

ORIGINAL

In the
Supreme Court of Ohio

[State ex rel.]	:	Case No. 2010-1400
JAMES E. LUNDEEN, SR., M.D.,	:	
	:	
Appellant-Relator,	:	On Appeal from the Franklin County
	:	Court of Appeals, 10 th Appellate District
v.	:	Case No. 08AP-601
	:	
MARSHA P. RYAN, ADMINISTRATOR	:	
OHIO BUREAU OF WORKERS'	:	
COMPENSATION,	:	
	:	
Appellee-Respondent.	:	

**APPELLEE-RESPONDENT'S MEMORANDUM CONTRA TO
APPELLANT-RELATOR'S MOTION TO STRIKE
RESPONDENT'S AUGUST 25, 2010, MOTION**

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Pro se Appellant-Relator

RICHARD CORDRAY
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Counsel for Appellee-Respondent,
Marsha P. Ryan, Administrator,
Ohio Bureau of Workers' Compensation

FILED
SEP 23 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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Supreme Court of Ohio

[State ex rel.]	:	Case No. 2010-1400
JAMES E. LUNDEEN, SR., M.D.,	:	
	:	
Appellant-Relator,	:	
	:	
v.	:	APPELLEE-RESPONDENT'S
	:	MEMORANDUM CONTRA
MARSHA P. RYAN, ADMINISTRATOR	:	
OHIO BUREAU OF WORKERS'	:	
COMPENSATION	:	
	:	
Appellee-Respondent.	:	

Appellee-Respondent, Marsha P. Ryan, Administrator, Ohio Bureau of Workers' Compensation, by and through counsel, opposes the September 13, 2010, motion filed by Appellant-Relator James E. Lundeen, Sr., M.D., to strike her motion to dismiss this cause of action based upon Dr. Lundeen's failure to comply with Civ.R. 53(D)(3)(b) and well-settled Ohio law. Dr. Lundeen's self-serving, unattested allegation of non-receipt of the Appellee-Respondent's motion which was filed with this Court on August 25, 2010, is insufficient to rebut the presumption of receipt of service embodied in the "mailbox rule." *Weiss v. Ferro Corp.* (1989), 44 Ohio St.3d 178.

Appellee's motion was served upon Dr. Lundeen at his address of record in this case by postage paid, regular U.S. mail service, in compliance with Civ.R. 5 and SCt.R. XIV (2)(B)(1). See "Certificate of Service" at Exhibits A and B. Service upon Dr. Lundeen was processed in the usual and customary manner employed by the Administrator's counsel in literally thousands of cases each year. See counsel's affidavit at Exhibit C. Further, to date, the served copy of the motion has not been returned to the undersigned's office by the U.S. Postal service as undeliverable.

As there is no proper evidence supporting Dr. Lundeen's allegation of non-receipt of the motion, the Respondent-Appellee Administrator asks the Court to overrule Dr. Lundeen's September 13, 2010, motion to strike.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



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Counsel for Appellee-Respondent,
Marsha P. Ryan, Administrator,
Ohio Bureau of Workers' Compensation

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing appellee-respondent's Memorandum Contra appellant-relator's Motion to Strike was served by regular U.S. Mail, postage prepaid, this 22nd day of September, 2010, upon:

James E. Lundeen, Sr., M.D.
668 North Nelson, Suite A
Columbus, Ohio 43219

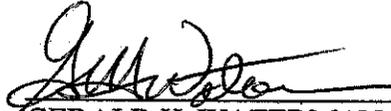
Pro se Appellant-Relator



GERALD H. WATERMAN (0020243)
Assistant Attorney General

Respectfully submitted,

RICHARD CORDRAY
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Marsha P. Ryan, Administrator,
Ohio Bureau of Workers' Compensation

CERTIFICATE OF SERVICE

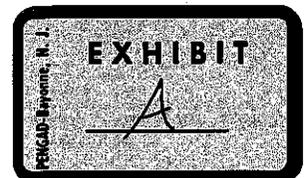
This is to certify that a copy of the foregoing Motion to Strike the Appeal and Dismiss the Cause was served by postpaid regular U.S. Mail, this 26th day of August, 2010, upon:

James E. Lundeen, Sr., M.D.
668 North Nelson Road, Suite A
Columbus, Ohio 43219

Pro se Appellant-Relator



GERALD H. WATERMAN (0020243)
Assistant Attorney General





RICHARD CORDRAY
OHIO ATTORNEY GENERAL

August 25, 2010

James E. Lundeen, Sr., M.D.
668 N. Nelson, Suite A
Columbus, Ohio 43219

Re: *James E. Lundeen, Sr., M.D. v. Admr., BWC*
Supreme Court of Ohio Case No. 10-1400

Dear Dr. Lundeen:

Enclosed please find a copy of a Motion to Strike the Appeal and Dismiss the Cause that has been filed this date in the above-captioned matter.

Thank you for your attention.

Very truly yours,

GERALD H. WATERMAN
Assistant Attorney General

GHW/jvf
Encl.

EXHIBIT

B

STATE OF OHIO)
)SS
COUNTY OF FRANKLIN)

AFFIDAVIT

1. Copies of pleadings and documents prepared for filing with courts by the Ohio Attorney General's Workers' Compensation Section are served upon parties to the litigation by regular U.S. mail, postage prepaid. The assigned counsel signs and dates the certificate of service, required copies are made, and a cover letter of service is prepared. The letter of service and a copy of the document or pleading, along with the certificate of service, are placed in a separate envelope addressed to each party being served and deposited in the Section's outgoing mail basket on the same day service is certified.
2. On a daily basis, couriers transport outgoing mail to the Attorney General central mail room, where postage is applied. The document is "mailed" (placed into the custody of the U.S. Postal Service) on the same day the certificate of service is dated.
3. To the best of my knowledge and belief, a copy of the Respondent-Appellee's Motion to Strike the Appeal and Dismiss the Cause, in the case of [State ex rel.] *Lundeen v. Ryan, Admr.*, Supreme Court Case No. 10-1400, was served upon Dr. Lundeen, at his address of record in this case in the manner described above, on August 25, 2010.
4. The cover letter and copy of the Motion to Strike the Appeal and Dismiss the Cause which was served upon Dr. Lundeen have not been returned to the Attorney General's Office, Workers' Compensation Section, as undeliverable as of the date of this affidavit.

FURTHER AFFIANT SAITH NOT.



GERALD H. WATERMAN
Assistant Attorney General

Subscribed and sworn before me, a notary public for the State of Ohio, this 22nd day of
September, 2010.



Notary Public



ANDREW J. ALATIS, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

