

ORIGINAL

IN THE SUPREME COURT OF OHIO

LARRY ENGEL, JR.,

Case No. 2009-1735

Plaintiff-Appellee,

On Appeal from the  
Franklin County Court of Appeals  
Tenth Appellate District

Vs

UNIVERSITY OF TOLEDO COLLEGE  
OF MEDICINE,

Court of Appeals  
No. 09AP-53

Defendant-Appellant.

**BRIEF OF AMICUS CURIAE DR. MAREK SKOSKIEWICZ ON BEHALF OF  
PLAINTIFF-APPELLE LARRY ENGEL, JR.**

Counsel for Amicus Curiae  
Dr. Marek Skoskiewicz on behalf  
of Larry Engel, Jr.  
Susan Healy Zitterman (0056023)  
John S. Wasung (0050096)  
KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK  
405 Madison Avenue  
Suite 1500  
Toledo, OH 43604-1235  
(419) 243-2257  
Fax : (419) 243-7333  
E: [Sue.Zitterman@kitch.com](mailto:Sue.Zitterman@kitch.com)  
E: [John.Wasung@kitch.com](mailto:John.Wasung@kitch.com)

Counsel for Plaintiff-Appellee  
John B. Fisher (0055356)  
Law Office of John B. Fisher, LLC  
5719 Olde Post  
Sylvania, Ohio 43560  
(419) 460-1372  
[jbfisher.law@gmail.com](mailto:jbfisher.law@gmail.com)

FILED  
MAY 25 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED  
MAY 25 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

Counsel for Amicus Curiae  
The Ohio Association for Justice

Paul Giorgianni (0064806) Counsel of Record  
Giorgianni Law LLC  
1538 Arlington Avenue  
Columbus, Ohio 43212-2170  
Phone: 614-205-5550  
Fax: 614-481-8242  
E: [Paul@GiorgianniLaw.com](mailto:Paul@GiorgianniLaw.com)

Thomas R. Houlihan (0070067)  
Amer Cunningham Co., L.P.A.  
Suite 1100, Key Building  
159 South Main Street  
Akron, Ohio 44308-1322  
Phone 330-762-2411  
Fax: 330-762-9918  
[E.Houlihan@amer-law.com](mailto:E.Houlihan@amer-law.com)

Peter D. Traska (0079036)  
Elk & Elk Co., Ltd.  
6105 Parkland Boulevard  
Mayfield Heights, Ohio 44124  
Phone: 440-442-6677  
Fax: 440-442-7944  
E. [PTraska@elkandelk.com](mailto:PTraska@elkandelk.com)

Counsel for Defendant-Appellant  
University of Toledo:

Richard Corday (0038034)  
Attorney General of Ohio  
Benjamin C. Mizer (0083089)  
Solicitor General and Counsel of Record  
Alexander Schimmer (0075732)  
Chief Deputy Solicitor General  
Brandon Lester (0079084)  
Deputy Solicitor  
Anne Berry Strait (0012256)  
Assistant Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
Phone 614-466-8980  
Fax: 614-466-5087

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## INTEREST OF AMICUS CURIAE

Dr. Marek Skoskiewicz is the physician who provided the care at issue in this case while serving in his role as Clinical Assistant Professor in the Department of Surgery of the Medical College of Ohio (now University of Toledo College of Medicine). Because this case arose in 2005, Dr. Skoskiewicz did not have a direct, statutory right to participate in the immunity determination, because at that time, "a state employee had[d] no right to participate in the immunity determination proceedings before the Court of Claims or to appeal that determination." *Theobald v. Univ. of Cincinnati*, 101 Ohio St.3d 370, 371, 2004-Ohio-1527, 805 N.E.2d 1084.

However, Dr. Skoskiewicz clearly has a direct and significant interest at issue which will be determined by the outcome of this case, and thus a strong incentive to provide this Court with assistance in presenting a view opposite to that of the appellant.

## COUNTERSTATEMENT OF FACTS

This counterstatement of facts is offered by Dr. Skoskiewicz to clarify what is or is not part of the record before the Court, and to point out characterizations by appellant of the facts which go beyond what is a fair inference from the record.

Appellant, in support of its assertion that “volunteer instructors play a limited role at Ohio’s public medical schools,” unilaterally pronounces (Merit brief, pp. 3-6), a plethora of “facts” (such as the limited role of, or number of, “volunteer instructors” in Ohio medical schools, the number and method of payment of clinical faculty, and that volunteer instructors are not subject to oversight by University medical quality assurance committees, etc.) which were not before the Court of Claims and/or for which there is no support in the record.

Further, appellant’s characterization of the nature of Dr. Skoskiewicz’s appointment as a Clinical Assistant Professor in the Department of Surgery is largely fictional. The declaration by the College of Medicine that appointment letters are “merely acknowledgement letters” sent “simply to satisfy the requirement of medical school accreditation agencies” that instructors be appointed before students can rotate through their practices,” seeks to rewrite the express, written terms of appointment. (Memorandum in support of jurisdiction, p. 3.)

These appointed, volunteer faculty members, whose formally awarded title is “Clinical Assistant Professor in the Department of Surgery,” are also subject to and must abide by all of the same rules, regulations and policies as compensated faculty members.

Volunteer faculty members make significant contributions through teaching and mentoring students, conducting collaborative research with MCO investigators, and providing clinical training experiences. During your appointment you shall participate and contribute to the education, research and service missions of the Department of Surgery and School of Medicine.

As a condition of appointment you will be subject to the MCO Faculty Rules and Regulations, and Medical College of Ohio policies and procedures, including those governing research. \* \* \* . [Stipulated Facts, exhibit B, 3/18/05 letter, emphasis added.]

The appointment as a Clinical Assistant Professor in the Department of Surgery includes a “commitment [by the faculty member] to devote professional time to official programs and activities of” the medical school. *Id.*

There is no evidence in the record to support the claim by appellant that all of the “MCO Faculty Rules and Regulations, and Medical College of Ohio policies and procedures” to which volunteer Clinical Assistant Professors in the Department of Surgery also are subject by virtue of their appointment (Stipulated Facts, exhibit B, 3/18/05 letter), are merely a “few basic guidelines,” which “speak only to the basics of professionalism in instruction.” (Appellant’s Merit brief, p. 5.)

Also without factual merit is the appellant’s erroneous assertion that state medical schools will now be forced to eliminate clinical education opportunities for medical students. Medical schools could not eliminate clinical education as it is mandated by the guidelines set by national and state accrediting bodies. See generally lead opinion in *Ohio Civ. Rights Comm. v. Case W. Res. Univ.*, 76 Ohio St.3d 168, 179-180, 1996-Ohio-53.

As further detailed in the argument below, there was below no issue raised, and appellant below conceded, that as set forth in detail in the affidavit of Dr. Skoskiewicz, filed with the Court of Claims, at the time of the alleged malpractice Dr. Skoskiewicz was acting within the scope of his appointment as a volunteer Clinical Assistant Professors in the Department of Surgery:

3. At all times pertinent to the care and treatment of Larry Engel, I was a Clinical Professor of Surgery at the University of Toledo School of Medicine (formerly known as Medical College of Ohio).

4. At all times pertinent to the care and treatment of Larry Engel, I was a preceptor to third-year medical student, David Essig, who was completing his required clinical rotation in surgery.

5. During the surgical procedures performed on Larry Engel on January 13, 2005 and January 27, 2005, David Essig was present with me in the operating room in his role as a CC-III.

6. As part of the necessary requirements of the position of Clinical Professor of Surgery, I am required to complete a clinical competency evaluation on each medical student who rotates through my medical practice, which is necessary for both licensing and credentialing purposes for the medical school.

7. The Required Clerkship Clinical Competency Evaluation on David Essig, and attached as Exhibit A, is a true and accurate copy of the Clinical Competency Evaluation I completed on David Essig following his clinical rotation through my practice. [Affidavit of Dr. Skoskiewicz, attached as exhibit to plaintiff's memorandum in support of immunity in the Court of Claims.]

Amicus Curiae Dr. Marek Skoskiewicz submits this brief in support of the position of plaintiff-appellee, Larry Engel, Jr., and the judgments of the lower courts.

## STANDARD OF REVIEW

When an appellate court is presented with legal questions, the standard of review to be applied is de novo. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829.

However, deference is given to the Court of Claims' findings of fact as long as they are supported by competent, credible evidence. *Marsh v. Heartland Behavioral Health Center*, Franklin App. No. 09AP-630, 2010-Ohio-1380. As was summarized by the Court in *Harden v. Univ. Of Cincinnati Med. Ctr.*, Franklin App. No. 04AP-154, 2004-Ohio-5548 at ¶ 34.

"Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. We afford every reasonable presumption in favor of the trial court's judgment and findings of fact, and evidence susceptible of more than one interpretation is construed consistently with the trial court's judgment. *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226, certiorari denied (1995), 513 U.S. 1150, 115 S. Ct. 1101.

## ARGUMENT

### **Proposition Of Law By Amicus Curiae Dr. Skoskiewicz:**

**A Physician Who Has Been Officially Appointed By A Public Medical School As A Clinical Assistant Professor And Volunteer Faculty Member, Subject To The Rules Of That Institution, Is An "Officer" Or "Employee" As Defined By R.C. 109(A)(1)(A), And Thus Is Entitled To Immunity Under R.C. 9.86, When Acting Within The Scope Of Such Appointment Because He Then Was "Serving In An...Appointed...Position With The State," To Which Compensation Is Irrelevant.**

The judgments of the Court of Claims, *Engel v Univ. Of Toledo College of Med.*, Franklin App. No. 09AP-53, 2008 Ohio 7058 (Ct. Cl.), and the Court of Appeals, *Engel v. Unvi. of Toledo College of Med.*, 2009-Ohio-3957, 184 Ohio App.3d 669, 922 N.E.2d 244, should not be disturbed by this Court. The plain language of R.C. 109(A)(1)(a), defining the meaning of "officer" and "employee" as employed in R.C. 9.86 when imposing immunity, clearly encompasses a physician formally appointed to the faculty of a state institution, a public medical

school, irrespective of whether that position is compensated or volunteer. Appellant's argument to the contrary is premised on policy arguments inconsistent with the plain language employed by the Legislature, on factual assertions unsupported by the record, and on common law agency principles which have no relevance to application of the unambiguous statutory definition provided by the Legislature for imposition of statutory immunity.

**A. Assertions Of "Facts" Which Are Not Part Of The Record Before The Supreme Court Will Not Be Considered By The Court.**

This Court in resolving this matter should decline to consider conclusory assertions of fact made by appellant which have no support in the record before this Court. It is inconsistent with fundamental principles of appellate review to consider "facts" asserted for the first time before this Court, for which there is no support in the record. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, 689 N.E.2d 22 ("We will not consider any argument based upon a document that is not part of the record."), *Squire v. Geer*, 117 Ohio St.3d 506, 2008-Ohio-1432, ¶ 11 ("We cannot. . . add matter to the record before us and decide this appeal based on that new matter.")

In *Squire v. Geer*, 2008-Ohio-1432, 117 Ohio St.3d 506, 885 N.E.2d 213 (2008), *cert. den.* 129 S. Ct. 421 (2008), in granting a motion to strike parts of an appendix containing documents not part of the record, the Court reiterated:

"We cannot \* \* \* add matter to the record before us that was not part of the court of appeals' proceedings and then decide the appeal on the basis of the new matter." *North v. Beightler*, 112 Ohio St.3d 122, 2006-Ohio-6515, 858 N.E.2d 386, ¶ 7, quoting *Dzina v. Celebrezze*, 108 Ohio St.3d 385, 2006-Ohio-1195, 843 N.E.2d 1202, ¶ 16.

Thus, the only facts which should be considered by this Court are those which were before and considered by the lower courts, and supported by the record.

**B. Appellant University Of Toledo College Of Medicine Has Affirmatively Conceded, And The Court Of Claims Found As Fact, That Dr. Skoskiewicz Was Acting Within The Scope Of His Volunteer Faculty Position At The Time Of The Alleged Malpractice, Precluding Any Argument To The Contrary Before This Court.**

Amicus curiae Ohio Association For Justice has asserted as an "alternative" proposition of law that when treating a private patient, a volunteer faculty member cannot be acting within the scope of his teaching responsibilities. It is also stated by appellant that the surgeries at issue in the malpractice claim were merely "observed" by a third year medical student from the University.

A new challenge to whether the malpractice occurred during the scope of Dr. Skoskiewicz's teaching responsibilities has no place before this Court in the context of this case. Appellant College of Medicine below affirmatively represented to the Court of Appeals that Dr. Skoskiewicz was acting within the scope of his faculty position at the time of the alleged malpractice. In its brief in the Court of Appeals, the College declared:

**The physician in question, Marek Skoskiewicz, M.D., was being observed by a third-year MCO medical student at the time he performed the vasectomies that are the subject of this suit, and so there is no question that he was acting within the scope of his volunteer faculty position. [Appellant's Court of Appeals Brief, p. 2, emphasis added.]**

That Dr. Skoskiewicz was indeed acting within the scope of his public university faculty position in performing the surgery at issue was established by the uncontradicted evidence before the Court of Claims, never contested by the appellant below, and found to be true as a factual matter by the Court of Claims. As the Court of Claims stated in its opinion in this matter:

In his affidavit, Dr. Skoskiewicz states that he was instructing David Essig, a third year medical student at MCO, "[a]t all times pertinent to the care and treatment of Larry Engel," and thus Essig was present in the operating room during the surgeries at issue. Defendant does not dispute that Dr. Skoskiewicz was educating Essig when the alleged negligence occurred.

\* \* \*

Based upon the evidence submitted, the court finds that Dr. Skoskiewicz was acting in furtherance of the interests of the state when he performed the procedures at issue. There is no dispute that Dr. Skoskiewicz was acting in his appointed position as an Assistant Clinical Professor of Surgery when Essig observed him perform the procedure. [Court of Claims opinion, pp. 4, 5.]

Even assuming that appellant could now argue before this Court a position directly contrary to that taken below (which is denied), that position is without merit.

The Court of Claims' factual determination in this regard may not be disturbed on appeal where, as here, it is supported by competent, credible evidence. *Marsh v. Heartland Behavioral Health Center*, 2010-Ohio-1380. Every reasonable presumption must be afforded in favor of the trial court's findings of fact, and evidence susceptible of more than one interpretation is construed consistently with the trial court's judgment. *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226, 638 N.E.2d 533.

Under this standard of review, there is no basis upon which this Court should conclude that the Court of Claims' factual determination, in accord with concessions by appellant below, was in error.

**C. A Physician Who Has Been Officially Appointed By A Public Medical School As A Clinical Assistant Professor And Volunteer Faculty Member Of The Department Of Surgery Is An "Officer" Or "Employee" Subject To Immunity Under R.C. 9.86 When Acting Within The Scope Of Such Appointment, Because He Was Then "Serving In An...Appointed...Position With The State" Under R.C. 109(A)(1)(a).**

The lower courts properly determined that, given the stipulated facts, the undisputed facts of record, and the plain language of R.C. 109(A)(1)(a) defining the terms "officers" and "employees" as used in R.C. 9.86 with respect to the statutory grant of immunity, Dr. Skoskiewicz is an "officer" or "employee" subject to immunity under R.C. 9.86 because he was

“serving in an...appointed...position with the state,” R.C. 109(A)(1)(a), at the time the action accrued.

R.C. 9.86 provides for immunity of public officers and employees as follows:

Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

This section does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon an officer or employee by any other provision of the Revised Code or by case law. This section does not affect the liability of the state in an action filed against the state in the court of claims pursuant to Chapter 2743. of the Revised Code. [Emphasis added.]

While individual officers and employees, as defined above, are immune, the state has waived sovereign immunity in such cases. R.C. 2743.02(A)(2) provides:

2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

The phrase “officer or employee” as used in R.C. 9.86, applying immunity for individuals, and R.C. 2743.02(A)(2), waiving immunity of the state for vicarious liability for those individuals, is specifically defined by R.C. 109.63, which provides, in relevant part:

As used in this section and sections 109.361 to 109.366 of the Revised Code:

(A)(1) "Officer or employee" means any of the following:

(a) A person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state.

(b) A person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the state.

(c) A person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering peer review, utilization review, or drug utilization review services in relation to medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the state.

(d) A person who, at the time a cause of action against the person arises, is rendering medical services to patients in a state institution operated by the department of mental health, is a member of the institution's staff, and is performing the services pursuant to an agreement between the state institution and a board of alcohol, drug addiction, and mental health services described in section 340.021 of the Revised Code.

(2) "Officer or employee" does not include any person elected, appointed, or employed by any political subdivision of the state. [R.C. 109.63, emphasis added.]

"The first rule of statutory construction is to look at the statute's language to determine its meaning. If the statute conveys a clear, unequivocal, and definite meaning, interpretation comes to an end, and the statute must be applied according to its terms." *Columbia Gas Transm. Corp v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶19. Pursuant to the unequivocal language of Section 109.63(A)(1)(a), for purposes of section 9.86 statutory immunity, "officer or employee" means any of the categories listed, including a person who "is serving in an elected or appointed office or position with the state or is employed by the state." (Emphasis added.) Employing the term "or" in its usual sense, this definition includes, in addition to an actual employee of the state, a person, such as Dr. Skoskiewicz, who was "serving in an...appointed...position with the state" at the time the action accrued.

As the Court of Appeals in its opinion in this matter reasoned:

[T]he use of the disjunctive "or" between the two portions of the subsection indicates that each portion sets forth a separate and distinct definition of "officer or employee." *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶ 20 quoting *Pizza v. Sunset Fireworks Co., Inc.* (1986), 25 Ohio St.3d 1, 4-5, 25 OBR 1, 494 N.E.2d 1115 (defining "or" as " 'a function word indicating an alternative between different or unlike things' " and concluding that the use of "or," instead of "and," evidenced an intent that each element of the disjunctive phrase be read separately from the others). Consequently, a person is an "officer or employee" if he is either "serving in an \* \* \* appointed \* \* \* position with the state" or he "is employed by the state." As Skoskiewicz meets the first definition, the second is irrelevant. [*Engel v. University of Toledo College of Medicine*, 2009-Ohio-3957, ¶ 11.]

Under the parties' stipulated facts, "Dr. Skoskiewicz held an appointment as a volunteer faculty member of the Medical College of Ohio with the academic title of Clinical Assistant Professor in the Department of Surgery, as is set forth in the appointment letters" attached to the stipulated facts. (Stipulated fact no. 4.) The March 18, 2005, letter from the Chairman of the Department of Surgery at Medical College of Ohio notified Dr. Skoskiewicz that the UT Board of Trustees "has approved [his] *appointment* to the volunteer faculty" as a Clinical Assistant Professor in the Department of Surgery. (Stipulated Facts, exhibit B, 3/18/05 letter, emphasis added.) That letter from the Medical School to Dr. Skoskiewicz further stated:

This appointment is conferred in recognition and appreciation of your commitment to devote professional time and effort to official programs and activities of MCO. Volunteer faculty members make significant contributions through teaching and mentoring students, conducting collaborative research with MCO investigators, and providing clinical training experiences. During your appointment you shall participate and contribute to the education, research and service missions of the Department of Surgery and School of Medicine.

As a condition of appointment you will be subject to the MCO Faculty Rules and Regulations, and Medical College of Ohio policies and procedures, including those governing research. \* \* \*

Thank you for your personal commitment and support of the Medical College of Ohio. [Stipulated Facts, exhibit B, 3/18/05 letter.]

The “purpose of this appointment was so that third year medical students of Medical College of Ohio could rotate through Dr. Skoskiewicz’s practice as part of one-month clerkships . . .” (Stipulated fact no. 5.) Clearly Dr. Skoskiewicz was thereby “serving in . . . appointed position with the state,” within the plain language of R.C. 109(A)(1)(a).

There also is no dispute that UT is a state institution, created and authorized by the General Assembly. See R.C. 3350.01, repealed by Sub. H.B. No. 478, effective July 1, 2006. Thus, as held by the Court of Appeals here, *Engel v. Univ. of Toledo College of Med.*, 2009-Ohio-3957, ¶ 10, “Skoskiewicz’s position was with the state.”

Appellant’s argument that this Court should emboss upon the statutory definition of “officer or employee” limits recognized by common law tests applied to determine whether one is or is not an employee for purposes of common law tort liability, such as compensation and the right to control, is without merit. Where the Legislature has supplied a definition of a term used in a statute, that definition is determinative. Only in the absence of a statutory definition, can the ordinary and common understanding of a term be relied upon. R.C. 1.42 directs:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. [R.C. §1.42, emphasis added.]

Thus, statutory definitions of terms are controlling in the application of the statute to which such definitions pertain. *Woman's Intern. Bowling Congress, Inc. v. Porterfield*, 25 Ohio St.2d 271, 275, 267 N.E.2d 781 (Ohio 1971).

In *State ex rel. Sanquily v. Court of Common Pleas of Lucas County*, 60 Ohio St.3d 78, 573 N.E. 2d 606 (1991), this Court rejected an attempt to subject a statutory definition of “officer or employee” in R.C. 109.36(A) to which statutory immunity under R.C. 2743.02(F) applied, to common law agency limitations. In *Sanquily*, Dr. Sanquily was sued for medical

malpractice. At the time of the alleged malpractice, Sanquily was employed by the Medical College of Ohio ("MCO"), a state institution, as a resident physician. However, the plaintiffs alleged that Sanquily, although employed by MCO, was working at Mercy Hospital, a private institution, as a "loaned servant" when he committed the alleged malpractice. Sanquily moved for summary judgment in the common pleas court, claiming that, as a state employee, he was personally immune from liability. The Martins contended that, as a "loaned servant" of Mercy Hospital, Sanquily had no immunity despite his state employment. The common pleas court denied Sanquily's motion.

This Court reversed, holding that the statutory definition of "officers and employees" applied, unmodified by common law loaned servant principles. The Court stated:

Sanquily is an "officer or employee" of the state as defined in R.C. 109.36(A): "Officer or employee" means any person who, at the time a cause of action against him arises \* \* \* is employed by the state; or is rendering medical \* \* \* services pursuant to a personal services contract with a department, agency, or institution of the state. \* \* \*"

In the common pleas court, the Martins argued that the jurisdictional issue turned on whether Sanquily was a state employee "[i]n the context of this case." Because Sanquily was a "loaned servant" of a private hospital at the time of the alleged malpractice, the Martins contended, he was not an "officer or employee" for purposes of the litigation; therefore, R.C. 2743.02(F) did not apply to him.

But under R.C. 2743.02(F), "officer or employee" must be defined according R.C. 109.36(A). Under R.C. 109.36(A), "[o]fficer or employee" means any person who, at the time a cause of action arises \* \* \* is employed by the state \* \* \*." Irrespective of whether Sanquily was a "loaned servant," he was employed by the state when the cause of action arose. He was therefore an "officer or employee" of the state for purposes of R.C. 2743.02(F). We therefore hold that the common pleas court's exercise of jurisdiction over the merits of the case is unauthorized by law until the Court of Claims decides whether Sanquily is immune from suit. [*Sanquily, supra.*]

Appellant's reliance on common law definitions "employee" is misplaced because immunity of officers and employees is now purely a matter of statute. Although it was the

common law in Ohio that officer immunity did not apply to ministerial acts, R.C. 9.86 abrogated that common law and "broadened" immunity for state officers and employees. *Wassenaar v. Ohio Dept. of Rehabilitation & Correction*, Franklin App. No. 5. 07AP-712 and 07AP-722, 2008-Ohio-1220, (CA 10), citing *Scot Lad Foods, Inc. v. Secretary of State* (1981), 66 Ohio St.2d 1, 8-9, 481 N.E.2d 1368.

Appellant's speculation regarding an unbridled extension of immunity to "mere volunteers" is not pertinent to the facts of this case. Dr. Soskiewicz, it was stipulated, was formally appointed by the Board of Trustees of the Medical School to a position as faculty member of the Medical College of Ohio with the academic title of Clinical Assistant Professor in the Department of Surgery. In discharging the duties of this formal appointment by the highest, governing body of the Medical School, Dr. Skoskiewicz was bound by the University's Faculty Rules and Regulations, as well as its policies and procedures.

Appellant's argument that immunity should not apply as a matter of policy or common tort law principles of agency because Dr. Skoskiewicz was a "mere volunteer" and was not paid by the University for his clinical teaching services, is not sensible. Similarly irrelevant is appellant's assertion that Dr. Skoskiewicz had a moral duty under the Hippocratic Oath to provide such services (as do his paid peers).

Rather, the fact that these services are provided by Dr. Soskiewicz for the benefit of the State without compensation, but subject to the rules, regulations, policies and procedures of the Medical School, makes it all the more just, as a policy matter, that immunity apply to such activities. It is ironic that the same institution that would appoint Dr. Soskiewicz to its faculty, and thank him "in recognition and appreciation of [his] commitment to devote professional time

and effort to official programs and activities of MCO,” (Stipulated Facts, exhibit B, 3/18/05 letter), now asserts that only paid faculty should benefit from immunity.

Further, as noted by the Court of Appeals, to the extent that appellant’s policy arguments about the cost of assuming liability for volunteer staff have any value, they should be directed to the Legislature. This Court, in this case, should apply the plain language of these statutes, to affirm the judgments of the lower courts.

**RELIEF REQUESTED**

WHEREFORE, Amicus Curiae Dr. Marek Skoskiewicz respectfully urges affirmance of the judgment of the Court of Appeals and Court of Claims.

Respectfully submitted,

KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK

By:

  
SUSAN HEALY ZITTERMAN (0056023)  
JOHN S. WASUNG(0050096)

Attorneys for Amicus Curiae  
Dr. Marek Skoskiewicz on behalf of  
Larry Engel, Jr.

405 Madison Avenue  
Suite 1500

Toledo, OH 43604-1235

(419) 243-2257

Fax: (419) 243-7333

E: [Sue.Zitterman@kitch.com](mailto:Sue.Zitterman@kitch.com)

E: [John.Wasung@kitch.com](mailto:John.Wasung@kitch.com)

Dated: May 24, 2010

IN THE SUPREME COURT OF OHIO

LARRY ENGEL, JR.,

Case No. 2009-1735

Plaintiff-Appellee,

On Appeal from the  
Franklin County Court of Appeals  
Tenth Appellate District

Vs

UNIVERSITY OF TOLEDO COLLEGE  
OF MEDICINE,

Court of Appeals  
No. 09AP-53

Defendant-Appellant.

**CERTIFICATION**

This is to certify that a copy of the foregoing **BRIEF FOR AMICUS CURIAE DR. MAREK SKOSKIEWICZ ON BEHALF OF LARRY ENGEL, JR.** has been served via ordinary U.S. Mail this 24th day of May, 2010, upon the following:

Counsel for Plaintiff-Appellee  
John B. Fisher (0055356)  
Law Office of John B. Fisher, LLC  
5719 Olde Post  
Sylvania, Ohio 43560  
419-460-1372  
[jbfisher.law@gmail.com](mailto:jbfisher.law@gmail.com)

Counsel for Amicus Curiae  
The Ohio Association for Justice

Paul Giorgianni (0064806) Counsel of Record  
Giorgianni Law LLC  
1538 Arlington Avenue  
Columbus, Ohio 43212-2170  
Phone: 614-205-5550  
Fax: 614-481-8242  
E: [Paul@GiorgianniLaw.com](mailto:Paul@GiorgianniLaw.com)

Counsel for Defendant-Appellant  
University of Toledo:

Richard Corday (0038034)  
Attorney General of Ohio  
Benjamin C. Mizer (0083089)  
Solicitor General and Counsel of Record  
Alexander Schimmer (0075732)  
Chief Deputy Solicitor General  
Brandon Lester (0079084)  
Deputy Solicitor

Thomas R. Houlihan (0070067)  
Amer Cunningham Co., L.P.A.  
Suite 1100, Key Building  
159 South Main Street  
Akron, Ohio 44308-1322  
Phone: 330-762-2411  
Fax: 330-762-9918  
[E.Houlihan@amer-law.com](mailto:E.Houlihan@amer-law.com)

Peter D. Traska (0079036)  
Elk & Elk Co., Ltd.  
6105 Parkland Boulevard  
Mayfield Heights, Ohio 44124  
Phone: 440-442-6677  
E. [PTraska@elkandelk.com](mailto:PTraska@elkandelk.com)

Anne Berry Strait (0012256)  
Assistant Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
Phone: 614-466-8980  
Fax: 614-466-5087

Respectfully submitted,

KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK

By:

  
SUSAN HEALY ZITTERMAN (0056023)  
JOHN S. WASUNG (0050096)  
Attorneys for Amicus Curiae  
Dr. Marek Skoskiewicz on behalf of  
Larry Engel, Jr.  
405 Madison Avenue  
Suite 1500  
Toledo, OH 43604-1235  
(419) 243-2257  
Fax : (419) 243-7333  
E: [Sue.Zitterman@kitch.com](mailto:Sue.Zitterman@kitch.com)  
E: [John.Wasung@](mailto:John.Wasung@)