

ORIGINAL

IN THE SUPREME COURT OF OHIO

JAMES SPENCER	:	Case No. 2010-2138
Plaintiff-Appellee,	:	
v.	:	On Appeal from the
FREIGHT HANDLERS, INC., et al.	:	Miami County Court of Appeals,
Defendant-Appellant.	:	Second Appellate District
	:	Court of Appeals
	:	Case No. 09CA00044

NOTICE OF DENIAL OF MOTION TO CERTIFY A CONFLICT

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 JAN 20 2011
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NOTICE OF DENIAL OF MOTION TO CERTIFY CONFLICT

Pursuant to S. Ct. Prac. R. 4.4(B), Defendant-Appellant Freight Handlers, Inc. ("FHI") hereby gives notice that the Miami County Court of Appeals, Second Appellate District, denied Appellant's Motion to Certify a Conflict in Case No. 09CA00044. See *Spencer v. FHI, LLC*, Case No. 09CA00044, Decision & Entry (Jan. 6, 2011)(attached).

Therefore, the conflict has not been certified, and the Court should now consider Appellant Bureau of Workers' Compensation's Memorandum in Support of Jurisdiction, which explains why this case is one of public and great general interest. S. Ct. Prac. R.

3.

Respectfully submitted,



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CERTIFICATE OF SERVICE

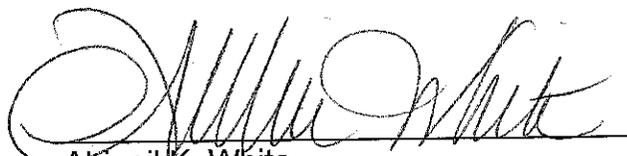
I hereby certify that a copy of the foregoing has been served via regular U.S. mail upon:

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this 19th day of January, 2011.


Abigail K. White

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

JAMES SPENCER
Plaintiff-Appellant

C.A. CASE NO. 09-CA-44

vs.

T.C. CASE NO. 09-988

FHI, LLC, et al.
Defendants-Appellees

DECISION AND ENTRY

Rendered on the 6th day of January, 2011.

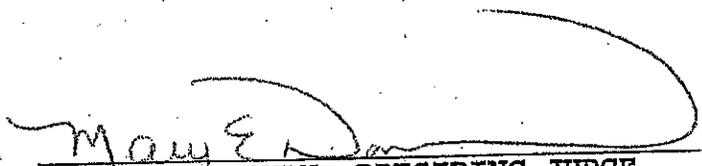
PER CURIAM:

This matter is before the court on two motions to certify a conflict to the Supreme Court filed pursuant to App.R. 25. The motions were filed by Defendant-Appellee Freight Handlers, Inc., and by the Attorney General on behalf of the Administrator of the Bureau of Worker's Compensation.

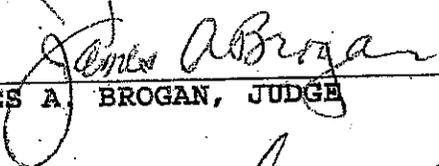
The movants contend that our decision in the present case is in conflict with the decision of the Sixth District Court of Appeals in *Olaru v. FedEx Custom Critical*, Lucas App. No. L-03-1143, 2003-Ohio-6376. The alleged conflict concerns whether the provisions of R.C. 4123.512(B) regarding naming the administrator as a party to an action on an appeal to the common pleas court filed pursuant to that section and serving a copy of the notice of appeal in the action on the administrator are jurisdictional.

We acknowledge that our holding herein and the holding in *Olaru*, at least with respect to their outcomes concerning the question of jurisdiction, are in conflict. However, we also held in the present case that the jurisdictional defect was waived by the administrator's voluntary appearance in the action filed in the common pleas court, citing the holding in *Wells v. Chrysler Corporation* (1984), 15 Ohio St.3d 21. Because of our reliance on those alternative grounds, the jurisdictional issue in the present case was decided on facts different from those in *Olaru*. To qualify for certification, "the alleged conflict must be on a rule of law-not facts." *Whitelock v. Gilbane Building Company* (1993), 66 Ohio St.3d 594.

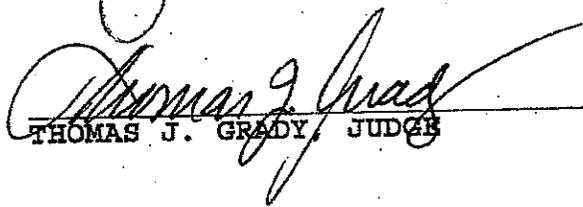
The motions to certify are Denied.



 MARY E. DONOVAN, PRESIDING JUDGE



 JAMES A. BROGAN, JUDGE



 THOMAS J. GRADY, JUDGE

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