



Appellee Kathleen E. Moran's Motion to Strike Reply Brief of *Amici Curiae* in Support of Appellant/Relator ("reply brief") DaimlerChrysler LLC should be denied because the reply brief was properly and timely filed under the Rules of Practice of the Supreme Court of Ohio.

### FACTS

On May 1, 2008, Appellant Chrysler LLC, formerly known as DaimlerChrysler Corporation, filed a stipulated extension of time until May 8, 2008 to file its reply brief. On May 7, 2008, within the deadline for Chrysler LLC to file its reply brief, *amici curiae* Ohio Chamber of Commerce, Ohio Self-Insurers Association, and Ohio Chapter of the National Federation of Independent Business filed a reply brief in support of Chrysler LLC. On June 2, 2008, Appellee Kathleen E. Moran ("Moran") filed a motion to strike the reply brief of the *amici curiae*.

### ARGUMENT

Moran argues in her motion to strike that the *amici curiae* reply brief did not comply with the requirements of the Rules of Practice of the Supreme Court of Ohio because the *amici curiae* filed only a reply brief without filing an initial merit brief. (Moran's Motion to Strike, p. 1.) Moran argues that if the *amici curiae* wanted to file a brief supporting Chrysler's position, they should have filed a merit brief on or before February 22, 2008. (Id.) This argument is based on Moran's misperception of a requirement, which does not exist.

S. Ct. Prac. R. VI, § 6 does not prohibit an *amicus curiae* from filing only a reply brief. There is no express requirement in the rule that *amicus curiae* file an initial merit brief before filing a reply brief. Mindful of the doctrine of *expressio unis est exclusio alterius*, which instructs that what was omitted or excluded in a statute or rule was intended to be omitted or

excluded, this Court should not read into S. Ct. Prac. R. VI, § 6 a requirement prohibiting the filing of only a reply brief.

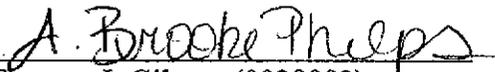
The only requirement set forth in S. Ct. Prac. R. VI, § 6 for the filing of a reply brief by the *amici curiae* is that the brief must be filed within the time allowed to the appellant to file the reply brief. Here, the *amici curiae* satisfied that requirement when they filed their brief on May 7, 2008, one day before the time allowed to Chrysler LLC to file its reply brief.

Moreover, S. Ct. Prac. R. VI, § 6 specifically states, “The Clerk shall refuse to file an *amicus* brief that is not submitted timely.” Likewise, S. Ct. Prac. R. XIV, § 1(C) specifically states that the Clerk shall refuse to file a brief that is not timely tendered for filing. Thus, if the *amici curiae* reply brief had not been timely filed, as Moran argues, then the Clerk would have refused to file the brief under these rules. The Clerk accepted the *amici curiae* reply brief, because it was timely filed.

Accordingly, Moran’s Motion to Strike Reply Brief of *Amici Curiae* in Support of Appellant/Relator should be denied.

Respectfully submitted,

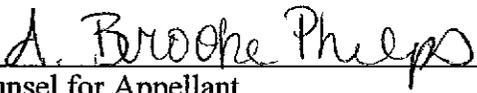
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**CERTIFICATE OF SERVICE**

I certify that a copy of **APPELLANT CHRYSLER LLC'S MEMORANDUM IN OPPOSITION TO APPELLEE KATHLEEN MORAN'S MOTION TO STRIKE REPLY BRIEF** was sent by ordinary U.S. Mail on this 11 day of June, 2008 to: John R. Polofka, Esq., Polofka and Van Berkomp, 500 Madison Avenue, Suite 605, Toledo, Ohio 43604, attorney for Respondent Kathleen E. Moran; to Andrew J. Alatis, Esq., Assistant Attorney General, Workers' Compensation Section, 150 East Gay Street, 22<sup>nd</sup> Floor, Columbus, Ohio 43215, attorney for Respondent Industrial Commission of Ohio; to Stewart R. Jaffy, Esq. and Marc J. Jaffy, Esq., Stewart, Jaffy & Associates Co., LPA, 306 East Gay Street, Columbus, Ohio 43215; and to Philip J. Fulton, Esq., Philip J. Fulton Law Office, 89 East Nationwide Boulevard, Suite 300, Columbus, Ohio 43215.

  
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