

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. WAYNE T. DONER, et al.,	:	Case No. 2009-1292
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	
	:	
SEAN D. LOGAN, Director,	:	
Ohio Department of Natural Resources, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM OF RESPONDENTS IN OPPOSITION TO CASE LEASING & RENTAL, INC.'S MOTION TO INTERVENE FOR A LIMITED PURPOSE

BRUCE L. INGRAM* (0018008)
**Counsel of Record*
 JOSEPH R. MILLER (0068463)
 THOMAS H. FUSONIE (0074201)
 KRISTI KRESS WILHELMY (0078090)
 Vorys, Sater, Seymour and Pease LLP
 52 East Gay Street
 P.O. Box 1008
 Columbus, Ohio 43216-1008
 614-462-6480
 614-719-4775 fax
 blingram@vorys.com
 jrmiller@vorys.com
 thfusonie@vorys.com
 kkwilhelmy@vorys.com

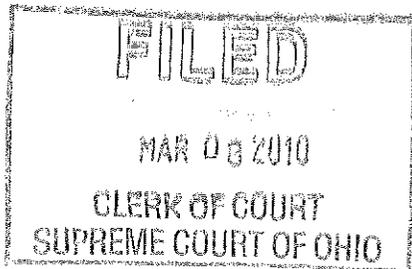
Counsel for Relators

RICHARD CORDRAY
 Ohio Attorney General

WILLIAM J. COLE* (0067778)
**Counsel of Record*
 MINDY WORLY (0037395)
 JENNIFER S.M. CROSKY (0072379)
 Assistant Attorneys General
 30 East Broad Street, 26th Floor
 Columbus, Ohio 43215
 614-466-2980
 866-354-4086 fax
 william.cole@ohioattorneygeneral.gov
 mindy.worly@ohioattorneygeneral.gov
 jennifer.croskey@ohioattorneygeneral.gov

DALE T. VITALE (0021754)
 DANIEL J. MARTIN (0065249)
 RACHEL H. STELZER (0083124)
 Assistant Attorneys General
 2045 Morse Road #D-2
 Columbus, Ohio 43229
 614-265-6870
 614-268-8871 fax
 dale.vitale@ohioattorneygeneral.gov
 daniel.martin@ohioattorneygeneral.gov
 rachel.stelzer@ohioattorneygeneral.gov

Counsel for Respondents



IN THE SUPREME COURT OF OHIO

STATE ex rel. WAYNE T. DONER, et al.,	:	Case No. 2009-1292
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	Master Commissioner Andrew J. Campbell
	:	
SEAN D. LOGAN, Director,	:	
Ohio Department of Natural Resources, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM OF RESPONDENTS
IN OPPOSITION TO CASE LEASING & RENTAL, INC.'S MOTION TO
INTERVENE FOR A LIMITED PURPOSE

I. INTRODUCTION

Case Leasing & Rental, Inc. (“Case Leasing”) seeks to intervene in this action in order to object to the document subpoena issued by Respondents, the Ohio Department of Natural Resources and its Director (collectively “ODNR”), to Relators’ expert, Pressley Campbell of Conestoga-Rovers and Associates, Inc. (collectively “CRA”). Case Leasing has served on ODNR its objections to the CRA subpoena as provided by Civil Rule 45 and, as of this memorandum’s date, ODNR has not filed a motion to compel CRA to comply with the subpoena. Case Leasing does not need to intervene to protect privileged material in CRA’s files related to CRA’s work on Case Leasing’s behalf in a different lawsuit. Case Leasing’s motion to intervene is also not proper because the motion does not comply with Civil Rule 24(A)’s requirements for intervention of right.

This Court should deny Case Leasing’s motion to intervene because the Civil Rules do not envision intervention of right in order to object to a subpoena.

II. ARGUMENT

A. Civil Rules 24 and 45 do not permit intervention to object to a document subpoena.

Pursuant to Civil Rule 45, written objections to a document subpoena may be served upon the issuing party. See S.Ct. Prac. R. 10.2 (“The Ohio Rules of Civil Procedure shall supplement [the Rules of Practice of the Supreme Court of Ohio] unless clearly inapplicable.”). Civil Rule 45(C)(2)(b) states:

[A] person commanded to produce [documents] under . . . this rule may . . . *serve upon the party or attorney designated in the subpoena written objections to production.* If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. (Emphasis added.)

Case Leasing does not need to intervene in order to object to the CRA subpoena because it has already served ODNR with its objections as permitted by Civil Rule 45. Even if Case Leasing had instead filed a motion to quash or modify the CRA subpoena pursuant to Civil Rule 45(C)(3), intervention in this action is neither necessary nor permitted by the Civil Rules.

B. Case Leasing’s motion does not meet the requirements for intervention of right.

Case Leasing’s attempt to intervene in this original mandamus action as a matter of right pursuant to Civil Rule 24(A) is improper. The relevant requirements for intervention of right are as follows:

(A) Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Civ.R. 24(A)(2). Case Leasing has no interest relating to the property that is the subject of this mandamus action. Instead, Case Leasing's interest, if any, is in protecting privileged information that CRA's files may contain. Case Leasing has elected to protect that limited interest by serving objections to the CRA subpoena on ODNR as permitted by Civ.R. 45(C)(2)(b). Intervention is thus inappropriate and unnecessary.

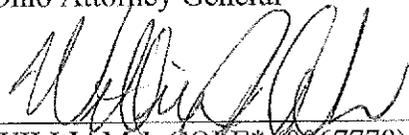
Further, Case Leasing has additional remedies available to it. It can file a motion to quash or modify the CRA subpoena with this Court. Civ.R. 45(C)(3). To date, it has not done so.

III. CONCLUSION

For these reasons, Case Leasing's motion to intervene should be denied.

Respectfully submitted:

RICHARD CORDRAY
Ohio Attorney General



WILLIAM J. COLE* (0067778)

**Counsel of Record*

MINDY WORLY (0037395)

JENNIFER S.M. CROSKEY (0072379)

Assistant Attorneys General

30 East Broad Street, 26th Floor

Columbus, Ohio 43215

614-466-2980

866-354-4086 fax

william.cole@ohioattorneygeneral.gov

mindy.worly@ohioattorneygeneral.gov

jennifer.croskey@ohioattorneygeneral.gov

DALE T. VITALE (0021754)
DANIEL J. MARTIN (0065249)
RACHEL H. STELZER (0083124)
Assistant Attorneys General
2045 Morse Road #D-2
Columbus, Ohio 43229
614-265-6870
614-268-8871 fax
dale.vitale@ohioattorneygeneral.gov
daniel.martin@ohioattorneygeneral.gov
rachel.stelzer@ohioattorneygeneral.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by regular mail on March 8, 2010, to Steven P. Samuels, Kevin L. Murch and Jeremy M. Grayem, Schottenstein, Zox & Dunn, 250 West St., Columbus, OH 43215; and Bruce L. Ingram, Joseph R. Miller, Thomas H. Fusonie and Kristi Kress Wilhelmy, Vorys, Sater, Seymour & Pease, P.O. Box 1008, Columbus, OH 43216.



WILLIAM J. COLE