ORIGINAL

IN THE SUPREME COURT OF OHIO

ACORDIA OF OHIO, LLC	:	
Appellant,	:	
v.	:	
MICHAEL FISHEL, JANICE FREYTAG, MARK TABER, SHEILA DIEFENBACH, NEACE LUKENS INSURANCE AGENCY, LLC, NEACE & ASSOCIATES INSURANCE AGENCY OF OHIO INC., and JOSEPH LUKENS	:	Case No.: 2011-0163
	:	On Appeal from the Hamilton County Court of Appeals First Appellate District
	:	Case No. C100071
Appellees,	:	

Brief of Amicus Curiae

THE OHIO EMPLOYMENT LAWYERS' ASSOCIATION

In Support of

APPELLEES MICHAEL FISHER, et al.

Neil Klingshirn (#0037158)
FORTNEY & KLINGSHIRN
4040 Embassy Parkway, Suite 280
Akron, Ohio 44333
(330)-665-5445, ext. 2
(330)-665-5446 Facsimile
Email: Neil@Fklaborlaw.com

Gegory Goridillo
2000 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113
(216) 875.5500
216.583.0345 Facsimile
Email: GGordillo@eeoattorney.com

COUNSEL FOR AMICUS CURIAE, OHIO EMPLOYMENT LAWYERS' ASSOCIATION

FILED
AUG 15 2011
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
AUG 15 2011
CLERK OF COURT
SUPREME COURT OF OHIO

List of Counsel

James F. McCarthy, III (0002245)
Laura Hinegardner (0067576)
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
OH 45202
(513) 721-4532
(513) 762-0006 (fax)
jmccarthy@katzteller.com

Counsel for Appellant
Acordia of Ohio, LLC

Mark E. Lutz (0009062)
Michael P. Majba (0076511)
Denlinger, Rosenthal & Greenberg
425 Walnut Street, Suite 2300 Cincinnati,
Cincinnati, OH 45202
(513) 621-3440
(513) 621-4449 (fax)
lutz@drgfirm.com

Counsel for Appellees Michael Fishel, Janice Freytag, Mark Taber, Sheila Diefenbach, Neace Lukens Insurance Agency, LLC, Neace & Associates Insurance Agency of Ohio, Inc., and Joseph T. Lukens

W. Stuart Dornette (0002955)
John B. Nalbandian (0073033)
Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
(513) 381-2838
(513) 381-0205 (fax)
dornette@taftlaw.com
nalbandian@taftlaw.com

Counsel for Amici Curiae
Ohio Chamber of Commerce and
Ohio Chemistry Technology Council

Peter L. Cassady (0005562)
Beckman Weil Shepardson, LLC
The American Book Building
300 Pike Street, Suite 400
Cincinnati, Ohio 45202
(513) 621-2100
(513) 621-0106 (fax)
petercassady@beckman-weil.com

Counsel for Amici Curiae USI Holdings Corp. and USI Midwest, Inc.

Robert P. Ducatman (0003571)
Meredith M. Wilkes (0073092)
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939
(216) 579-0212 (fax)
rducatman@jonesday.com
mwilkes@jonesday.com

Counsel for Amicus Curiae The PNC

Michelle Lafferty (0043590)
Hylant Group, Inc.
811 Madison Avenue
Toledo, Ohio 43604
(419) 255-1020
(419) 255-7557 (fax)
Michelle.Lafferty@hylant.com

Counsel for Amicus Curiae Hylant Group, Inc.

Financial Services Group, Inc.

Jennifer M. Turk (0073781)
Benesch, Friedlander, Coplan, Aronoff LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215
(614) 223-9308
(614) 223-9330 (fax)
jturk@beneschlaw.com

Counsel for Amicus Curiae
Willis of Ohio, Inc.

TABLE OF CONTENTS

I.Statement of Interest of Amicus Curiae 1

II. Statement of the Facts 3

III. Argument 4

PROPOSITION OF LAW OF AMICI OHIO EMPLOYMENT LAWYERS' ASSOCIATION: 4

If parties to a non-competition agreement agree to restraints on competition that commence with the termination of the Employee's employment with the Company, then a merger that extinguishes the Company's existence terminates the Employee's employment with the Company, causes the restraints to commence, and vests in the surviving company the right to enforce the restraints until they expire.

A. Preliminary Statement 4

B. The First Appellate District Correctly Applied Bedrock Contract Principles to Find that Appellant's Predecessor Chose Post Employment Restrictions that Expired, by their Terms, before Mr. Fishel Engaged in Competitive Activity, ... 5

C. Appellant's Proposition Requires this Court to Re-Write the Revised Code 7

D. Injecting "As If" Parties into Original, Pre-Merger Constituent Agreements will Place Undue Burdens on Employees. 9

E. Appellant's Proposition will Frustrate the Parties' Intent with Respect to Terms Triggered by Merger 9

F. Creating "As If" Parties to Every Original Contract Will Significantly Expand Contract Rights and Obligations Intended to Apply to a Specific, Constituent Entity 11

G. Appellant Abandoned or Failed to Exercise Four Options for Extending the Restrictive Covenants 12

IV. Conclusion 13

TABLE OF CASES

Charles Penzone, Inc. v. Koster,
2008 Ohio 327 (Ohio Ct. App., Franklin County Jan. 31, 2008)..... 5

Raimonde v. Van Vlerah,
42 Ohio St. 2d 21 (Ohio 1975)..... 5, 6

Lake Land Empl. Group of Akron, LLC v. Columber,
101 Ohio St. 3d 242, 248 (Ohio 2004)..... 5

Rogers v. Runfola & Assoc., Inc.,
57 Ohio St. 3d 5 (Ohio 1991)..... 5

Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.,
(1997), 78 Ohio St. 3d 353, 361..... 6

Miller v. Marrocco,
(1986), 28 Ohio St.3d 438, 439..... 6

Avki, Inc. v. Avery,
1993 Ohio App. LEXIS 2777 (Ohio Ct. App., Montgomery County June 3, 1993)..... 8

Boley v. Goodyear Tire & Rubber Co.,
125 Ohio St. 3d 510, 515 (Ohio 2010)..... 8

Worth v. Huntington Bancshares, Inc.,
43 Ohio St. 3d 192 (Ohio 1989)..... 10

TABLE OF AUTHORITIES

ORC § 1701.82(A)(3) 8

IN THE SUPREME COURT OF OHIO

ACORDIA OF OHIO, LLC	:	
Appellant,	:	
v.	:	
MICHAEL FISHEL, JANICE FREYTAG, MARK TABER, SHEILA DIEFENBACH, NEACE LUKENS INSURANCE AGENCY, LLC, NEACE & ASSOCIATES INSURANCE AGENCY OF OHIO INC., and JOSEPH LUKENS	:	**Case No.: 2011-0163**
	:	**On Appeal from the Hamilton County Court of Appeals First Appellate District**
	:	**Case No. C100071**
Appellees,	:	

Brief of Amicus Curiae

THE OHIO EMPLOYMENT LAWYERS' ASSOCIATION

In Support of

APPELLEES MICHAEL FISHER, et al.

I. Statement of Interest of Amicus Curiae

The Ohio Employment Lawyers' Association (OELA) is the state-wide professional membership organization in Ohio comprised of lawyers who represent employees in labor, employment and civil rights disputes. OELA is the only state-wide affiliate of the National Employment Lawyers Association (NELA) in Ohio. NELA and its 67 state and local affiliates have a membership of over 3,000 attorneys who are committed to working on behalf of those who have been treated illegally in the workplace. NELA and OELA strive to protect the rights of their members' clients, and regularly support precedent-setting litigation affecting the rights of

individuals in the workplace. OELA advocates for employee rights and workplace fairness while promoting the highest standards of professionalism, ethics and judicial integrity.

As an organization focused on protecting the interests of workers who are subjected to the heavy burden of post employment restrictions, OELA has an abiding interest in ensuring that Ohio's civil justice system enforces non-competition agreements as the parties intended. Grafting new parties into original agreements in a manner that frustrates the language chosen by the parties unwisely and unnecessarily imposes exponentially greater burdens on employees. OELA asks to participate as amicus in this case to cast light on these issues and to call attention to the impact the decision in this case may have on employees whose non-competition agreements transfer through merger.

II. Statement of the facts

The amici adopt the statement of the facts contained in the merit brief of Appellees Michael Fishel, *et al.*

III. Argument

PROPOSITION OF LAW OF *AMICI* OHIO EMPLOYMENT LAWYERS' ASSOCIATION :

If parties to a non-competition agreement agree to restraints on competition that commence with the termination of the Employee's employment with the Company, then a merger that extinguishes the Company's existence terminates the Employee's employment with the Company, causes the restraints to commence, and vests in the surviving company the right to enforce the restraints until they expire.

A. Preliminary Statement

Appellant ask this Court to include it as "the Company" in an original non-competition agreement made years before Appellant acquired it through merger.[1] Appellant does not ask the Court to do this by rewriting this Agreement, which the Court cannot do, but by construing Ohio's merger law to treat the surviving entity in a merger "as if" it were an original party to the agreement. This, however, would require this Court to rewrite Ohio's merger law.

This Court cannot rewrite Ohio's merger law to include Appellant as "the Company" in Mr. Fishel's agreement any more than it can rewrite the agreement to accomplish the same result. First, this Court would have to invade the province of the General Assembly to create "as if" parties to original, pre-merger agreements, which it cannot do. Second, creating "as if" parties to pre-merger agreements would expand the already heavy non-competition burden on employees, frustrate the intentions of parties who negotiate terms that are triggered by merger, and materially alter any agreement negotiated with reference to specific parties.

---

[1] For efficiency of argument, *amici* discusses the non-competition agreement and mergers affecting only Appellee Michael Fishel. As detailed by Appellees in their Merit Brief, the language of the non-competition agreements of the other Appellees were functionally identical to that of Mr. Fishel's agreement in all relevant respects, as were the effects of merger on those agreements.

None of this is necessary. Merger survivors have many options for obtaining the protection that Appellant seeks by its proposition of law, both before and after the merger. In this case, Appellant abandoned or failed to exercise the options available to it. That neglect does not justify a dramatic and burdensome change in Ohio merger law.

B. The First Appellate District Correctly Applied Bedrock Contract Principles to Find that Appellant's Predecessor Chose Post Employment Restrictions that Expired, by their Terms, before Mr. Fishel Engaged in Competitive Activity,

Non-competition agreements burden employees. *Charles Penzone, Inc. v. Koster,* 2008 Ohio 327 (Ohio Ct. App., Franklin County Jan. 31, 2008) ("All non-compete agreements create some level of hardship."). When the burden is undue, Ohio courts enforce non-competition agreements only "to the extent necessary to protect an employer's legitimate interests." *Raimonde v. Van Vlerah,* 42 Ohio St. 2d 21 (Ohio 1975).

In contrast to the heavy burden borne by employees, non-competition agreements cost employers almost nothing. *Lake Land Empl. Group of Akron, LLC v. Columber,* 101 Ohio St. 3d 242, 248 (Ohio 2004) (continuing an "at-will employment relationship that could legally be terminated without cause" was sufficient consideration for a three year, 50 mile non-competition agreement). Moreover, employers have the upper hand in non-competition negotiations since, if employees object to the adequacy of consideration, employers can terminate their at-will employment. *Columber, supra,* at 248 (Lake Land had "a legal right to terminate (Columber's) at-will employment relationship when Columber was presented with the noncompetition agreement.").

Once an employee accepts the consideration, no matter how slight, Ohio courts cannot inquire into its adequacy. *Rogers v. Runfola & Assoc., Inc.,* 57 Ohio St. 3d 5 (Ohio 1991) ("[W]e

are not prepared to abandon our long-established precedent that courts may not inquire into the adequacy of consideration. . . ."). Ohio courts must instead enforce the parties' intent, which "is presumed to reside in the language they chose to employ in the contract." *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.* (1997), 78 Ohio St. 3d 353, 361. If clear and unambiguous, courts must enforce contracts as written, without rewriting them. *Miller v. Marrocco* (1986), 28 Ohio St.3d 438, 439.[2]

The trial and appellate courts faithfully followed these bedrock principles, concluding that Frederick Rauh & Company chose post employment restrictions with Mr. Fishel that expired, by their terms, before Mr. Fishel engaged in competitive activity. Under normal contract principles, this Court can reach no other conclusion, a point that Appellant does not seriously contest.

The reason is because Frederick Rauh & Associates ("Rauh") entered into a non-competition agreement with Michael Fishel that prohibited him from providing insurance services to customers of "the Company" for a period of two years following "termination of employment with 'the Company .'" In the Agreement, Rauh, the author, defined "the Company" as "Frederick Rauh & Company." Mr. Fishel's employment with the Company terminated as a result of the Company's merger into Acordia of Ohio, Inc.[3] While Appellant survived the merger,

---

[2] To avoid undue employee burden caused by overly restrictive non-competition agreements, courts may modify restrictive covenants, limiting them to those necessary to protect the employer's legitimate business interest. *Raimonde v. Van Vlerah,* 42 Ohio St. 2d 21 (Ohio 1975). This represents an exception to the rule that a court cannot disturb the parties' bargain, and it cuts in favor of protecting employees.

[3] Before the merger, Frederick Rauh & Company's owners renamed it Acordia of Cincinnati, Inc. After the merger, Acordia of Ohio, Inc. was itself merged out of existence and into Acordia of Ohio, LLC, which survived.

Frederick Rauh & Company did not. ORC § 1701.82 (A)(1) ("The separate existence of each constituent entity other than the surviving entity in a merger shall cease . . . ."). Mr. Fishel's employment with the Company terminated and, by its terms, his restrictive covenants expired two years later. (*i.e.,* "two years following the termination of employee's employment with the Company").

C. Appellant's Proposition Requires this Court to Re-Write the Revised Code

Dissatisfied with this result but bound by the language chosen for its restrictive covenants, Appellant asks this Court to rewrite Ohio's merger law to let it, a surviving entity in a merger, enforce its constituent's pre-merger agreements "as if (it) were a party to the original agreement." *See* Appellant's sole Proposition of Law. This way, Appellant could be a party to Mr. Fishel's non-competition agreement through a change in the merger law that deems Appellant "the Company" from the inception of Mr. Fishel's non-competition agreement, without rewriting the agreement itself.

This Court cannot rewrite Ohio's merger law to include Appellant as "the Company" in Mr. Fishel's agreement any more than it can rewrite the agreement itself, since doing so would violate the separation-of-powers doctrine. The plain and unambiguous terms of Ohio's business merger statute provide that contracts of the constituent entities are assets that automatically transfer to the surviving entity. ORC § 1701.82(A)(3). Following merger:

> G. The surviving or new entity possesses all assets and property of the constituent entities, without further act or deed;
>
> H. All assets, property, rights, privileges, immunities, powers, franchises, and authority, and all obligations belonging to or due to each constituent entity, are vested in the surviving or new entity, without further act or deed.

ORC § 1701.82(A). Nothing in ORC Chapter 1701 or § 1701.82 deems the surviving entity a party to pre-merger agreements of the constituent companies "as if the surviving company were a party to the original agreements." If the General Assembly considered such a thing, it would probably have deemed it unwise, for the reasons stated below. But if it wanted to create "as if" parties to original agreements, prior to the merger, it could have done so, as demonstrated by subsection (4) of § 1701.82(A). Subsection (4) permits claims against constituent companies to proceed against the surviving entity "as if the merger or consolidation had not taken place." ORC § 1701.82(A)(4).

Since the General Assembly could have created "as if" parties to original, pre-merger agreements in Ohio's merger law but did not do so, this Court cannot do so for it, particularly where nothing in Chapter 1701 suggests that it should be construed in a way that favors restraints on competition by former employees *Avki, Inc. v. Avery,* 1993 Ohio App. LEXIS 2777 (Ohio Ct. App., Montgomery County June 3, 1993) ("[W]e find nothing in R.C. Chapter 1701 . . . which requires imposition of such a restriction.").[4] *Boley v. Goodyear Tire & Rubber Co.,* 125 Ohio St. 3d 510, 515 (Ohio 2010) (J. O'Connor concurring; even when the result is harsh, the Court cannot "invade the province of the legislature and violate the separation-of-powers doctrine . . . . As judges, we are not to impose our views as to the best policies . . . . Rather, we must leave it to the General Assembly to rewrite the statute if it deems it necessary.")

---

[4] To the contrary, public policy does not permit a court "to arbitrarily impose a non-competition agreement upon parties who have not themselves agreed to be bound by such a restraint." *Avki, Inc. v. Avery,* 1993 Ohio App. LEXIS 2777 (Ohio Ct. App., Montgomery County June 3, 1993)

D. Injecting "As If" Parties into Original, Pre-Merger Constituent Agreements will Place Undue Burdens on Employees.

Creating "as if" parties to pre-merger agreements will expand the already heavy burden on employees. This case illustrates how. The restrictive covenant that Mr. Fishel signed prohibited him from providing insurance services to the customers of Frederick Rauh & Company for two years following his termination of employment from Frederick Rauh & Company. This restriction ended in 1999, two years after Appellant merged Frederick Rauh & Company out of existence. If this Court adopts Appellant's Proposition of Law, though, the same restrictions would extend until August of 2007, two years after Mr. Fishel left Appellant's employment and eight years after the point chosen by Appellant's predecessor.

Moreover, the customers defined by Mr. Fishel's agreement were those of Frederick Rauh & Company. If this Court adopts Appellant's proposition, prohibited customers would include all of the customers of all four constituent companies. If each constituent company had an equal numbers of customers, Appellant's Proposition of Law would quadruple the scope of the competitive restraints. This, coupled with the expansion of the restraints' duration from two to eight years, would place significant, additional burdens on Mr. Fishel.[5] Mr. Fishel never had an opportunity to negotiate, nor did he agree, to restraints on the customers of four other companies.

E. Appellant's Proposition will Frustrate the Parties' Intent with Respect to Terms Triggered by Merger

On top of the undue burden that Appellant's Proposition will place on Mr. Fishel and the

---

[5] Since a four-fold, exponential expansion would place an undue burden on Mr. Fishel, the trial court would have to modify it. It is difficult to discern, for example, what interest, if any, Appellant has in preventing Mr. Fishel from leaving Cincinnati to sell insurance products in Youngstown.

other Appellees, Appellant's Proposition will frustrate any agreement that operates as a result of or in reference to a merger.[6] For example, "change of control" agreements provide benefits to executives of companies who lose their employment as a result of mergers. *See, e.g., Worth v. Huntington Bancshares, Inc.,* 43 Ohio St. 3d 192 (Ohio 1989). In *Worth,* the parties defined a "change in control" to mean when "the Company shall have merged into or consolidated with another corporation, or merged another corporation into the Company . . . ." *Id.* As judicially modified by this case, though, Worth would never experience a change in control through merger, since Appellant's proposition would place the surviving entity as a party to the original agreement, "as if" it were the Company all along. Similarly, Appellant's proposition will nullify any term in contracts that limits it to a specific, constituent entity, since it treats the surviving entity in a merger "as if" it were an original party to the agreement.

---

[6] The First Appellate District Court made the crucial and correct distinction between the effect of a merger and the effect of a contract term that is "triggered by the relevant merger." (Acordia of Ohio, LLC v. Fishel, et al., Case No. C-100071 (First App. Jud. Dist. 2010) at ¶ 19). A "[m]erger involves the absorption of one company by another, the latter retaining its own name and identity, and acquiring the assets, liabilities, franchises and powers of the former." *Id.* Fishel's contract transferred as a result of the merger. Since the merger terminated Rauh's existence, though, and with it Fishel's employment with Rauh, "the two-year period of Fishel's noncompete agreement" was triggered by the merger. *Id.* It "began to run at that time" and, when Fishel left Appellant, "the time restriction under the agreement had expired." *Id* at ¶¶ 17, 20.

F. Creating "As If" Parties to Every Original Contract Will Significantly Expand Contract Rights and Obligations Intended to Apply to a Specific, Constituent Entity

Appellant's proposition will alter contracts intended to apply to a single constituent entity, like agreements to clean "the Company's" facilities, contracts to provide all energy required by "the Company" and even insurance agreements indemnifying "Company" officials from their errors and omissions. By treating the surviving entity as an original party to those agreements, Appellant's proposition would obligate the cleaning vendor to clean all of the survivor's facilities, the energy supplier to supply all of the survivor's energy needs, and the insurer to indemnify all of the survivor's officials. Even merger survivors like Appellant are at risk. If the merger survivor acquires through merger a profit sharing agreement applicable only to the employees of a "the Company," defined as a specific, non-surviving constituent entity, Appellant's Proposition makes the survivor a party to the original agreement, whose obligations now cover all of the employees of the combined businesses.

Commercial chaos awaits Ohio businesses, courts and lawyers who have to live with the consequences of Appellant's proposition. Each party to every agreement that could ever pass through merger would have to consider the consequences of Appellant's proposition, if adopted, and negotiate language to amend the agreements to address those consequences, if possible. None of this is necessary, though, as Ohio law already provides merger survivors ample opportunities for continuing the restrictive covenants acquired through merger from a non-surviving entity.

G. Appellant Abandoned or Failed to Exercise Four Options for Extending the Restrictive Covenants

Appellant and its predecessors had at least four chances to continue the restrictive covenants at issue in this case. Each time, Appellant or its predecessors abandoned or failed to exercise those options. They were:

1. To add three words to the Appellees non-competition agreements, thereby defining "the Company" to mean "Frederick Rauh & Company *and its successors*";

2. To continue Frederick Rauh & Company in existence as a separate entity. Appellee exercised this option in 1994, but abandoned it when it merged Frederick Rauh & Company out of existence in 1997;

3. To continue Frederick Rauh & Company in existence as the surviving entity; and

4. To amend or replace Mr. Fishel's non-competition agreements after the merger to commence the restrictions with his termination of employment from Appellant.

Appellant offers no explanation for failing to pursue these options. Its neglect to amend or replace Mr. Fishel's agreement after the merger is especially unsympathetic. This Court made non-competition agreements easy and almost costless for employers to obtain. In this case, Appellant was in an even better position than most employers to obtain a new restrictive covenant from Mr. Fishel, since Appellant had the benefit of Mr. Fishel's bargain with Rauh to keep Mr. Fishel from working anywhere else in Cincinnati for two years. With Appellant as Mr. Fishel's only employment opportunity, he could hardly have refused to amend his agreement.

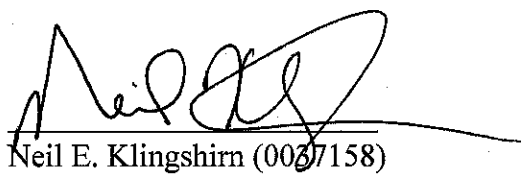
Appellant does not need this Court to save it from its own neglect. This Court likewise does not need to protect other merger survivors, since they have the same options to protect themselves as Appellant. Neither does the First Appellate Court's decision, contrary to Appellant's overwrought argument, create uncertainty. It merely makes meaningful the due

diligence checklist item to review and, if necessary, amend or renew existing non-competition agreements of the non-surviving constituent entities.

IV. Conclusion

This Court must not create "as if" parties to original, pre-merger agreements. Doing so will create a legal nightmare, impose heavier burdens on employees and the courts and require this Court to invade the province of the General Assembly. None of that is not necessary to protect merger survivors like Appellant from changes in their contractual relationships resulting from mergers. In this and every other case, the surviving entity or its predecessors have options for creating and extending restrictive covenants, which Appellant simply failed to exercise.

Respectfully Submitted:



Neil E. Klingshirn (0037158)
FORTNEY & KLINGSHIRN
4040 Embassy Parkway
Suite 280
Akron, Ohio 44333
(330) 665-5445
(330) 665-5446 fax
Neil@fklaborlaw.com

CERTIFICATE OF SERVICE

James F. McCarthy, III (0002245)
Laura Hinegardner (0067576)
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
OH 45202
(513) 721-4532
(513) 762-0006 (fax)
jmccarthy@katzteller.com

Counsel for Appellant
Acordia of Ohio, LLC

Mark E. Lutz (0009062)
Michael P. Majba (0076511)
Denlinger, Rosenthal & Greenberg
425 Walnut Street, Suite 2300 Cincinnati,
Cincinnati, OH 45202
(513) 621-3440
(513) 621-4449 (fax)
lutz@drgfirm.com

Counsel for Appellees Michael Fishel, Janice Freytag, Mark Taber, Sheila Diefenbach, Neace Lukens Insurance Agency, LLC, Neace & Associates Insurance Agency of Ohio, Inc., and Joseph T. Lukens

W. Stuart Dornette (0002955)
John B. Nalbandian (0073033)
Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
(513) 381-2838
(513) 381-0205 (fax)
dornette@taftlaw.com
nalbandian@taftlaw.com

Counsel for Amici Curiae
Ohio Chamber of Commerce and
Ohio Chemistry Technology Council

Peter L. Cassady (0005562)
Beckman Weil Shepardson, LLC
The American Book Building
300 Pike Street, Suite 400
Cincinnati, Ohio 45202
(513) 621-2100
(513) 621-0106 (fax)
petercassady@beckman-weil.com

Counsel for Amici Curiae USI Holdings Corp. and USI Midwest, Inc.

Robert P. Ducatman (0003571)
Meredith M. Wilkes (0073092)
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939
(216) 579-0212 (fax)
rducatman@jonesday.com
mwilkes@jonesday.com

Counsel for Amicus Curiae The PNC

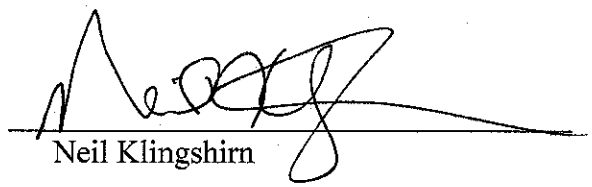
Michelle Lafferty (0043590)
Hylant Group, Inc.
811 Madison Avenue
Toledo, Ohio 43604
(419) 255-1020
(419) 255-7557 (fax)
Michelle.Lafferty@hylant.com

Counsel for Amicus Curiae Hylant Group, Inc.

Financial Services Group, Inc.

Jennifer M. Turk (0073781)
Benesch, Friedlander, Coplan, Aronoff LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215
(614) 223-9308
(614) 223-9330 (fax)
jturk@beneschlaw.com

Counsel for Amicus Curiae
Willis of Ohio, Inc.



Neil Klingshirn