

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, et al.

Plaintiffs,

vs.

VILLAGE OF PIKETON,

Defendant.

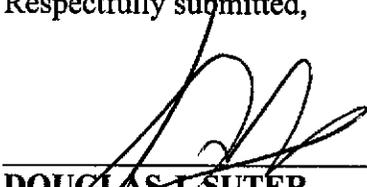
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Case No.: 2008-0782

**NOTICE OF FILING EVIDENCE BY VILLAGE OF PIKETON, OHIO
BILL SPENCER, MAYOR, LINDA NELSON, CLERK-TREASURER AND
JAMES NELSON CHIEF OF POLICE**

Pursuant to the Supreme Court's Entry dated September 10, 2008, Respondents herein file the attached additional evidence.

Respectfully submitted,



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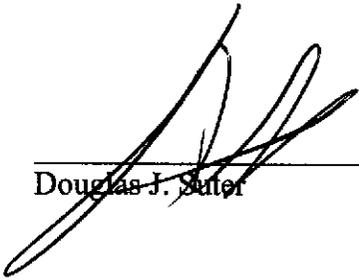
Village of Piketon, Ohio

FILED
SEP 30 2008
CLERK OF COURT
SUPREME COURT OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by regular U.S. mail, postage prepaid, this 30th day of SEPTEMBER, 2008, upon the following:

Phillip M. Collins
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Douglas J. Suter

(0040288)

MEMORANDUM IN SUPPORT

INTRODUCTION

The Village of Piketon, Ohio respectfully moves the Court to vacate the January 2, 2003 judgment entered against Nathaniel Todd Booth pursuant to the inherent powers of the Court or, in the alternative, pursuant to Ohio Civil Rule 60(B)(5). Five years after obtaining this judgment against Booth, the Miles Estate now claims, as of April 2008, that the judgment is actually a judgment against the Village of Piketon.

In this case, the Miles Estate never served the Village of Piketon Solicitor, the Village Administrator or the Police Chief with the Complaint and Summons as required by Ohio Civil Rule 4.2(m). Instead, the Miles Estate served Nathaniel Todd Booth at his personal residence on January 17, 2002, almost two years after Booth resigned as the Piketon Police Chief on April 19, 2000.

On April 24, 2008, the Miles Estate filed a Writ of Mandamus with the Ohio Supreme Court taking the legal position for the first time in over five years that the January 2, 2003 Judgment was a judgment against the Village of Piketon, despite never ever making that argument in other related lawsuits.

The Ohio Supreme Court has ruled that a Judgment rendered without proper service is a nullity and is void. *Lincoln Tavern v. Snader* (1956) 165 Ohio St. 61, 64. Ohio Courts also hold that a void judgment is a nullity that may be challenged at any time either by collateral or direct affidavit. *Rondy v. Rondy* 13 Ohio App.3d 19, 21 (Summit Cty. 1983).

The Village of Piketon also asserts that if the Court finds that the January 2, 2003 judgment against former Police Chief Nathaniel Todd Booth is, in fact, a valid judgment against

the Village of Piketon, as opposed to a void judgment, that the facts and law justify relief from judgment under Ohio Civil Rule 60(B)(5).

In this case, the Village of Piketon and the Piketon Police Department would have been completely immune from the claims asserted by the Miles Estate pursuant to Ohio Revised Code Chapter 2744, and, as such, there are meritorious defenses to the underlying complaint. *GTE Automatic Elec. V. ARC Industries* (1976) 47 Ohio St. 2d 146.

UNDERLYING FACTS AND CASE HISTORY

On December 13, 2001, the Miles Estate sued former Piketon Police Chief Nathaniel Todd Booth in the Pike County Common Pleas Court (Case No. 519-CIV-01) alleging that Booth acted “negligently, wantonly, recklessly and/or willfully failed or refused to perform an adequate investigation, and/or interfered with, tampered with, removed and/or destroyed property and evidence which would have led to the cause of the homicide of Jerry Miles” (Plaintiff’s Complaint, paragraph 9). The Miles Estate also alleged that “Defendant’s performance of his duties as Chief of Police in bad faith and/or in a reckless and wanton manner proximately caused harm to the Plaintiffs.” (Plaintiff’s Complaint, paragraph 10).

Nathaniel Todd Booth resigned from the Piketon Police Department on April 19, 2000, a year and a half before the Miles Estate filed suit. The Miles Estate perfected service on Nathaniel Todd Booth on January 17, 2002 at his personal residence by way of ordinary mail at a time when Booth was no longer the Village Police Chief or employed with the Village of Piketon. (See Docket attached as Exhibit “A”.)

At no time did the Miles Estate name the Village of Piketon or the Piketon Police Department in the lawsuit and the Complaint and Summons were never served on the Village,

the acting Police Chief or the Village Solicitor. (See Exhibit "A" Civil Docket for Case No. 519-CIV-07). Ohio Civil Rule 4.2(M) provides that service upon a municipal corporation or upon any of its officers, deputies, agents, etc. must be made by serving the officer responsible for administration of the office, department, agency, authority, etc. or by serving the City Solicitor.

On January 2, 2003, the Pike County Common Pleas Court entered Judgment against Nathaniel Todd Booth in the amount of Eight Hundred Thirty Seven Thousand Five Hundred Eighteen dollars and 22/100 (\$837,518.22). (Exhibit "B"). On April 22, 2003, the Miles Estate filed a supplemental lawsuit against the Village of Piketon and Piketon's governmental risk sharing pool in the Pike County Common Pleas Court, Case No. 171-CIV-03 (Exhibit "C") seeking to have the Village of Piketon and its risk sharing pool satisfy and pay the \$837,518.22 judgment entered against Nathaniel Todd Booth.

At no time during Case No. 171-CIV-03 did the Miles Estate claim that it had won a judgment against the Village of Piketon in Case No. 519-CIV-01, **rather**, the Miles Estate asserted that the Village of Piketon had a statutory duty to defend and indemnify its former employee Nathaniel Todd Booth for the judgment. (See Supplemental Petition paragraphs 1 and 4).

Nathaniel Todd Booth died on February 4, 2003 and an Estate was opened in the Lawrence County Probate Court Probate Division Case No. 04 AM 016143. The Miles Estate filed a claim against the Booth Estate in the Probate Court for enforcement of the January 2, 2003 judgment and attached a Certificate of Judgment from the Pike County Common Pleas Court. (Exhibit "D") that only recognized a judgment against Nathaniel Todd Booth at his personal address, 630-TR-274-S, Ironton, Ohio 45638.

On April 24, 2004 in Case No. 171-CIV-03, the Miles Estate dismissed its claims seeking payment of the judgment against the Village of Piketon pursuant to Ohio Civil Rule 41(A)(1). (Exhibit "E"). The Miles Estate never re-filed the action against the Village of Piketon.

On April 24, 2008, over five years after obtaining a judgment against former Police Chief Nathaniel Todd Booth, the Miles Estate filed a Complaint for Writ of Mandamus with the Ohio Supreme Court (Case No. 08-0782), claiming for the first time ever in any legal pleadings that the Village is aware of that the Miles Estate had a judgment against the Village.

LAW AND ARGUMENT

I. The January 2, 2003 Judgment, to the Extent is Void As To The Village of Piketon, Ohio

The Docket in Case No. 519-CIV-01 clearly shows that the Miles Estate never served the acting Police Chief, the Village or the Village Solicitor with the Complaint and Summons. Instead, the Miles Estate served the former Piketon Police Chief by way of ordinary mail on January 17, 2002 at Booth's personal residence almost two years after Booth resigned his position as Piketon Police Chief.

Ohio Civil Rule 4.2(m) provides that service upon a municipal corporation must be made by serving the Officer responsible for the administration of the office, department, agency, authority, etc. or by serving the City Solicitor. Any judgment against the Village of Piketon in Case No. 519-CIV-01 is void as a matter of law.

A judgment rendered without proper service is a nullity and is void. *Lincoln Tavern v. Snader* (1956) 165 Ohio St. 61, 64. A Court lacks jurisdiction to enter judgment against a defendant where effective service of process has not been made upon that defendant and the

defendant has not appeared in the case or waived service. *Marryhew v. Yova* (1984) 11 Ohio St. 3d 154, 156; *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59 (Franklin County 1995).

Completion of service of process is necessary to clothe the Trial Court with jurisdiction to proceed. Thus, where service of process has not been accomplished, any judgment rendered is void *ab initio*. *Rondy v. Rondy* 13 Ohio App.3d 19, 21 (Summit Cty. 1983); *Kurtz v. Kurtz*, 71 Ohio App.3d 176, 182 (Erie Cty. 1991); *Calvary Industries, LLC v. Clevenger*, 2005 WL 3557391 (9th Dist. 2005); *Sampson v. Hooper Holmes, Inc.*, 91 Ohio App.3d 538, 540 (9th Dist. 1993).

The authority to vacate a void judgment falls within the inherent powers possessed by Ohio Courts. *Patton v. Diemer* (1988) 35 Ohio St. 3d 68 (syllabus). If service of process is improper or service is not made on a proper defendant, the judgment is void and may be set aside at any time pursuant to the Court's inherent powers. *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59, 62 (Franklin County 1995).

Since the Docket for Case No. 519-CIV-01 clearly shows that the Miles Estate never properly served the Complaint and Summons on the Village, the Village Police Chief or the Village Solicitor, the January 2, 2003 Judgment is void as a matter of law as applied to the Village of Piketon. *Lincoln Tavern v. Snader* (1956) 165 Ohio St. 61, 64.

II. In The Alternative, the Court Should Set Aside Any Claimed Judgment Against the Village of Piketon, Ohio Pursuant to Ohio Civil Rule 60(B)(5)

To prevail on a Motion for Relief from Judgment under Civil Rule 60(B), a movant must demonstrate:

- 1) The party has a meritorious defense or claim to present if relief is granted;

- 2) The Party is entitled to relief under one of the grounds stated in Civil Rule 60(B)(5);
- 3) The Motion is made with a reasonable time.

GTE Automatic Electric v. ARC Industries (1976) 47 Ohio St. 2d 146.

Rule 60(B)(5) governing relief from judgment is premised upon the inherent power of the Court to prevent unfair application of a judgment. *Newark Orthopedics Inc. v. Brock*, 92 Ohio App.3d 117 (Franklin Cty. 1994); *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59 (Franklin County 1995). Any doubt as to the merits of a movant's defense to a judgment should be resolved in favor of the motion to set aside the Judgment. *GTE Automatic Electric, Supra*. Courts should decide cases on the merits whenever possible. *Perotti v. Ferguson* (1983) 7 Ohio St. 3d 1.

A. **The Village of Piketon and Piketon Police Department have a Meritorious Defense to the Claims of the Miles Estate**

The grant of summary judgment in favor of the Miles Estate against former Police Chief Booth was expressly based upon Booth's individual liability as an **employee** of an Ohio political subdivision, with the Trial Court specifically citing to individual liability of a governmental employee under O.R.C. 2744.03(A)(6) in the entry. To the contrary, the Village of Piketon and the Police Department would have been immune from any state law official capacity claims for the police department's investigation of the Miles' fatality under Ohio Revised Code Chapter 2744.

The liability of an Ohio political subdivision such as a Village of Village Police Department is and was expressly governed by O.R.C. Section 2744.02. Under O.R.C. 2744.02, the Village and Police Department are immune from governmental functions. See O.R.C. 2744.02(A)(1). "Governmental functions" include, but statutory definition, the "provision of

police,” the “power to preserve the peace,” and “the enforcement of any law.” Ohio Revised Code Sections 2744.01(C)(1) and (C)(2)(a), (b) and (i).

The Ohio Supreme Court and various Courts of Appeals have held, as a matter of law, that the operation of a police department and the provision of police services are governmental functions, for which there is complete immunity. *Aldrich v. Youngstown* (1922), 106 Ohio St. 342; *Gabris v. Blake* (1967), 9 Ohio St. 2d 71; *Zeigler v. Mahoning County Sheriff's Dept.* (2000), 137 Ohio App.3d 831; *McCloud v. Nimmer*, 72 Ohio App.3d 533 (8th Dist. 1991).

There was no viable claim against the Village of Piketon or the Police Department in Case No. 519-CIV-01 that could have overcome immunity under O.R.C. 2744.02 and Ohio Common Law. There were no claims asserted by the Miles Estate against the Village or Police Department in the underlying complaint and nothing in the Trial Court's January 2, 2003 Judgment Entry that in any way referenced a judgment against the Village of Piketon or Piketon Police Department.

B. The Village of Piketon Made This Motion Within a Reasonable Time

The first time the Miles Estate ever in a legal proceeding claimed it had obtained a Judgment against the Village of Piketon was on April 24, 2008, when the Miles Estate filed a Writ of Mandamus with the Ohio Supreme Court (Case No. 08-0782). That was over five years after obtaining a judgment against former Police Chief Nathaniel Todd Booth and years after the Miles Estate's involvement in related litigation.

On January 2, 2003, the Pike County Common Pleas Court entered Judgment against Nathaniel Todd Booth in the amount of Eight Hundred Thirty Seven Thousand Five Hundred Eighteen dollars and 22/100 (\$837,518.22). Months later, on April 22, 2003, the Miles Estate

filed a supplemental petition against the Village of Piketon and Piketon's governmental risk sharing pool.

At no time during Case No. 171-CIV-03 did the Miles Estate claim that it had won a judgment against the Village of Piketon in Case No. 519-CIV-01, rather, the Miles Estate only asserted that the Village of Piketon had a statutory duty to defend and indemnify its former employee Nathaniel Todd Booth for the judgment. (See Supplemental Petition paragraphs 1 and 4).

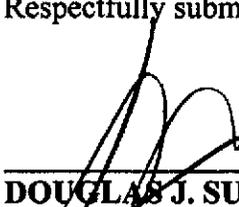
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April 2008 was the first time the Village of Piketon was ever put on notice by the Miles Estate that the Miles Estate intended to treat the January 2, 2003 Judgment against former Police Chief Nathaniel Todd Booth as a Judgment against the Village of Piketon. Thus, this alternative Motion for Relief from the claimed Judgment against the Village of Piketon is timely.

CONCLUSION

Based upon the foregoing and the attached documents, as well as review of the Docket for Case No. 519-CIV-01, the Village of Piketon respectfully urges the Court to render the January 2, 2003 Judgment void to the extent it can be construed as a judgment against the Village of Piketon. In the alternative, the Village of Piketon urges the Court to grant the Village relief from Judgment pursuant to Ohio Civil Rule 60(B)(5).

Respectfully submitted,



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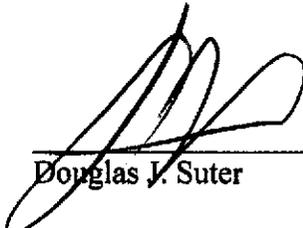
(614) 221-2121; Fax (614) 365-9516

Attorneys for Defendant Village of Piketon, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by regular U.S. mail, postage prepaid, this 23rd day of JUNE, 2008, upon the following:

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Attorney for Plaintiff



Douglas J. Suter

(0040288)



IN THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO

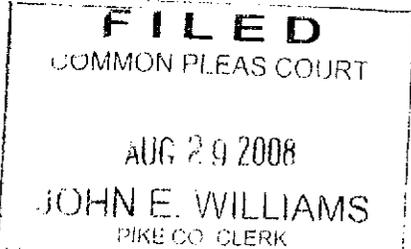
BETTY S. MILES, et al.	:	
	:	
Plaintiffs,	:	Case No.: 519-CIV-01
	:	
vs.	:	Judge Deering
	:	
NATHANIEL TODD BOOTH,	:	
	:	
Defendant.	:	

**REPLY IN SUPPORT OF MOTION TO VACATE VOID JUDGMENT OR,
IN THE ALTERNATIVE, MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO OHIO RULE 60(b)(5)
BY THE VILLAGE OF PIKETON**

The Court should grant the Village of Piketon's Motion to Vacate Void Judgment or in the alternative, grant relief from judgment pursuant to Ohio Civil Rule 60(b)(5).

The Miles Estate's own pleadings support the Village of Piketon's Motion. First, the Miles Estate concedes that the Estate did not serve the Village of Piketon, the Police Department or Village Solicitor with a copy of the Complaint and Summons in Case No. 519-CIV-01, as expressly required by Ohio Civil Rule 4.2 (Miles Estate's Memo Contra page 2). The Court docket for Case No. 519-CIV-01 (attached to the Village of Piketon's Motion to Vacate) also shows that the Village, Police Department and Village Solicitor were not served.

Under Ohio Civil Rule 4(D) a waiver of service of Summons by a defendant must be in writing. The case docket in 519-CIV-01 does not show any waiver of service by the Village of Piketon, nor does the docket reflect an entry of appearance by the Village Solicitor as an attorney of record for the Village of Piketon.



As to Attorney Anthony Moraleja, who maintained a private law practice in the Village of Piketon, Moraleja testified in a related proceeding that the extent of his involvement in Case No.: CIV-519-01 was a private meeting in the hallway of the Courthouse with Nathaniel Booth where Booth declined legal representation by Moraleja, who was offering to defend Booth as a friend:

Q: When the lawsuit was filed against Nathaniel Booth by the Estate of Miles, did you hear from the clerks or from being around the Courthouse, from the police chief, or maybe at this time the former police chief, did you hear from any of those people that this lawsuit had been filed against him?

A: The first time I heard of the suit was when I went up to the – I don't know what the hearing was for, but I know it was something that was – I think it had to do with summary judgment or default. The default might have already been granted and it was a damage hearing. But that was the first time that I heard it as possibly a civil litigation. Actually when I got the phone call about it, I thought it had something to do with his criminal case, that maybe he violated his parole or his probation or something.
(Moraleja depo. pp. 25, 26)

Q: Did Nathaniel Booth ever contact you after he was sued and discuss the allegations of the complaint?

A: No he didn't.

X X X

He was adamant about at least me not representing him. It was almost as if he was doing it as a friend. As a friend, he did not want to put me through any more trouble because of him. I said, "It's not any trouble. I know that you screwed up, but you're still a friend of mine and I'll even go up there as a friend. I'll say I'm representing you or that I may be representing you. I'll talk to the judge about it."

He said, "No." He went ahead and said, "If you go up there, I'll embarrass you in public and say you're fired. I don't want you here. Get out of here."
(Moraleja depo. p.34).

Attorney Moraleja also denies ever having participated in any pre-trial in the underlying case, only that he talked to former Police Chief Booth in the hallway of the Courthouse:

Q: Okay. In the third paragraph, it says that on July 8, 2002, at a pretrial conference – that you attended that pretrial conference. Do you see that in the entry?

A: Yes.

Q: The entry says that the court directed Nathaniel Booth to discuss the matter of counsel with Mr. Moraleja. Do you see that?

A: Yes.

Q: Do you recall – and that 30 days was given to obtain counsel either through the village, the village insurer or at his own expense. Do you see that?

A: Yes.

Q: And does that accurately reflect what transpired during the course of these proceedings?

A: I don't know. I don't remember being in the courtroom. When it says "attended", I was there, but when the record got snapped on, I don't remember being in the courtroom.

(Moraleja depo. p. 41).

There is no evidence from the Court docket in Case No. 519-CIV-01 or in the pleadings that Attorney Anthony Moraleja ever entered an appearance as counsel of record for the Village of Piketon or that he, with the knowledge or authorization of the Village, personally appeared in the case or conducted himself in a manner to waive service for the Village of Piketon.

II. The Miles Estate Pleadings from Case No.: 292-CIV-00 Support the Village of Piketon's Motion to Vacate Void Judgment

The pleadings from Case No. 292-CIV-00, submitted by the Miles Estate, support the Village of Piketon's position that the Miles Estate did not sue the Village in the Nathaniel Booth suit.

On February 20, 2001, the Miles Estate, in Case No. 292-CIV-00, filed a Third Party Complaint specifically against the Village of Piketon asserting claims against the Village for the handling of the murder investigated by the Village of Piketon Police Department. The Court docket shows that the Miles Estate served the Village of Piketon with that Third Party Complaint by way of certified mail, return receipt requested.

On May 9, 2002, the Court in Case No. 292-CIV-00 signed an Agreed Judgment Entry of dismissal dismissing all claims with prejudice. The Miles Estate's claims against the Village of Piketon were specifically alleged in Case No.: 292-CIV-00, which was dismissed with prejudice on May 9, 2002 and never re-filed.

III. Piketon has met the requirements of Ohio Civil Rule 60(B)(5) and Should be Granted Relief from the January 2, 2003 Judgment

The Village of Piketon has a meritorious defense to the Judgment. The claims asserted against Nathaniel Booth in his individual capacity would be met with complete immunity if asserted against the Village of Piketon.

The liability of an Ohio political subdivision such as a Village of Village Police Department is and was expressly governed by O.R.C. Section 2744.02. Under O.R.C. 2744.02, the Village and Police Department are immune from governmental functions. See O.R.C. 2744.02(A)(1). "Governmental functions" include, but statutory definition, the "provision of

police,” the “power to preserve the peace,” and “the enforcement of any law.” Ohio Revised Code Sections 2744.01(C)(1) and (C)(2)(a), (b) and (i).

The Ohio Supreme Court and various Courts of Appeals have held, as a matter of law, that the operation of a police department and the provision of police services are governmental functions, for which there is complete immunity. *Aldrich v. Youngstown* (1922), 106 Ohio St. 342; *Gabris v. Blake* (1967), Ohio St. 2d 71; *Zeigler v. Mahoning County Sheriff's Dept.* (2000), 137 Ohio App.3d 831; *McCloud v. Nimmer*, 72 Ohio App.3d 533 (8th Dist. 1991).

The Miles Estate is incorrect that the Village of Piketon would not be immune from the reckless acts of former Police Chief Nathaniel Booth in his official capacity. Under O.R.C. 2744.02, there is complete immunity from “governmental” functions by Piketon except for the operation of a motor vehicle.

In the Miles Estate’s July 8, 2002 Motion for Summary Judgment against Booth, it was clear the Estate was only seeking liability against Booth in his individual capacity and was not making claims against the Village of Piketon under O.R.C. 2744.02:

“In order to find the Defendant liable, the Plaintiff must prove that the Defendant’s acts or omissions in the investigation of this matter were conducted in a wanton or reckless manner. O.R.C. 2744.03(A)(6).”

(Miles Estate’s summary judgment at page 2).

Ohio Revised Code Section 2744.03(A)(6) governs only individual liability and states in pertinent part:

(T)he employee is immune from liability unless one of the following applies:

- (a) The employee’s acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities.
- (b) The employee’s acts or omissions were with malicious purpose, in bad faith or in a wanton or reckless manner.
- (c) Civil liability is expressly imposed upon the employee by a Section of the Revised Code . . .

The September 9, 2002 Judgment Entry granting the Miles Estate's summary judgment motion against Booth also only referenced a judgment against Booth in his individual capacity:

Specifically, the Court finds that while he was acting within the course and scope of his employment, Defendant's acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved. O.R.C. 2744.03(A)(6).

IV. The Motion To Vacate or in the Alternative, For Relief From Judgment was Timely

On April 24, 2008, over five years after obtaining a judgment against former Police Chief Nathaniel Todd Booth in Case No. 519-CIV-01, the Miles Estate filed a Complaint for Writ of Mandamus with the Ohio Supreme Court, claiming for the first time ever in any legal pleadings that the Miles Estate actually had a judgment against the Village. The Village then promptly moved to vacate this purported judgment in this proceeding.

On January 2, 2003, the Pike County Common Pleas Court entered Judgment against Nathaniel Todd Booth in the amount of Eight Hundred Thirty Seven Thousand Five Hundred Eighteen dollars and 22/100 (\$837,518.22). On April 22, 2003, the Miles Estate filed a supplemental petition against the Village of Piketon and Piketon's governmental risk sharing pool in the Pike County Common Pleas Court, Case No.: 171-CIV-03 seeking to have the Village of Piketon and its risk sharing pool satisfy and pay the \$837,518.22 judgment entered against Nathaniel Todd Booth.

At no time during Case No.: 171-CIV-03 did the Miles Estate claim that it had won a judgment against the Village of Piketon in Case No. 519-CIV-01, rather, the Miles Estate asserted that the Village of Piketon had a statutory duty to defend and indemnify its former employee Nathaniel Todd Booth for the judgment.

On April 24, 2004, in Case No.: 171-CIV-03, the Miles Estate dismissed its claim seeking payment of the judgment against the Village of Piketon pursuant to Ohio Civil Rule 41(a)(1). The Miles Estate never re-filed the action against the Village of Piketon.

If the claims that the Miles Estate specifically asserted against the Village of Piketon in Case No.: 292-CIV-00 were not already dismissed with prejudice on May 9, 2002, the claims against the Village of Piketon were dismissed when the Miles Estate, in Case No.: 171-CIV-3, dismissed its lawsuit against the Village of Piketon to enforce the judgment on April 24, 2004 and never re-filed the claim. (See O.R.C. 2744.04).

CONCLUSION

Based on the foregoing, the Village of Piketon respectfully urges the Court to vacate the January 2, 2003 judgment or, in the alternative, grant relief from the judgment pursuant to Ohio Civil Rule 60(B)(5).

Respectfully submitted,



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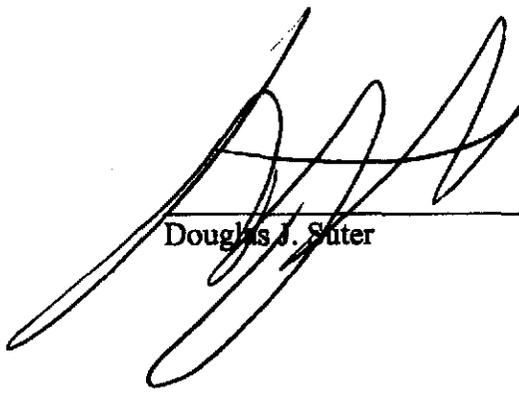
Attorneys for Defendant Village of Piketon, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by regular U.S. mail, postage prepaid, this 28th day of AUGUST, 2008, upon the following:

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Douglas J. Suter (0040288)

THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO
WAVERLY, OHIO 45690
TELEPHONE: (740)947-2212
FAX: (740)947-1729

TO: DOUGLAS J SUTER
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9TH FLOOR
COLUMBUS, OH 43215

BETTY S MILES et al,
Plaintiff

VS.

Case No. 519-CIV-01

McCall
TV
DCBto

NATHANIEL TODD BOOTH,
Defendant

THE ABOVE CASE IS ASSIGNED

FOR PRE-TRIAL: Wednesday, November 19, 2008, at 11:00 am

BEFORE THE HONORABLE RANDY D. DEERING
RESIDENT JUDGE OF THE PIKE COUNTY COURT OF COMMON PLEAS
WAVERLY, OH 45690

Dated August 20, 2008

ASSIGNMENT COMMISSIONER
Ginger Lawless

MARGARET B APEL-MILLER 0041912 630 6TH ST PORTSMOUTH OH 45662

FILED
COMMON PLEAS COURT

AUG 20 2008
JOHN E. WILLIAMS
PIKE CO. CLERK

EXHIBIT
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