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**EXPLANATION OF WHY THIS CASE IS NOT A CASE
OF PUBLIC OR GREAT GENERAL INTEREST**

This appeal presents the common sense question of whether or not non-asbestos claims can be administratively dismissed by the Ohio Asbestos Bill.¹ This case does not warrant review by this Court as it involves a simple question of statutory interpretation that was correctly decided by the Cuyahoga County Court of Appeals. Moreover, this issue has already been addressed and resolved by several other courts of appeal here in Ohio. As the Cuyahoga County Court of Appeals recognized below, the issue presented there, and again here, is well-settled: “The railroads argue that non-asbestos claims, joined in the same action, must comply with R.C. 2307.91 et seq., or be administratively dismissed. We disagree. The statute is clear that R.C. 2307. 91, et seq. applies only to asbestos-related claims.” *Riedel v. Consolidated Rail Corp.*, 8th Dist. Nos. 91237, 91238, 91239, 2009-Ohio-1242, at ¶ 7; See, *Penn v. A-Best Prods.*, 10th Dist. Nos. 07AP-404, 07AP-405, 07AP-406, 07AP-407, 2007-Ohio-7145, at ¶ 32 (holding that “a plain reading of the R.C. 2307.92 indicates that only those types of cases explicitly specified must demonstrate a prima facie case.”); See, also, *Nichols v. A.W. Chesterton Co.*, 172 Ohio App.3d 735, 2007-Ohio-3828, 876 N.E.2d 1269, at ¶ 9 (same); *Wagner v. Anchor Packing Co.*, 4th Dist. No. 05CA47, 2006-Ohio-7097, at ¶ 27 (same).

The instant Appellees had claims in the trial court for asbestos-related disease and also for other lung diseases (Chronic Obstructive Pulmonary Disease (“COPD”), asthma, and emphysema) related to their railroad exposure to locomotive diesel exhaust and other toxins brought under the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. §§ 51–60, and the

¹The Ohio Asbestos Bill, referenced by the Appellants as “Am. Sub. H.B. 292,” is codified at R.C. 2307.91–98.

Locomotive Inspection Act (“LIA”), 49 U.S.C. §§ 20701–03. The trial court administratively dismissed the asbestos-related claims when the Appellees were unable to make the prima facie showing required by R.C. 2307.92(B).² The trial court sensibly severed the Appellees’ remaining claims, reasoning that the Ohio Asbestos Bill could only pertain to causes of action related to asbestos. The Eighth District agreed. *Riedel* at ¶ 7. No new issues of public or great general interest have been presented warranting review by this Court. Numerous Ohio courts’ of appeal have held that only the categories of claims specified in the Act are subject to its requirements. Uniformity throughout the courts of Ohio should not be disturbed and accordingly jurisdiction should be denied by this honorable Court.

In their sole Proposition of Law, Appellants ask this Court to review whether administrative dismissal is applicable to “mixed” asbestos/non-asbestos claims for “indivisible injuries.” However, the Appellees herein suffer from at least two separate and distinct diseases, asbestosis and COPD (including asthma and emphysema). Of these, only asbestosis can be caused by exposure to asbestos. As explained fully below, the personal physicians of the Appellees, as well as the Cuyahoga County Court of Appeals have explained as much. See, *Riedel* at ¶ 14 (“However, the [Appellees’ injuries] (except asbestosis) may be caused by other substances. Therefore, those claims remain because ‘[a] plain reading of R.C. 2307.92 indicates that only those types of cases explicitly specified must demonstrate a prima facie case.’”) (citing

²R.C. 2307.92(B) requires a prima facie showing for non-malignant asbestos claims and provides: “No person shall bring or maintain a tort action alleging an asbestos claim based on a non malignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person’s exposure to asbestos is a substantial contributing factor to the medical condition.”

Penn at ¶ 32).

These consolidated cases involve unique claims brought under the FELA and LIA, arising from various exposures that resulted in separate and distinct injuries. Only one claim of each Appellee relates to asbestos exposure, which resulted in asbestosis, while the others involve exposure to other harmful toxins, specifically diesel locomotive exhaust, that resulted in COPD, asthma, and emphysema. In the opinions of their own doctors, these conditions are unrelated to Appellees' railroad exposures to asbestos.

Because the Appellees' remaining severed claims do not relate to exposure to asbestos, nor were the injuries complained of caused by asbestos or in any sense "mixed" or "indivisible," the Proposition of Law put forth by Appellants, which asks for relief based on severance of an "indivisible injury," does not present a justiciable issue engendering a "real controversy."

Further appellate review thereof would violate numerous decisions of this Court. See, e.g., *Voinovich v. Ferguson* (1992), 63 Ohio St.3d 198, 586 N.E.2d 1020; *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 63 O.O.2d 149, 296 N.E.2d 261; *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, 51 O.O.2d 35, 35, 257 N.E.2d 371, 372; *Peltz v. South Euclid* (1967), 11 Ohio St.2d 128, 131, 40 O.O.2d 129, 131, 228 N.E.2d 320, 323.

Without question, Appellees could have brought separate claims under the FELA and LIA for their non-asbestos related injuries in separate actions. The legislation at issue, R.C. 2307.91-98, does not contemplate stripping a plaintiff of his or her federally-created rights under the FELA and LIA to bring non-asbestos claims merely because they were properly joined with asbestos-related claims pursuant to Civ.R. 18, which allows a plaintiff to join as many claims, legal or equitable, as he or she has against an opposing party. A result like the one suggested by

Appellants would be contrary to the intention of the legislature, which intentionally limited the scope of R.C. 2307.92 after previously considering its applicability to a wider variety of claims.

Appellants' suggestion that severed claims should not be maintained on the asbestos docket is unavailing. Contrary to what Appellants suggest, Appellees did not "choose" to litigate their cases on the asbestos docket. Any case involving any asbestos claim must be filed on the asbestos docket pursuant to the trial court's case management order. Moreover, any claims remaining must be maintained on the trial court's docket when severed because new evidence could be discovered which would allow the administratively dismissed asbestos claim to meet the prima facie filing requirements and be re-activated. For these reasons, it would be inappropriate to remove any remaining claims from the asbestos docket.

Appellants would have this Court rule that an entire multi-claim complaint may be administratively dismissed when it is clear on the face of R.C. 2307.93 and in the precedent of appellate courts throughout this state that only the asbestos claims which are specifically enumerated in the statute require a prima facie showing. Only those specific claims may be administratively dismissed for failure to make such a showing. The Appellants allege that by filing other claims related to diesel exhaust and other toxic exposures that Appellees are simply "tacking on vague and unsubstantiated allegations of non-asbestos exposures" in an attempt to avoid the statute's prima-facie filing requirements.

Initially, it should be noted that by definition, asbestosis is virtually the only non-malignant disease caused by exposure to asbestos. See, generally, Levin, Kahn & Lax, *Medical Examination for Asbestos-Related Disease*, Am. J. Indus. Med. 37:6-22 (2000). Neither COPD, asthma, nor emphysema, suffered by all three of the Appellees herein, are caused by exposure to

asbestos. Id.

Moreover, each of the Appellees' own physicians have opined that the injuries suffered by their patients have been caused by toxins other than asbestos. Dr. Michael Kelly, formerly Jack E. Riedel's personal physician, has stated "I also believe that there is an asthmatic bronchiectatic component to his pulmonary disease[,] a result of exposures to other materials besides asbestos. The diesel exhaust and other irritants have likely caused the reversible and asthmatic portion of this disease as well." Dr. Vishnu Patel, Danny Six's treating pulmonologist, has described his patient's condition as "severe respiratory impairment which is most probably from COPD which is again most probably from smoking but working on the railroad with exposure to diesel fumes and chemicals may be a contributing factor also." Finally, Dr. Brian Zurcher, the treating doctor of Jack Weldy prior to his death, has explained that "[e]xposure to smoke and fumes during his years working on the railroad most certainly contributed to [Mr. Weldy's] COPD (chronic obstructive pulmonary disease), and therefore, eventually led to his death."

The Appellants' unavailing assertions that "unsubstantiated accusations" have been "tacked on" to the instant asbestos claims are without merit. The Eighth District recognized as much. All three Appellees have suffered serious and debilitating harm, and in Jack Weldy's case, death, as a result of their occupational exposure to toxins, other than asbestos, while employed by Appellants. Where, as here, the issue raised by Appellants is not of public or great general concern and the issue of whether or not the Ohio Asbestos Bill requires the administrative dismissal of claims which have not been specified in the statute, is self evident and well-settled by courts' of appeal throughout the state, this Court should deny jurisdiction.

STATEMENT OF THE CASE AND FACTS

Jack E. Riedel, Danny Six, and Jack Weldy all gave extensive service to their railroad employers in excess of thirty years. These men worked as locomotive brakemen, conductors, and engineers with the railroad which caused them to be exposed to a laundry list of harmful toxins, including asbestos and diesel locomotive exhaust. Appellees have brought forward evidence that they were exposed to these harmful toxins during their tenure with the railroad through their own testimony and that of their co-workers. By the opinions of their own treating doctors, all three have suffered injuries caused by substances other than asbestos.

This action was commenced when Appellees brought occupational disease actions under the protective wing of the FELA and the LIA, against Consolidated Rail Corporation, et al., in the Cuyahoga County Court of Common Pleas. In their Complaints, Appellees alleged that during their extensive careers employed by the railroad, continuous occupational exposure to various toxic substances including asbestos, diesel fumes, silica, sand, solvents, and others, caused and/or aggravated the development of severe lung diseases, including asbestosis, COPD, asthma and emphysema.

These separate and distinct lung diseases have resulted in permanent and debilitating injuries for Jack E. Riedel and Danny Six, including supplemental oxygen dependency, and in the case of Jack Weldy, eventual death. Appellees have alleged six separate and distinct causes of action against the Appellants occurring as a result of their occupational exposures to the above mentioned substances. The first cause of action related to exposure to asbestos; the second, exposure to diesel locomotive exhaust; the third, exposure to silica and sand; the fourth, exposure to solvents and other toxic substances; the fifth, for aggravation of pre-existing conditions; and

the sixth, for negligent assignment. Appellees averred, among other injuries, pneumoconiosis, asbestosis, pleural disease, restrictive lung disease, obstructive lung disease, emphysema, asthma, reactive airway disease, fear of cancer, and lost wages. Additionally, Josephine Weldy brought a claim for the wrongful death of her husband from COPD caused by his occupational exposure to diesel exhaust. Appellees alleged, inter alia, that their occupational exposure to asbestos had caused them to suffer from asbestosis and that their occupational exposures to diesel exhaust, and to other toxic substances caused them to suffer from COPD, asthma, and/or emphysema.

Relevant to this Memorandum in Opposition of Jurisdiction, Jack E. Riedel's physician has opined that his COPD, in the form of asthmatic bronchitis, relates to exposure to diesel exhaust and other toxins while on the railroad; Danny Six's physicians have similarly diagnosed his COPD as being caused and or contributed to by diesel locomotive exhaust while working for the Appellants; and Jack Weldy's doctor has attributed his COPD, respiratory failure, and death, at least in part, to Weldy's railroad exposure to diesel smoke and fumes. In addition to the asbestos-related diseases of asbestosis, all three men have suffered separate and distinct pulmonary injuries that, in the opinions of their own doctors, were caused by exposure to toxins other than asbestos while working for the Appellant railroads. All three victims have offered evidence in the form of medical reports revealing that their remaining claims are not in any way based on exposure to asbestos. All three have brought those federally-created claims under the FELA and the LIA.

As this Court is aware, R.C. 2307.92, requires plaintiffs to make a prima-facie showing as to their asbestos claims when they are based on (1) a nonmalignant condition, (2) lung cancer in a statutorily-defined smoker, and (3) wrongful death as provided by the Ohio Wrongful Death

Statute. R.C. 2307.92(B)–(D). Failure or inability to comply with the requirements of the statute results in the administrative dismissal of those claims relating to asbestos until, if ever, the requisite showing can be made and the claims can be reactivated. R.C. 2307.93(C) (“The court shall administratively dismiss the plaintiff’s *claim* without prejudice upon a finding of failure to make the prima facie showing required by subdivision (B), (C), or (D) of section 2307.92 of the Revised Code.”) (emphasis added). After presenting evidence in support of a prima-facie showing for their nonmalignant conditions, Appellants challenged the evidence as insufficient and the Court of Common Pleas agreeing, administratively dismissed the Appellees’ asbestos claims. The trial court correctly held that “the remaining claims, contained within the remaining causes of action and pertaining to substances other than asbestos, should be scheduled for trial at the earliest convenience of the Court and of the parties.”

Subsequent to the trial court’s order severing the non-asbestos claims and allowing them to proceed, because they are outside the scope of R.C. 2307.92, Appellants successfully moved the court for a stay pending appeal to the Eighth District Court of Appeals on the issue of severance. On March 19, 2009 the Eighth District unanimously affirmed the lower court’s order severing the plaintiffs’ non-asbestos claims.

The Eighth District held the language of R.C. 2307.92 to be clear and unambiguous, and that it requires the administrative dismissal of only asbestos-related claims. *Riedel* at ¶ 7 (“The statute is clear that R.C. 2307.91, et seq., applies only to asbestos-related claims.”). Relying on the precedent of appellate courts throughout this state, the Eighth District discussed *Wagner v. Anchor Packing Co.*, *Nichols v. A.W. Chesterton Co.*, and *Penn v. A-Best Prods. Co.* The court found that the clear weight of authority required prima facie showings only for the three kinds of

asbestos claims outlined in R.C. 2307.92 and cited above. The Court of Appeals further explained that the legislature could have written the statute so as to allow the court to dismiss the entire case, but that it chose not to, as evidenced by earlier drafts of the legislation containing such provisions that were not adopted. *Riedel* at ¶ 13,

Following the release of its decision, Appellants moved the Eighth District for reconsideration. The Court of Appeals denied the motion without comment. This appeal follows. In the face of clear statutory language, Appellants herein argue that all of Appellees' claims, even those in no way related to asbestos, are governed by R.C. 2307.91–98 and should be administratively dismissed. Not only does this contention fly in the face of established precedent, it also defies logic. Jurisdiction should be denied.

ARGUMENT IN OPPOSITION OF APPELLANTS' PROPOSITION OF LAW

Argument in Opposition of Appellants' Proposition of Law: Only asbestos claims can be administratively dismissed for failure to meet the prima-facie filing requirements R.C. 2307.92(B), (C), or (D), and any remaining non-asbestos claims are severable and may proceed to trial.

I. The FELA and LIA

The FELA requires rail carriers to provide a reasonably safe working environment and imposes liability for negligence, "even the slightest," when employees are injured. *Rogers v. Missouri Pac. R. Co.* (1957), 352 U.S. 500, 506, 77 S.Ct. 443, 1 L.Ed.2d 493. The FELA, as a remedial statute, establishes a non-delegable duty and embodies a diminished standard of proof such that any evidence of "employer negligence . . . [can] justify a jury's determination that employer negligence had played any role in producing the harm." *Gallick v. Baltimore & O. R.*

Co. (1963), 372 U.S. 108, 116, 83 S.Ct. 173, 9 L.Ed.2d 618. The burden of proof in FELA cases has consistently been held to be substantially less than that of ordinary negligence actions.

Sentilles v. Inter-Caribbean Shipping Corp. (1959), 361 U.S. 107, 80 S.Ct. 173, 4 L.Ed.2d 142.

Rail workers do not receive the benefit of state workers' compensation statutes and the FELA is their only means of recovery for work-related injuries sustained through their employer's negligence. *Hilton v. South Carolina Pub. Ry. Comm.* (1991), 502 U.S. 197, 202, 112 S.Ct. 560, 116 L.Ed.2d 560.

The LIA, in substance an amendment to the FELA, imposes absolute liability on rail carriers which "use or permit to be used . . . any locomotive . . . [whose] parts and appurtenances [are not] in proper condition and safe to operate . . . [resulting in] unnecessary peril to life or limb" *Southern Ry. Co. v. Lunsford* (1936), 297 U.S. 398, 400-01, 56 S.Ct. 504, 80 L.Ed.2d 740.

The duty imposed by the LIA is absolute, continuing, and non-delegable. *Id.* The Act has universally been interpreted as one designed to facilitate recovery. *Sinkler v. Missouri Pac. R. Co.* (1958), 356 U.S. 326, 328, 78 S.Ct. 758, 2 L. Ed.2d 799. It provides that rail workers may recover for injuries sustained through their railroad employer's failure to provide safe equipment or to comply with Department of Transportation regulations. See, *Mosco v. Baltimore & Ohio R.R. Co.* (C.A.4, 1987), 817 F.2d 1088, 1091 (citing *Lunsford* at 402).

Although the Plaintiff is not required to prove a regulatory violation to support a violation of the LIA, where a regulation is violated, absolute liability is established under the Act. No defenses are available to the defendants, including contributory negligence. *Lilly v. Grand Trunk Western R.R. Co.* (1943), 317 U.S. 481, 491, 63 S.Ct. 347, 87 L.Ed. 411. Here, among the allegations advanced by the Appellees is that the Appellant railroads have violated regulations of

the Department of Transportation, specifically 49 C.F.R § 229.43, which governs the presence of exhaust fumes inside the cabs of operating locomotives.³ In keeping with the liberal construction afforded railroad safety statutes, the Supreme Court of the United States has held that under the LIA a railroad worker must recover if his employer's violation was even a "contributory" cause of his injuries. *Coray v. Southern Pac. Co.* (1949), 335 U.S. 520, 523, 69 S.Ct. 275, 93 L.Ed. 208.

It has long been established that railroad workers bringing actions under the FELA and LIA carry a diminished burden of proof than plaintiffs in ordinary negligence cases. Ohio courts, and courts throughout the county, have recognized this well-settled principle of law. See, *Hess v. Norfolk S. Ry.*, 106 Ohio St. 3d 389, ¶ 46, 2005-Ohio-5408, 835 N.E.2d 679 (noting the relaxed standard of causation for FELA plaintiffs); *Basinger v. CSX Transp.* (C.A.6, 1996), 1996 U.S. App. LEXIS 19139, at *13 (same); *Harbin v. Burlington Northern R. Co.* (C.A.7, 1990), 921 F.2d 129, 131 (same).

The instant Appellees have properly joined their causes of action related to their exposure to diesel exhaust, under the FELA and the LIA, in the same Complaint as their cases of action related to their railroad exposure to asbestos. The Appellants would have this Court administratively dismiss these federally-created claims, for exposures and disease processes unrelated to asbestos, on the basis of the Ohio Asbestos Bill. As the Eighth District has held, administrative dismissal of Appellees' non-asbestos claims pursuant to R.C. 2307.93 is inappropriate because these claims have been established by federal law, are beyond the scope of

³ 49 C.F.R. § 229.43 provides that "Products of combustion shall be released entirely outside the cab and other compartments. Exhaust stacks shall be of sufficient height or other means provided to prevent entry of products of combustion into the cab"

the Ohio legislation, and were properly severed by the trial court.

II. The Ohio Asbestos Bill

The Ohio Asbestos Bill was enacted to address a perceived crisis in asbestos legislation. The Twelfth District Court of Appeals has noted that the statute's purpose is "to resolve this state's asbestos-litigation crisis." *Nichols* at ¶ 17. This Court has similarly acknowledged that the statute is intended to apply only to asbestos claims. See, *Norfolk S. Ry. Co. v. Bogle* (2007), 115 Ohio St. 3d 455, ¶ 31, 2007-Ohio-5248, 875 N.E.2d 919 (holding that R.C. 2307.92–98 "applies to all asbestos claims filed in Ohio."). The Appellants would have this Court extend the requirements of the statute to non-asbestos claims simply because such claims have been properly pleaded with asbestos claims in one lawsuit. Neither the statute itself, nor this Court's decision in *Bogle*, mandates, or even contemplates, administrative dismissal of non-asbestos claims.

The prima-facie filing requirements of R.C. 2307.93 can only apply to Appellees' asbestos claims and not to the entire action. The statute provides that a plaintiff in "any tort **action** who alleges an asbestos **claim** shall file . . . a written report and supporting test results constituting prima facie evidence of the exposed person's physical impairment that meets the minimum requirements specified . . . The court shall administratively dismiss the Plaintiff's **claim** without prejudice upon a finding of failure to make the prima-facie showing that meets the minimum requirements . . ." R.C. 2307.93 (emphasis added).

The words "claim" and "action" are not synonymous and cannot be taken as such when used by the legislature within the same sentence. The legislature's choice of words cannot be arbitrary. See, generally, *Ohio v. Lowe* (2007), 112 Ohio St.3d 507, ¶ 9, 2007-Ohio-606, 861

N.E.2d 512; *State ex rel. Burrows v. Industrial Comm.* (1997), 78 Ohio St.3d 78, 80–81, 676

N.E.2d 519. Further each term is statutorily defined. An “[a]sbestos claim’ means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos.” R.C. 2307.91(B). While, “[t]ort action’ means a civil action for damages for injury, death, or loss to person.” R.C. 2307.91(II)

It is evident that while “action” refers to the entire case, “claim” refers only to a specific cause of action. The plain and generally accepted meaning of these terms further compels this conclusion. An “action” is “a civil or criminal judicial proceeding.” *Black’s Law Dictionary* 31 (8th ed. 2004); See, also, *id.* at 228 (defining “case” as synonymous with “action”). A “claim,” however, is defined as “an interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; cause of action.” *Id.* at 264 (defining “Claim”); See, also, *id.* at 235 (defining “Cause of Action” as synonymous with “Claim”).

The trial court did not err in allowing non-asbestos claims to be severed where the instant Appellees were unable to satisfy the prima facie requirements of R.C. 2307.92(B), with respect to their asbestos claims. And the Eighth District did not err in affirming the ruling of the trial court. It is axiomatic that the dismissal of one claim or cause of action in a lawsuit does not dismiss the entire action. See, generally, *Price v. Jillsky*, 10th Dist. No. 03AP–801, 2004-Ohio-1221, at ¶ 13 (discussing that pursuant to Civ.R. 54(B), an order dismissing fewer than all claims in a cause of action allows the rest of the claims to proceed to adjudication).

This Court has previously held that the dismissal of one claim does not affect other distinct claims that a plaintiff may still have. See, *Perry v. Eagle-Picher Industries, Inc.* (1990),

52 Ohio St. 3d 168, 170, 556 N.E.2d 484. In *Perry*, this Court held that the trial court abused its discretion when it refused to grant leave to bring claims other than the dismissed claim in a supplemental pleading because Civ.R. 25, which was applicable to that case, required dismissal of only a single claim within an action. *Id.* The Twelfth District Court of Appeals has similarly held that “dismissal of [one form of relief sought by a Plaintiff] will therefore not require dismissal of the other claims properly joined in the Complaint.” *Peed v. Moore* (1981), 12th Dist. No. 857, 1981 Ohio App. LEXIS 14531, at *8–*9.

III. Ohio’s Courts’ of Appeal are in Agreement that the Ohio Asbestos Bill is Applicable Only to Claims Specifically Enumerated in the Statute

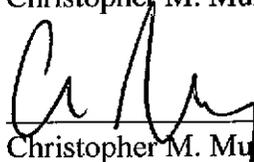
Recently, the Fourth, Tenth, and Twelfth District Courts of Appeal have held that R.C. 2307.91–98 is not applicable to injuries not specified in the statute. See, *Wagner* at ¶ 30; *Penn* at ¶ 17; *Nichols* at ¶ 26. In *Wagner*, the Fourth District explained that the claimant, who had colon cancer, was not contemplated by R.C. 2307.92 because no such legislative intent was “clearly expressed in the statute.” *Wagner* at ¶ 31. Similarly, in finding that the Ohio Asbestos Bill did not apply to a colon cancer claim, in *Nichols*, the Twelfth District Court of Appeals, explained that “[i]f the General Assembly had intended for the [statute] to apply . . . in *all* asbestos cases, the legislature could have easily said so.” *Nichols* at ¶ 29 (emphasis in original). Most recently, in *Penn*, the Tenth District has held that “[a] plain reading of 2307.92 indicates that only those types of cases explicitly specified must demonstrate a prima facie case. A cancer claim of a non-smoker is not one of those types of claims specified, and we can find no requirement anywhere within the H. B. No. 292 statutes that requires such a claimant to demonstrate a prima facie case.” *Penn* at ¶ 32.

Just as the Appellants in *Wagner, Nichols, and Penn*, the instant Appellants seek to apply the language of the Ohio Asbestos Bill to claims that are clearly not within the plain language of the statute, nor even contemplated by it. In the aforementioned cases, Appellants sought to include lung cancer in a non-smoker and colon cancer within the purview of the statute, without a statutory context. Here, Appellants seek to include Appellees' claims for COPD, including asthma and emphysema, with no textual warrant. While Appellees concede that their claims for asbestos-related disease; that is, asbestosis, must comply with R.C. 2307.92(B), their other claims, for exposures and diseases unrelated to asbestos were properly and sensibly severed by the trial court, as affirmed by the Eighth District.

CONCLUSION

For the foregoing reasons, this case is not a case of public or great general interest worthy of this Court's review. By its very nature, the Ohio Asbestos Bill can only govern claims related to asbestos. As a result, the Appellees, Jack E. Riedel, Danny Six, and Josephine Weldy, respectfully request that this Court deny jurisdiction.

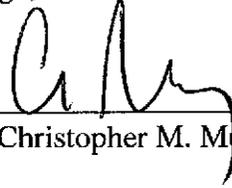
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Certificate of Service

I certify that a copy of this Memorandum in Opposition of Jurisdiction was sent by overnight U.S. mail to counsel for appellants, David A. Damico, Burns, White & Hickton, LLC, Four Northshore Center, 106 Isabella Street, Pittsburgh, PA 15212 on July 8, 2009.



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