

IN THE SUPREME COURT OF OHIO

Stephen Musser, as the Personal	)	CASE NO. 2008-0784
Representative of the Estate of	)	
Florence Hayes (deceased),	)	
	)	
Appellee,	)	On Appeal from the
	)	Cuyahoga County Court of Appeals
	)	Eighth Appellate District
vs.	)	
	)	
The Oakridge Home, et al.,	)	
	)	
Appellants.	)	

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**APPELLEE STEPHEN MUSSER'S MOTION TO CONTINUE ORAL ARGUMENT**

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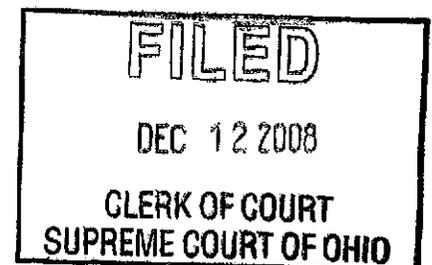
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Attorneys for Appellant The Oakridge Home



Now comes Appellee Stephen Musser, by and through his attorney, Blake A. Dickson of the law firm of Dickson & Campbell, L.L.C., and hereby respectfully requests that this Honorable Court reschedule the Oral Argument in this case.

On Tuesday, December 9, 2008, Appellee's counsel received a Notice of Oral Argument from this Honorable Court, indicating that the Supreme Court of Ohio is currently scheduled to hold Oral Argument on the merits in this case on Wednesday, February 4, 2009. Plaintiff's counsel is currently scheduled to begin a jury trial on Monday, February 2, 2009, in a case captioned, *Tila Miller, individually and as the personal representative of the Estate of James H. Miller (deceased) v. Nelson Taylor, et al.*, currently pending in the Columbiana County Court of Common Pleas, Case Number 2005 CV 3588, before the Honorable Judge David Tobin. This case was filed on February 27, 2007. The jury trial of the *Miller* case will still be proceeding on Wednesday, February 4, 2009.

The *Miller* case arises from an incident which occurred on May 9, 2005 when Defendant Nelson Taylor negligently and/or recklessly operated the Verizon van that he was driving, in the course and scope of his employment for Defendant Verizon North, Inc., into collision with the person of decedent James H. Miller. Mr. Miller suffered significant injuries to both of his legs, which required multiple surgeries. He has incurred in excess of \$400,000.00 in medical bills. UnitedHealthcare intervened as a party, relative to its claim for subrogation. Eight months after the collision, Mr. Miller tragically committed suicide by overdosing on Oxycontin. The Columbiana County Coroner is currently scheduled to testify, at the Jury Trial of this case. Plaintiff has retained three expert witnesses, an expert psychiatrist, and two trauma surgeons, both of whom operated on decedent James H. Miller. The parties are going to travel to Atlanta, Georgia for the videotaped, trial deposition of one of these trauma surgeons. The videotaped, trial deposition of the other trauma

surgeon who operated on James Miller has also already been scheduled. The discovery deposition and videotaped, trial deposition of an orthopaedic surgeon from University Hospitals, retained by Defendant Verizon North, Inc., has already been scheduled.

James Miller had six (6) children, all of whom are scheduled to testify at the Jury Trial. James Miller had nine (9) siblings, many of whom will testify at Trial. The damages are considerable. Plaintiff's counsel would like to try the *Miller* case on February 2, 2009. The Trial of the *Miller* case will not be concluded in time for Plaintiff's counsel to appear in Columbus, for the Oral Argument in this case on Wednesday, February 4, 2009.

It is Appellee's counsel's understanding that it is rare for the Ohio Supreme Court to continue an Oral Argument. Appellee's counsel certainly understands that the time of the Ohio Supreme Court is valuable. However, Appellee's counsel respectfully requests that this Honorable Court reschedule the Oral Argument in this case, so that Appellee's counsel may proceed with the Jury Trial of the *Miller* case, as scheduled, beginning on Monday, February 2, 2009.

This Motion is not being made for the purpose of delay.

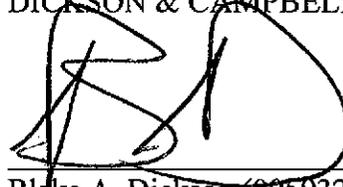
This Motion should be granted in the interest of justice.

Appellee respectfully requests that this Honorable Court consider that the rescheduling of the Jury Trial of the *Miller* case will delay the Miller family receiving compensation for the death of James Miller, potentially for an extended period of time, since the Jury Trial of the *Miller* case will have to be rescheduled to a date when all four trial counsel and the Court are available.

Accordingly, Appellee respectfully requests that this Motion be granted and the Oral Argument in this case be continued.

Respectfully submitted,  
DICKSON & CAMPBELL, L.L.C.

By:



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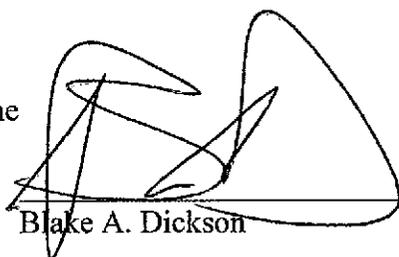
## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing, Appellee Stephen Musser's Motion to Continue Oral Argument, was sent by ordinary U.S. Mail **this 11<sup>th</sup> day of December, 2008**, to the following:

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By:

  
Blake A. Dickson

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