

IN THE SUPREME COURT OF OHIO

RICKY M. TORCHIK, :
 :
 Appellant, : Case No. 08-0534
 :
 vs. : On Appeal from the Ross County
 : Court of Appeals, Fourth Appellate
 : District
 JEFFREY M. J. BOYCE, et al., :
 :
 Appellee. : Court of Appeals
 : Case No. 06 CA 002921

AMICUS CURIAE BRIEF OF OHIO ASSOCIATION OF
PROFESSIONAL FIRE FIGHTERS IN SUPPORT OF APPELLANT

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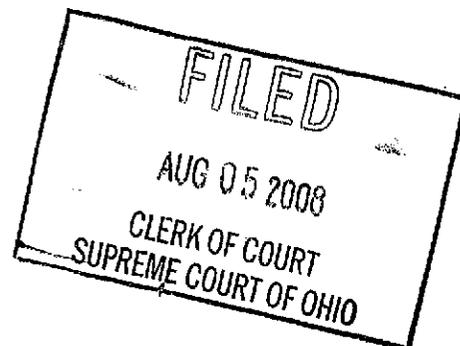


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STATEMENT OF THE CASE AND STATEMENT OF FACTS

Amicus Curiae Ohio Association of Professional Fire Fighters agrees with and adopts the Statement of the Case and Statement of Facts as set forth in the Brief of Appellant.

ARGUMENT

Proposition of Law: Ohio's "Fireman's Rule" does not grant immunity to a third party contractor who negligently performs work on a premises, creating a hazardous condition which causes injuries to a member of a public safety force.

The Fireman's Rule operates to deprive a class of public servants of their right to seek compensation for injuries they receive as a result of the negligence of a property owner. Door-to-door sales representatives, water, electric and gas meter readers, postal workers and others who are injured while on the property of another, as a result of the property owner's negligence, are entitled to receive compensation for their injuries. However, police officers and firefighters who are injured as a result of a property owner's negligence are generally barred from seeking compensation.

The Fireman's Rule currently is justified by public policy considerations. As noted in *Hack v. Gillespie* (1995), 74 Ohio St.3d 362:

As can be gleaned, this court's holding in *Scheurer* is based on certain legal theories and various public policy concerns. First, fire fighters and police officers can enter the premises of a private property owner or occupant under authority of law. Hence, fire fighters and police officers can be distinguished from ordinary invitees. *Id.*, 175 Ohio St. at 168-169, 23 O.O.2d at 456, 192 N.E.2d at 41-42. Second, because a landowner or occupier can rarely anticipate the presence of safety officers on the premises, the burdens placed on possessors of property would be too great if fire fighters and police officers were classified, in all instances, as invitees to whom a duty of reasonable care was owed. *Id.*, 175 Ohio St. at 170, 23 O.O.2d at 457-458, 192 N.E.2d at 43. Third, the rule has been deemed to be justified based on a cost-spreading rationale through Ohio's workers' compensation laws. In this regard, this court has recognized that all citizens share the benefits provided by fire fighters and police officers and, therefore, citizens should also share the burden if a fire fighter or police officer is

injured on the job. Id., 175 Ohio St. at 170-171, 23 O.O.2d at 457, 192 N.E.2d at 43. 74 Ohio St.3d at 367.

The public policy concerns that supposedly justify the Fireman's Rule have little validity today. The rule is based upon the idea that a property owner cannot anticipate the presence of a firefighter or police officer on his/her property. That supposition is no longer true; the case before the Court presents a perfect example of that fact. Here, the property owner had an installed security alarm system. The very purpose of the system was to detect any problems and then alert the Sheriff's office, causing the dispatch of a deputy sheriff to the property.

It is difficult to imagine how the property owner could not have anticipated the presence of a law enforcement officer on his property, when he had a system installed that automatically summoned the officer to his property. If a property owner installs an alarm system, isn't that owner specifically inviting safety forces to come onto his property if the alarm sounds? How can that owner possibly be surprised when safety forces respond to the owner's alarm? And if he knows that safety forces will be responding to his alarm, doesn't he have the time and the opportunity to make his premises safe for those responding forces? The basis for the rule, that a landowner or occupier can rarely anticipate the presence of safety officers on the premises, is no longer accurate, and certainly does not apply in this case.

In addition, the fact that police officers or firefighters may receive workers compensation should no longer be used as justification for denying them compensatory damages. Other classes of employees, the door-to-door sales representatives, the meter readers, the postal workers, and delivery personnel, would also be entitled to workers compensation benefits in the event of an injury, yet they are not deprived of their right to compensatory damages.

Moreover, if anything, the public policy should be that the tortfeasor pay for the damages

caused by his/her negligence. Why should the employers of safety forces see their workers compensation premiums increase because of injuries to their employees caused by third parties? If their employees could seek compensation from the tortfeasors, the employers could exercise their subrogation rights and recoup their workers compensation payments? Applying the Fireman's Rule to this case means that the taxpayers of Ross County foot the bill for Plaintiff's injuries, while the tortfeasor escapes any liability. Amicus Curiae submits this is not sound public policy.

The public policy considerations that currently support the Fireman's Rule are tenuous to begin with; those public policy considerations certainly do not support an extension of the Fireman's Rule to allow third party tortfeasors to escape liability for their negligence. While this Court has not had the occasion to determine whether the Fireman's Rule should be expanded to relieve additional classes of tortfeasors from liability, courts in other states have examined this issue and have refused to expand the Fireman's Rule to relieve third party tortfeasors of their liability. For instance, in *Rennenger v. Pacesetter Co.* (Iowa 1997), 558 N.W.2d 419, the Iowa Supreme Court refused to allow a contractor to evade liability for injuries caused to a firefighter by the contractor's negligence. The Court's ruling is summarized as follows:

Here, we must decide if a contractor involved in the renovation of a four-story apartment building is protected by the firefighter's rule in a negligence suit brought by a firefighter who was injured while fighting a fire in the apartment building. Under the circumstances of this case, we conclude the firefighter's rule does not apply. 558 N.W.2d at 420.

Iowa is not the only state that has refused to expand the Fireman's Rule beyond the property owner to third party tortfeasors. In *McKernan v. General Motors Corporation* (Kan. 2000), 3 P.3d 1261, the Kansas Supreme Court held that a strong public policy recognized in strict liability law is that responsibility be fixed wherever it will most effectively reduce the

hazards to life and health inherent in defective products that reach the market. That requires holding a tortfeasor responsible for his negligence, not granting him immunity. Accordingly, the Court refused to extend the Fireman's Rule to products liability claims against third party tortfeasors. Similarly, the Wisconsin Supreme Court refused to apply the Fireman's Rule beyond property owners to third party tortfeasors. In *Hauboldt v. Union Carbide* (Wisc. 1991), 467 N.W.2d 508, the Court summarized its rationale in the following manner:

None of the public policies served by the firefighter's rule would be served by an extension of the firefighter's rule to cover manufacturers in this situation. *Hass* stated that allowing recovery was likely to "place too great a burden upon homeowners, and other occupiers of real estate." *Hass*, 48 Wis. 2d at 327. The rationale behind this principle is that since a large proportion of fires are started by the negligence of the landowner or occupier, it would be unreasonable to make the landowner or occupier respond in damages to the firefighter who is employed and trained for the purpose of fighting such fires. This rationale does not apply to manufacturers of defective products which directly injure firefighters who are not prepared for the danger the defective product presents. Imposing liability where a product, because of a defectively designed or manufactured safety device, explodes in a fire and injures a firefighter is no different from imposing liability for injuries caused by other defective products. The burden on the manufacturer is the same. 467 N.W.2d at 513.

Iowa and Wisconsin are not alone. In *Court v. Grzelinski* (Ill. 1978), 379 N.E.2d 281, the Illinois Supreme Court also limited the Fireman's Rule:

"[P]ublic policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market." (*Escola v. Coca Cola Bottling Co.* (1944), 24 Cal.2d 453, 462, 150 P.2d 436, 440; accord *Suvada v. White Motor Co.* (1965), 32 Ill.2d 612, 618-19.) In furtherance of this public policy, a legal duty is imposed upon those responsible for creating a defective product in favor of any person to whom injury from the product may reasonably be foreseen. It would serve no societal interest to limit this duty by carving out of the class of such persons a subclass of firemen to assume the undue risks of injury inherent in defective products. We therefore hold that, to the extent a fireman is a person to whom injury from the product may reasonably be foreseen, he may recover in products liability, even though his injury was incurred while fighting a fire in the course of his employment. In so holding, we reject the opportunity to extend the "fireman's rule" beyond its

limited context of landowner/occupier liability. 379 N.E.2d at 285.

See also *Hawkins v. Sunmark Industries, Inc.* (KY 1986), 727 S.W.2d 397, 401, in which the Court refused to extend the immunity provided by the Fireman's Rule beyond owners or occupants of the premises.

In summary, the Fireman's Rule is based upon public policy concerns, but there are no public policy concerns that would support an extension of the rule to third parties. Extending the rule and further eroding the rights of firefighters and police officers to be compensated for their injuries is unwarranted. The Court of Appeals erred in extending the rule to cover not only the owners or occupiers of premises but third party tortfeasors as well. The Court of Appeals should be reversed.

Respectfully submitted,



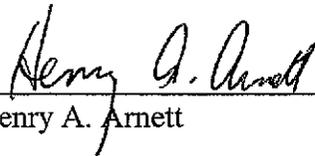
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following by ordinary U.S. mail, postage prepaid this 5th day of August, 2008:

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