ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 11-1050

LISA VACHA,	:	
Plaintiff-Appellee/Cross-Appellant	:	
vs.	:	Cross-Appeal from Lorain County App. No. 10CA009750, Ninth Judicial District of Ohio
CITY OF NORTH RIDGEVILLE, et al.,	:	
Defendants-Appellants/Cross-Appellees	:	

NOTICE OF COURT OF APPEALS' DECISION DENYING LISA VACHA'S MOTION TO CERTIFY CONFLICT

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FILED
AUG 26 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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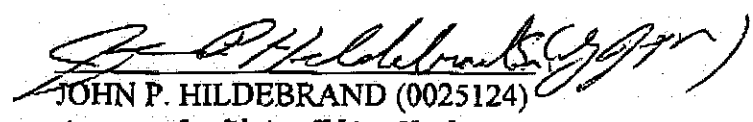
CITY OF NORTH RIDGEVILLE, et al.,	:	
Defendants-Appellants/Cross-Appellees	:	

Pursuant to Rule 4.4(B), S. Ct. Rules of Practice, Lisa Vacha hereby provides notice that her motion to certify conflict has been denied by the Ninth District Court of Appeals. The decision is appended hereto.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A true copy of the foregoing, with appended materials, has been sent via U. S. mail on this 26th day of August, 2011, to:

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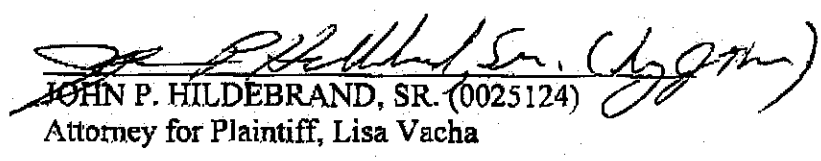

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Attorney for Plaintiff, Lisa Vacha

COURT OF APPEALS

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

FILED
LORAIN COUNTY

2011 JUL 27 P 1:24

CLERK OF COMMON PLEAS
RON NABAHOWSKI

9th APPELLATE DISTRICT

LISA VACHA

Appellee

v.

NORTH RIDGEVILLE, OHIO (CITY OF)

Appellant

C.A. No. 10CA009750

JOURNAL ENTRY

Appellee has moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on May 23, 2011, and the judgment of the 12th District Court of Appeals in *Prewitt v. Alexson Services, Inc.*, 12th Dist. No. 2007-09-218, 2008-Ohio-4306. Appellant has responded to the motion.

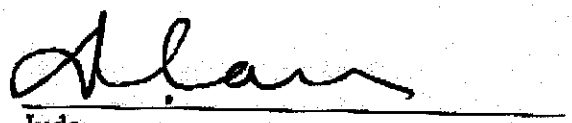
Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment *** is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" Moreover, "the asserted conflict *must* be 'upon the same question.'" *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596, quoting Section 3(B)(4), Article IV of the Ohio Constitution.

Appellee has proposed that a conflict exists between the districts on the following issue:

> "With respect to an employer's immunity under R.C. 4123.74, is a sexual assault committed by a coworker an event that occurs "in the course of or arising out of employment?"

This Court concludes that no conflict of law exists, as the *Prewitt* decision was not based on the same facts as the decision in this case, i.e., that the injured employee also sustained physical injuries for 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. The outcome of this appeal was entirely dependent upon that fact, which distinguishes the

decision in this case from the *Prewitt* decision. For that reason, there is no conflict in the judgments and the motion to certify is denied.



Judge

Concur:
Belfance, J.
Dickinson, J.