear legislative intention expressed or implied, that the statutory provisions are merely cumulative. *Bolles v. The Toledo Trust Co.* (1944), 144 Ohio St. 195, 58 N.E.2d 381 (syllabus 13); reversed on other grounds; *Smith v. The Cleveland Trust Co.* (1961), 172 Ohio St. 489, 179 N.E.2d 60. The establishment of a second and duplicative cause of action for the same tort is cumulative and is neither just nor reasonable. Hence this Court should answer this last certified question in the affirmative.

CONCLUSION

Respondent urges this Court to accept the eight certified questions for review and to answer the first seven questions in the negative the eighth in the affirmative.

Respectfully submitted,

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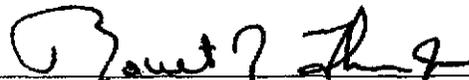
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R.J. Corman Railroad Group, LLC

PROOF OF SERVICE

A copy of the foregoing Memorandum Of Defendants-Respondents R.J. Corman Derailment Services LLC and R.J. Corman Railroad Group LLC in Support of the Court's Jurisdiction to Answer the Certified Questions of Law has been sent by ordinary U.S. Mail this 4th day of June, 2008 to Gregory E. Elder, Esq., R. Ethan Davis, Esq., and James M. Tuschman, Esq., Barkan & Robon Ltd., 1701 Woodlands Drive, Suite 100, Maumee, OH 43537 attorney for plaintiffs.



Attorneys for Defendant-Respondents
R.J. Corman Derailment Services LLC and
R.J. Corman Railroad Group, LLC

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 Plaintiffs Carl and Doris Stetter

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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

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

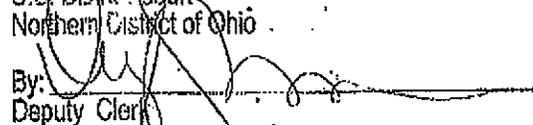
Geri M. Smith, Clerk of Court
Northern District of Ohio

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

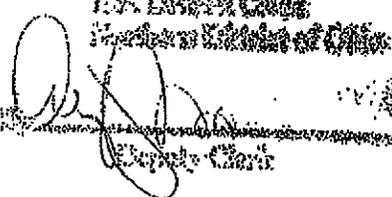
Plaintiff

Carl F Stetter

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express.com

I hereby certify that this
is a true and correct copy of the original
as filed in my office.
U.S. District Court
Northern District of Ohio

James G. Carr

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

Doris Stetter

represented by **Gregory R. Elder**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

James M. Tuschman
(See above for address)
*LEAD ATTORNEY
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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)

Date Filed	#	Docket Text
03/23/2007	<u>1</u>	**FILING ERROR - SHOULD BE NOTICE OF REMOVAL** 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 Defendants' First Set of Interrogatories to Plaintiffs and First Set of Requests for Production of Documents to Plaintiffs 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 Defendants' Rule 26 Initial Disclosures 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 Plaintiffs' First Set of Interrogatories, Request for Production of Documents, and Request for Admissions to Defendants filed by all plaintiffs. (Elder, Gregory) (Entered: 08/31/2007)
10/01/2007	<u>16</u>	Notice of Certificate of Service for Defendants' Answers and Objections to Plaintiffs' First Set of Interrogatories, Request for Production of Documents, and Request for Admissions 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		Minutes of proceedings [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>	Order 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 Answer 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	18 <u>19</u>	Motion to strike and/or, Motion for declaratory judgment filed by Carl F Stetter, Doris Stetter. (Elder, Gregory) (Entered: 03/17/2008)
03/31/2008	<u>20</u>	Motion 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 Motion 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>	Marginal Order 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>	Marginal Order 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 Motion 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>	Order 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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