
IN THE SUPREME COURT OF OHIO

CASE NO. 2008-0972

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

Vs.

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

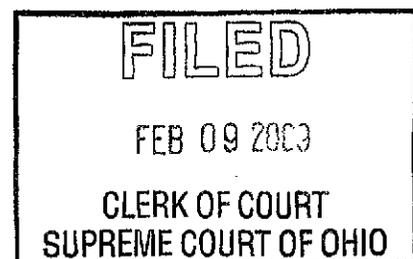
LIST OF ADDITIONAL AUTHORITIES
TO BE RELIED UPON AT ORAL ARGUMENT

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Now come Petitioners and, pursuant to Rule IX, Section 8 of the Rules of Practice of the Supreme Court of Ohio, hereby give notice of intent to rely on the following authorities during oral argument:

Fiscal Note & Local Impact Statement, 125 H.B. 498 (As Introduced), Ohio Legislative Service Commission, September 7, 2004. Available at: <http://www.lbo.state.oh.us/fiscal/fiscalnotes/125ga/HB0498IN.htm>

Fiscal Note & Local Impact Statement, 125 H.B. 498 (As Enacted), Ohio Legislative Service Commission, December 8, 2004. Available at: <http://www.lbo.state.oh.us/fiscal/fiscalnotes/125ga/HB0498EN.htm>.

Respectfully submitted,

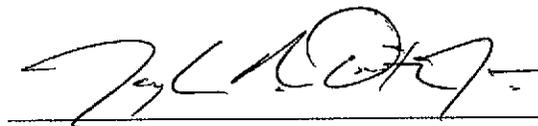


Joseph R. Dietz, Jr., Esq.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing List of Additional Authorities to Be Relied Upon at Oral Argument was served this 6th day of February, 2009 via ordinary U.S. Mail upon the following:

Robert J. Gilmer, Jr., Esq., Margaret Mattimoe Sturgeon, Esq., and Sarah E. Pawlicki, Esq., **Eastman & Smith Ltd.**, One SeaGate, 24th Floor, P.O. Box 10032, Toledo, Ohio 43699-0032 - *Counsel for R.J. Corman Derailment Services, LLC and R.J. Corman Railroad Group, LLC*



Of Counsel

that standard of proof would presumably have made it easier and therefore more likely for certain employment intentional tort actions to be filed. In this instance, as noted, that standard of proof was lessened by the Ohio Supreme Court in 1999, which means that the resulting increase, if any, in the number of employment intentional tort actions filed annually would have occurred closer to the time of the Court's ruling, and well before the bill was introduced.

Since the bill in effect codifies the standard of proof accepted by Ohio's courts following the 1999 ruling, if enacted, it appears unlikely to have any noticeable effect on the number of employment intentional tort actions filed annually. Assuming that were true then the bill should have no effect on the revenues and expenditures of the state or its political subdivisions.

LSC fiscal staff: Joseph Rogers, Budget Analyst

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Detailed Fiscal Analysis

Under current law, a successful employment intentional tort action requires the employee, or plaintiff, to prove, by clear and convincing evidence, that the employer, or defendant, deliberately committed all of the elements of an intentional tort. In 1999, the Ohio Supreme Court declared this particular provision of the Revised Code unconstitutional and ruled that the required standard of proof "by clear and convincing evidence" imposed an excessive standard on plaintiffs. In the wake of this ruling, the courts have essentially, by default, required that employment intentional tort actions be proven by a preponderance of the evidence, which is a lesser standard of proof. The bill essentially codifies this existing "preponderance of the evidence" standard utilized in an employment intentional tort action since this 1999 Ohio Supreme Court ruling.

It seems reasonable to conclude that, subsequent to its enactment, this more difficult standard of proof – clear and convincing evidence – would have had at least some chilling effect on the filing of certain employment intentional tort actions. Assuming that were true, then any subsequent easing of that standard of proof would presumably have made it easier and therefore more likely for certain employment intentional tort actions to be filed. In this instance, as noted, that standard of proof was lessened by the Ohio Supreme Court in 1999, which means that the resulting increase, if any, in the number of employment intentional tort actions filed annually would have occurred closer to the time of the Court's ruling, and well before the bill was introduced.

Since the bill in effect codifies the standard of proof accepted by Ohio's courts following the 1999 ruling, if enacted, it appears unlikely to have any noticeable effect on the number of employment intentional tort actions filed annually. Assuming that were true, then the bill should have no effect on the revenues and expenditures of the state or its political subdivisions.

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