

**IN THE SUPREME COURT
OF THE STATE OF OHIO**

TRACY RUTHER, ADM., et al.	:	Supreme Court Case No. 2011-0899
	:	
Plaintiffs-Appellees,	:	
	:	On Appeal from the
vs.	:	12th District Court of Appeals,
	:	Warren County, Ohio
GEORGE KAISER, D.O., et al.	:	
	:	
Defendants-Appellants.	:	Court of Appeals Case No. CA201007066
	:	

**MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD AND
TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
WITH ATTACHED AFFIDAVITS OF THOMAS A. GELWICKS, ESQ.
AND JOHN D. HOLSCHUH, JR., ESQ.**

Come now John D. Holschuh, Jr., Esq., Sarah Tankersley, Esq., Brian P. O'Connor, Esq., Thomas A. Gelwicks, Esq. and the law firm of Santen & Hughes, LPA, (collectively, the "Movants") and hereby move this Court for leave to withdraw as counsel of record for the Plaintiffs-Appellees in the above-captioned matter. Movants seek leave, pursuant to S.Ct. Prac. R. 9.6(A), to participate in oral argument of this matter as amicus curiae urging affirmance. The reasons for this extraordinary Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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 Sarah Tankersley (0068856)
 Brian P. O'Connor (0086646)
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FILED
 DEC 19 2011
 CLERK OF COURT
 SUPREME COURT OF OHIO

RECEIVED
 DEC 19 2011
 CLERK OF COURT
 SUPREME COURT OF OHIO

and

Per authority of
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Attorneys for Plaintiffs-Appellees

MEMORANDUM IN SUPPORT

I. LEAVE TO WITHDRAW

This case is before the Court upon discretionary review to determine the constitutionality of R.C. 2305.113(C), the medical malpractice statute of repose, as applied to Plaintiffs-Appellees. Prior to any trial, the Court of Common Pleas held R.C. 2305.113(C) unconstitutional as applied to the Plaintiffs-Appellees because it violated Section 16, Article I of the Ohio Constitution. The Twelfth District Court of Appeals affirmed.

After the Court of Appeals opinion was released, certain irreconcilable differences have arisen between the Plaintiffs and their counsel, the Movants. Despite repeated attempts by the Movants, Plaintiffs have ceased all communication with Movants. This is detailed in the attached Affidavits of Thomas A. Gelwicks, Esq. and John D. Holschuh, Jr., Esq. In light of this, Movants believe they can no longer ethically represent the Plaintiffs in accordance with Rule 1.4 of the Ohio Rules of Professional Conduct. As such, Movants seek leave to withdraw as counsel of record for Plaintiffs in the above-captioned matter.

II. LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE

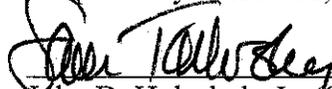
Movants also seek leave to participate in oral argument as amicus curiae urging affirmance pursuant to Rule 9.6(A) of the Rules of Practice of the Supreme Court. This Court has accepted discretionary review in this case because the issue presented involves a substantial constitutional question and is a matter of great public interest.

If this Court grants Movants leave to withdraw, Movants anticipate filing, on their own behalf and not as counsel of record, an amicus brief urging affirmance pursuant to S.Ct. Prac. R. 6.6. However, Movants fear that if they are granted leave to withdraw as counsel of record, the oral argument in this matter will not be attended by any party or counsel urging affirmance of the

decision below. Movants seek leave to present such an argument before this Court, even if it is not in a capacity as counsel of record. Movants dedicate a substantial amount of their practice to medical malpractice cases and respectfully submit that their oral argument may be beneficial to the Court with respect to the issue presented by this appeal. In addition, Movants are more than familiar with the case and successfully argued the issue in the Twelfth District Court of Appeals. In light of all of this, Movants respectfully submit that this situation is one of “the most extraordinary circumstances” contemplated by S.Ct. Prac. R. 9.6(A) such that leave should be granted for Movants to participate on their own behalf as amicus curiae at oral argument.

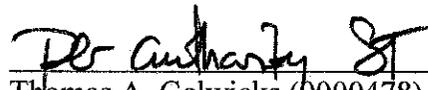
WHEREFORE, Movants respectfully request this Court grant them leave to withdraw as counsel of record for Plaintiffs-Appellees in the above-captioned matter, and that this Court grant them leave to participate in oral argument as amicus curiae and allot the Movants 15 minutes to argue for affirmance of the decision below.

Respectfully submitted,



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Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion was served by regular U.S. Mail this 16 day of December, 2011 upon:

Karen L. Clouse, Esq. (0037294)
John B. Welch, Esq. (0055337)
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Sarah Tankersley

468902.1

AFFIDAVIT OF THOMAS GELWICKS

1. My name is Thomas Gelwicks. I have been co-counsel in Warren County Case No 09-CV-74405, Tracy Ruther v. George Kaiser, DO, et al; Warren County Case No 2011-CV-79987, Tracy Ruther v. Maurice Caceres; Court of Appeals/Warren County Case No CA-2010-07-066 Ruther v. Kaiser; Supreme Court of Ohio Case No 2011-0899 Ruther v. Kaiser; and Court of Claims of Ohio No 2011-08784, Tracy Ruther, Admr. et al v. University of Cincinnati College of Medicine.
2. I have been unable to obtain any cooperation from client Tracy Ruther.
3. I have called Ms. Ruther no fewer than ten times during the past 6 weeks, at both her home and cell phone numbers. There has been no response to any of the voice mail messages.
4. I called her adult daughter, Meghan, on her cell phone asking to encourage her mother to contact me; there has been no call-back to my voice mail message.
5. I am unable to effectively assist in the representation of plaintiff Tracy Ruther due to irreconcilable differences that have arisen between us.

Further affiant saith naught.

Thomas Gelwicks

Thomas Gelwicks, Esq

STATE OF OHIO)

COUNTY OF HAMILTON) SS:

Sworn to before me and subscribed in my presence this 13th day of December,

2011



William J. Brosenne
Notary Public, State of Ohio
My Commission Expires 07-26-2014 Notary Public

My Commission Expires: 7/26/14

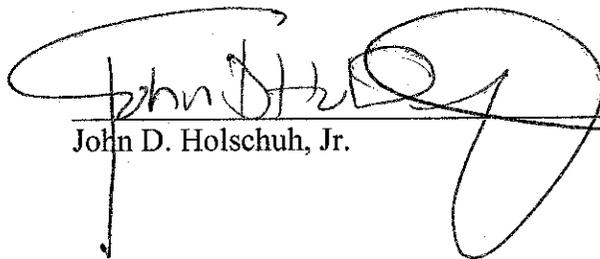
AFFIDAVIT OF JOHN D. HOLSCHUH, JR., ESQ.

1. I, John D. Holschuh, Jr., am co-counsel for Plaintiff, Tracy Ruther.

2. I have made a number of attempts to contact Plaintiff, Tracy Ruther, and have left messages asking her to return my call but to date she has not done so. Specifically, on October 24, 2011, I called Tracy Ruther and left a message asking her to contact me. I followed this with a letter dated October 26 again asking her to call me immediately upon receipt of the letter. I called Tracy Ruther again on October 31 on her cell phone and I left her a message asking her to call me again. I dialed her home number but got a fax machine. On November 8, 2011, I sent a letter to Tracy Ruther asking her to contact me immediately upon receipt of the letter. On December 12, I once again called Tracy Ruther, left yet another message asking her to contact me. Despite all of these requests, at no time has Tracy Ruther returned any of my phone calls or my requests by correspondence for her to contact me.

3. Due to Tracy Ruther's conduct and not returning any of my phone calls or requests and correspondence to discuss the merits of her case, I cannot professionally continue to represent her in this matter.

Further affiant saith naught.


 John D. Holschuh, Jr.

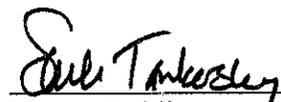
STATE OF OHIO)
)
 COUNTY OF Hamilton)

SS:

Sworn to before me and subscribed in my presence this 15 day of December, 2011.



SARAH TANKERSLEY
 Attorney at Law
 Notary Public, State of Ohio
 My Commission Has No Expiration
 State Section 147.03 O.R.C.


 Notary Public
 My Commission Expires: does not expire