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IN THE SUPREME COURT OF OHIO  
CASE NO.: 2011-1050

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Appeal from the Court of Appeals  
Ninth Appellate District  
Lorain County, Ohio  
Case No. 10CA009750

LISA VACHA

Plaintiff-Appellee/Cross-Appellant

v.

CITY OF NORTH RIDGEVILLE, et al.

Defendants-Appellants/Cross-Appellees

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**CROSS-APPELLEE CITY OF NORTH RIDGEVILLE'S BRIEF IN OPPOSITION TO  
CROSS-APPELLANT LISA VACHA'S MOTION IN SUPPORT OF JURISDICTION**

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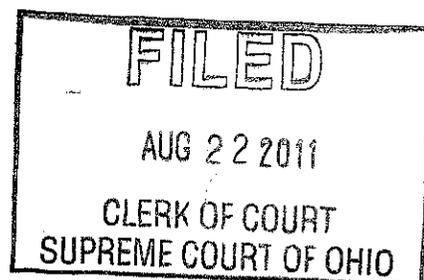
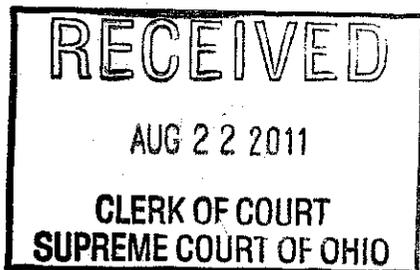
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**I. THIS CROSS-APPEAL DOES NOT PRESENT A MATTER OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION.**

Despite her arguments, Plaintiff/Cross-Appellant Lisa Vacha's case is not a matter of public or great general interest. Vacha merely disagrees with the Workers' Compensation Act's immunity provision and improperly wants to judicially override the Ohio Legislature's clear language and intent. Emblematic of how limited her dispute really is, Vacha also wants this Court to review an issue that deals with the pre-October 11, 2006, now abrogated, definition of "injury" under that Act that may affect only the case at hand and possibly no others. Vacha's cross appeal is not only legally without merit, but does not present a matter of public or great general interest. This Court should decline jurisdiction.

The Legislature has carefully balanced the competing interests of employers and employees in passing the immunity provision of the Workers' Compensation Act. The established law provides that employers that are in compliance with their obligation to pay workers compensation premiums "shall not be liable to respond in damages." As this Court has recognized, "employees relinquish their common law remedy and accept lower benefit levels coupled with greater assurance of recovery and employers give up their common law defenses and are protected from unlimited liability." *Blankenship v. Cincinnati Milacron Chemicals Inc.* (1982), 69 Ohio St.2d 608, 614. The law does not preclude an employer intentional tort claim, and certainly does not remove an employee's claim against the wrongdoer. Indeed, the Ninth District affirmed Vacha's ability to pursue an intentional tort claim against the City. (*Vacha v. North Ridgeville*, 9th Dist. No. 10CA009750, 2011-Ohio-2446 ¶18). Yet, and at the heart of her cross appeal, Vacha wants to have it all: unfettered recovery for her negligence claims in her

civil suit, and the benefits of workers' compensation. The Workers' Compensation Act's immunity provision precludes this.

Vacha does not dispute that the City of North Ridgeville was in full compliance with its workers compensation payments. Vacha does not dispute that she had been approved for *and received* permanent total disability benefits for her injuries. She did not suggest that her worker's compensation claim had been wrongly decided. Yet, Vacha wants to avoid the City's immunity. In accord with the Legislature's intent, the Ninth District held that Vacha's claims of negligent/reckless hiring were barred by workers' compensation immunity. Vacha urges this Court to resolve her perceived "disparity between the Ninth and Twelfth districts" on whether workers compensation immunity applies to the negligence portion of her claims. But, there is no real conflict among the district courts. In rejecting Vacha's purported "conflict" with *Prewitt v. Alexson Serv. Inc.*, 12th Dist. No. CA2007-09-218, the Ninth District expressly and correctly concluded that the facts of this case are starkly different. That is, there is no real conflict. The Ninth District explained the difference was that Vacha "sustained physical injuries which she **sought and received** worker's compensation benefits and, therefore, worker's compensation was her exclusive remedy against her employer for its alleged negligent or reckless conduct [emphasis added]." (Journal Entry denying conflict, which was filed with this Court on Aug. 9, 2011.) There is no conflict among the districts. The Ninth District's decision is well founded.

Vacha also argues that an injury arising from an assault is not an "injury" under workers' compensation, according to the pre-October 11, 2006, now abrogated, definition of injury under R.C. 4123.01(C). Quite apparently, any proposition that deals with such a narrow class of cases (those that accrued pre-Oct. 11, 2006) is of limited (and possible no) precedential value. There is no statewide implications because the Legislature already superseded the previous law. This

narrow dispute between the parties does not pose a substantial question for review. This argument is not a matter of public or great general interest. Furthermore, it is not correct. This Court recognized under the pre-October 11, 2006 statute that Vacha would be considered injured within the meaning of the Workers' Compensation Statute. See *Kerans v. Porter Paint Co.* (1991), 61 Ohio St.3d 486, 488 ("physical injury occasioned solely by mental or emotional stress received in the course of employment is an 'injury' within the definition found in R.C. 4123.01(C).") Vacha's claim that Workers Compensation immunity does not apply has no merit under any version of the statute.

This Court should decline jurisdiction to decide this cross-appeal on the merits.

## **II. STATEMENT OF FACTS AND CASE**

### **A. Factual Background**

The Ninth District set forth the basic facts in its opinion:

{¶ 2} On June 2, 2006, Lisa Vacha was raped by a coworker, Charles Ralston, while she was working a shift with him at the French Creek Wastewater Treatment Plant, which is owned and operated by the city of North Ridgeville. Shortly after the incident, Vacha applied for worker's compensation benefits, seeking recovery for the physical and psychological injuries that she sustained in the attack. Although the specific details of her workers' compensation claim are not clear from the record, Vacha's application was approved and she was granted permanent total disability benefits.

{¶ 3} Vacha later filed this action against the city, alleging that it was liable for her injuries that resulted from the rape, on theories that included vicarious liability, negligent and reckless hiring and supervision of Ralston, and that the city committed an employer intentional tort by employing Ralston. The city eventually moved for summary judgment on all of Vacha's claims. It asserted, among other things, that it was entitled to immunity under R.C. 4123.74 and/or R.C. 2744.02. Although the trial court granted the city summary judgment on Vacha's claims for vicarious liability, it denied the city's motion for summary judgment on her remaining claims. The trial court found that there were genuine issues of material fact on those claims, implicitly rejecting the city's immunity defenses. Pursuant to R.C. 2744.02(C), the city appealed the trial court's denial of its immunity defenses, raising two assignments of error.

(*Vacha* at ¶¶ 2-3.)

## **B. Procedural Posture**

While a majority of the court affirmed Vacha's ability to pursue an intentional tort claim against the City, the unanimous Ninth District properly reversed the trial court's denial of workers compensation immunity. The Ninth District explained that "it was not disputed that Vacha's injuries qualified for compensation under the workers' compensation system and that she was, in fact, receiving permanent total disability benefits, there was no genuine issue of material fact that the city was immune from Vacha's claims for negligent and reckless hiring and supervision." (*Vacha* at ¶14.)

## **III. LAW AND ARGUMENT**

**CROSS-APPELLANT'S PROPOSITION OF LAW II:** "BECAUSE SEXUAL ASSAULT BY A CO-WORKER DOES NOT ARISE AS A NATURAL AND PROBABLE CONSEQUENCE OF EMPLOYMENT, AN EMPLOYER DOES NOT ENJOY IMMUNITY FROM LIABILITY UNDER THE WORKER'S COMPENSATION PROVISIONS OF THE REVISED CODE."

**A. Vacha's Proposition II is not a matter of great general or public interest because the Legislature clearly precludes Vacha's negligence-based claims when an employer complies with the Workers Compensation Act.**

**1. The Ninth District's Decision is well founded; North Ridgeville is immune under R.C. 4123.74.**

Ohio R.C. 4123.74 provides North Ridgeville with immunity:

Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law ... for any injury ... received ... by any employee in the course of or arising out of employment ... occurring during the period covered by such premium so paid into the state insurance fund ....

Ohio R.C. 4123.74 provides employers with immunity from liability to claims of employees for injuries occurring in the course of or arising out of their employment, if the employer was in full compliance with the workers' compensation premiums at the time of the incident causing the injury. *Maynard v. H.A.M. Landscaping, Inc.*, 8th Dist. No. 86191, 2006-

Ohio-1724, at ¶ 17, citing *Catalano v. Lorain* (9<sup>th</sup> Dist.), 161 Ohio App.3d 841, 2005-Ohio-3298. But, “[t]he requirements for immunity are set forth in the disjunctive. Accordingly, a complying employer has immunity when either aspect of the statute is satisfied. ... Employer immunity is therefore provided when the injury occurs ‘in the course of’ employment or when the injury ‘arises out of’ employment.” *Maynard*, supra, at ¶ 20.

Here, North Ridgeville was current on its workers’ compensation premiums on June 2, 2006. Vacha was granted permanent total disability as a result of her workers’ compensation claim. Vacha argues that the City is not entitled to immunity -- even though she accepted the benefits of workers compensation -- because her injury did not "arise out of the employment." (Vacha's Br. at 12.) Without any meaningful legal analysis, Vacha erroneously concludes that the City cannot be entitled to immunity. This is wrong.

The Legislature has carefully balanced the competing interests of employers and employees in passing the immunity provision under workers compensation laws. The established law provides that employers that are in compliance with their obligation to pay workers compensation premiums "shall not be liable to respond in damages." As this Court has recognized, "employees relinquish their common law remedy and accept lower benefit levels coupled with greater assurance of recovery and employers give up their common law defenses and are protected from unlimited liability." *Blankenship v. Cincinnati Milacron Chemicals Inc.* (1982), 69 Ohio St.2d 608, 614.

The Ninth District correctly explained that there is one definition for injury and Vacha's effort to avoid the immunity provisions even after she was compensated is without merit.

[Vacha] did not argue that her workers' compensation claim had been wrongly decided, however, nor did she cite any legal authority for the underlying premise of her argument that the same injury could fall within this definition for purposes of qualifying for workers' compensation benefits but outside of it for purposes of

her employer's immunity for civil suits. There is but one definition of "injury" in R.C. Chapter 4123; if an employee's "injury" is compensable within the workers' compensation system, the employer is consequently immune from a civil action by the employee for negligently or recklessly causing the injury.

(*Vacha* at ¶ 12.) The Ninth District reasonably concluded that "if an employee's "injury" does qualify for workers' compensation coverage, that remedy is exclusive and the employer is immune from civil action liability arising out of an allegation that the employer was negligent or reckless in causing the employee's injury. That is the only reasonable interpretation of the language of R.C. 4123.74 and 4123.01(C) and any other interpretation would be unfair to the employer in the overall balance of competing interests in the workers' compensation system."

(*Id.* at ¶ 13.)

Vacha's claim is meritless.

**CROSS-APPELLANT'S PROPOSITION OF LAW III: "PSYCHOLOGICAL DAMAGES ARISING FROM SEXUAL ASSAULT DO NOT FALL UNDER THE RUBRIC OF 'INJURY' AS THAT TERM WAS DEFINED UNDER R.C. 4123.01(C) (PRE-OCT. 11, 2006)."**

**A. Vacha's Proposition III is not a matter of great general or public interest because it may only apply to this case and no others.**

In arguing against workers' compensation immunity, Vacha states that "psychological damages are not 'injuries'" under R.C. 4123.74 and concludes that the City would not be immune under the pre-Oct. 11, 2006 definition of injury. But, Vacha sustained physical and emotional injuries. Before and after the Legislature's amendment, workers' compensation immunity applies to bar these types of cases.

**1. The Legislature has already resolved this issue.**

Vacha is forced to admit that the Legislature has conclusively resolved the issue she brings for all cases that accrued after October 11, 2006. (Memo in Support at 13, fn. 3.) The Legislature has made clear that "injury" includes "psychiatric conditions [that] have arisen from

sexual conduct in which the claimant was forced by threat of physical harm to engage." R.C. 4123.01(C)(as amended by S.B. 7, 126th General Assembly, effective October 11, 2006.)

Vacha argues that this Court should exercise its discretionary jurisdiction over a proposition of law that would only affect cases that arose before October 11, 2006. This Court surely has more pressing issues than those that the Legislature has conclusively resolved and potentially only applies to a class of cases that have an accrual date of almost six years ago -- a class of cases that may not exist other than the one before this court.

**2. Vacha's proposition is wrong under the former Workers' Compensation Statute.**

Vacha argues that the statutory provision governing this case that defined "injury" did not expressly include psychiatric conditions arising from her attack. But, this Court recognized under the former (applicable) statute that Vacha would be considered injured within the meaning of the Workers' Compensation Statute. The subsequent amendment to the Statute made clear that these psychiatric conditions resulting from a rape were, in fact, injuries. But, the amendment did not change existing precedent, it merely confirmed existing precedent. Vacha's claim that Workers Compensation immunity does not apply has no merit.

Vacha relies solely on *Kerans v. Porter Paint Co.* (1991), 61 Ohio St.3d 486 to argue that she did not suffer an injury under R.C. 4123.01(C). *Kerans* does not stand for the proposition that Vacha's physical and emotional injuries do not fall within the definition of injury contained in R.C. 4123.01. In fact, *Kerans* held to the exact opposite. In *Kerans*, the Supreme Court held that **"physical injury occasioned solely by mental or emotional stress received in the course of employment is an 'injury' within the definition found in R.C. 4123.01(C)."** *Kerans* at 488, citing *Ryan v. Connor* (1986), 28 Ohio St.3d 406. That is exactly the case in the present dispute. Here, Vacha suffered physical and psychological injuries after being attacked by Ralston. In

contrast, the *Kerans* court had before it “a non-physical injury with purely psychological consequences.” *Id.* at 488.

Ohio courts have consistently recognized that Vacha was “injured” within the meaning of the Workers’ Compensation Statute. See e.g.s, *Myers v. Goodwill Industries of Akron, Inc.* (9<sup>th</sup> Dist. 1998), 130 Ohio App.3d 722, 728; *Harrison v. Franklin County Sheriff’s Dept.* (2000), 10<sup>th</sup> Dist. No. 00AP-240 at 4-5. Vacha’s claim that her psychological damages are not injuries under the former version of R.C. 4123.01(C) is meritless.

#### IV. CONCLUSION

This Court should decline jurisdiction over Plaintiff/Cross-Appellant's Cross Appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

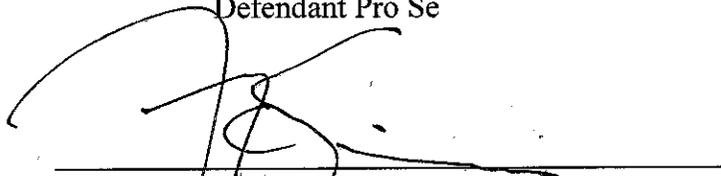
A copy of the foregoing Brief in Opposition to Cross-Appellant Lisa Vacha's Motion in Support of Jurisdiction has been sent by regular U.S. Mail, postage prepaid, on August 19, 2011 to the following:

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