

ORIGINAL

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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

v.

CITY OF NORTH RIDGEVILLE, et al.,

Defendants-Appellants

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**DEFENDANT/APPELLANT CITY OF NORTH RIDGEVILLE'S RESPONSE TO  
APPELLEE/CROSS-APPELLANT LISA VACHA'S MOTION FOR  
RECONSIDERATION OF DECISION NOT TO ACCEPT CROSS-APPEAL**

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**I. RESPONSE TO CROSS-APPELLANT VACHA'S MOTION TO RECONSIDER THIS COURT'S REFUSAL TO ACCEPT HER CROSS APPEAL**

Disappointed with this Court declining jurisdiction over her cross-appeal, Vacha merely reargues her jurisdictional brief in the hope that saying the same thing twice leads to a different result. Supreme Court Practice Rule XI(2)(A) expressly prohibits this type of reargument:

A motion for reconsideration shall be confined strictly to the grounds urged for reconsideration [and] shall not constitute a reargument of the case ... [.]

Vacha's disagreement with the decision is not enough to warrant reconsideration. Vacha provides nothing new for this Court's consideration, no intervening case or statutory law, and no demonstration of a clear error of law or fact. It is the same request previously made and rejected.

Vacha merely disagrees with the Workers' Compensation Act's immunity provision and improperly wants to judicially override the Ohio Legislature's language and intent. Telling of how limited her dispute really is, Vacha also wants this Court to review an issue (Cross-Proposition of Law III) 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 reject Vacha's motion for reconsideration that merely rehashes its previous request.

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.

Despite Vacha's protest that she will not be able to pursue her negligent hiring claim, she fails to note that 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, Vacha wants 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. In her request for reconsideration, Vacha once again urges this Court to resolve her perceived disparity between the 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.) Similarly, Vacha's reiteration of this argument with regard to *Weimerskirch v. Coakley*, 10th Dist. 07AP-952, 2008-Ohio-1681 is without merit because it is not only based on dicta, but the case does not involve a worker who *sought and received* workers compensation benefits for her injury. There is no conflict among the districts. The Ninth District's decision is well founded.

Finally, Vacha provides no supporting argument for reconsideration with regard to her Third Proposition of law. Vacha does not demonstrate that this Court made a clear error of law, or any error at all. It is not surprising, though, that she did not make an argument because that proposition merely shows how limited her dispute really is. In her jurisdictional brief, Vacha argued to this Court that it should 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 passing request for this Court to reconsider her cross appeal is without merit.

## II. CONCLUSION

This Court should deny reconsideration.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

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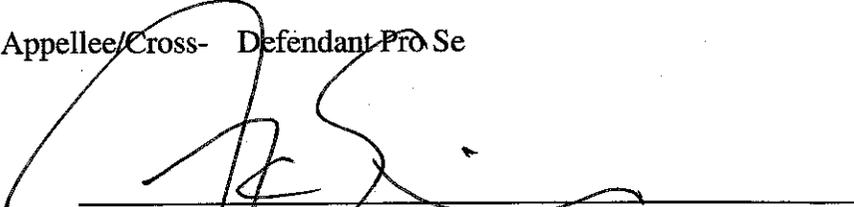
**CERTIFICATE OF SERVICE**

A copy of the foregoing Response to Motion of Appellee/Cross-Appellant Lisa Vacha for Reconsideration of Decision not to Accept Cross-Appeal was served October 26<sup>th</sup>, 2011 by depositing same in first-class United States mail, postage prepaid, to the following:

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