

IN THE SUPREME COURT OF OHIO

LISA G. HUFF, et al.)	SUPREME CT. CASE NO. 10-0857
)	On Appeal from the
Plaintiffs-Appellees)	Trumbull County Court
)	of Appeals, Eleventh
v.)	Judicial District
)	
FIRSTENERGY CORP., et al.)	Court of Appeals
)	Case No. 2009 T 00080
Defendants-Appellants)	

**BRIEF OF APPELLANT OHIO EDISON COMPANY IN OPPOSITION
TO APPELLEES' MOTION TO DISMISS**

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BRIEF IN OPPOSITION TO
MOTION TO DISMISS

Fearful that this Court's decision to hear this matter will properly correct the aberrational Opinion below, thereby mending the damage caused by that Opinion, Appellees have moved this Court to dismiss, as improvidently allowed, the appeals of Ohio Edison ("Ohio Edison") and Asplundh Tree Expert Company ("Asplundh"). The potential damage that the Opinion below causes to innumerable Ohio contract and tort litigants clearly makes this a case of public and great general interest requiring decision upon the merits.

Appellees present their Motion to Dismiss as a third effort to dissuade this Court from properly accepting this case and maintaining a proper and logical course for Ohio's contract law, tort law, and their interplay.

Appellees' first argument actually corroborates why this is a case of public and great general interest. Appellees' second argument is as misguided as the opinion which it attempts to support. Both of Appellees' arguments fail to engage the significant issues raised by Ohio Edison and Asplundh (see Memoranda in Support of Jurisdiction and Briefs in Support of Applications for Reconsideration of Ohio Edison and Asplundh), let alone demonstrate error in this Court's decision to accept jurisdiction.

Central to Appellees' first argument is the assertion that it "is axiomatic that a court interpreting a contract is attempting to give effect to the contracting parties' intent." The Opinion below wholly disregarded the contracting parties' intent, both as evidenced by the contract, itself, and as acknowledged by those contracting parties. The Court of Appeals' Opinion allows a total stranger to the contract, years after the contract's creation, to replace the contracting parties' agreed intent and to use that substituted interpretation to create a tort duty

against the contracting parties. Moreover, all of this occurred in a context where even the Court of Appeals acknowledged that no tort duty otherwise existed. Appellees confirm the fundamental and paramount directive that a court interpreting a contract must give effect to the contracting parties' intent, all while asking this Court to avoid doing so here in a case where the contracting intent was disregarded in a manner which creates a watershed case supporting disregard of contracting parties' intent in countless scenarios.

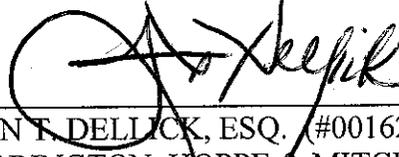
Appellees' second argument is that, now knowing that a court of appeals would strain to find a contractual duty where the contracting parties intended none, Ohio Edison could change its contract. Initially, since both Ohio Edison and Asplundh agree to the meaning of the contract provision at issue, the parties should not be forced to change their agreement. Whether this specific contract is changed or not, innumerable litigants are threatened with the application of the perverted interpretations of law in the Opinion below.

In Ohio, contracting parties should not be exposed to the uncertainties created by the court below, including allowing third parties, years after the fact, to impose obligations not envisioned by the contracting parties. The Opinion below even allows the creation of contract-based duties to establish tort liability for parties who made no promise in the contract and had no notice or apprehension of the alleged danger. Without limiting that this case has broad implications, Ohio Edison highlights the absurdity of the Opinion below which threatens to hold Ohio Edison responsible for a tree Ohio Edison never even knew existed. Appellees' assertion that Ohio Edison and Asplundh could change the contract for future purposes does not eliminate the calamity unleashed by the Court of Appeals.

Concomitant with the filing of this Brief in Opposition, Ohio Edison has filed its Merit Brief. The opinion below which departs from the long-established contract and tort law of Ohio must properly be considered and reversed by this Court, as set forth in Ohio Edison's Merit Brief.

A majority of this Court properly decided to accept review of these issues and that review must proceed if the intent of contracting parties is to remain sacrosanct and so that the aberrational opinion below does not unravel the fabric of both Ohio contract and tort law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **Brief of Appellant Ohio Edison Company in Opposition to Appellees' Motion to Dismiss** has been served via ordinary U.S. Mail this 11th day of January, 2011 to: **David J. Betras, Esq. (0030575)** and **Susan Gaetano Maruca, Esq. (0065169)**, Betras, Maruca, Kopp & Harshman, LLC, 6630 Seville Drive, P.O. Box 125, Canfield, Ohio 44406-0129, Attorneys for Plaintiffs-Appellees; and **Clifford Masch, Esq. (0015737)** and **Brian D. Sullivan, Esq. (0063536)**, Reminger & Reminger, Suite 1400, 101 Prospect Avenue, W., Cleveland, Ohio 44115-1093, Attorneys for Appellant Asplundh Tree Expert Company.



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