

IN THE SUPREME COURT OF OHIO

LARRY HEWITT, :
 :
 Plaintiff-Appellee, : Case No. 11-2013
 :
 v. :
 :
 THE L.E. MYERS COMPANY, : On Appeal from the Cuyahoga County
 : Court of Appeals, Eighth Appellate
 Defendant-Appellant. : District (C.A. No. 10-96138)
 :
 :

**NOTICE OF VORYS, SATER, SEYMOUR AND PEASE, LLP OF WITHDRAWAL AS
 COUNSEL FOR AMICI CURIAE OHIO INSURANCE INSTITUTE, NATIONAL
 ASSOCIATION OF MUTUAL INSURANCE COMPANIES, PROPERTY CASUALTY
 INSURANCE ASSOCIATION OF AMERICA, AMERICAN INSURANCE
 ASSOCIATION, AND OHIO SELF-INSURERS ASSOCIATION**

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NOTICE OF WITHDRAWAL

Vorys, Sater, Seymour and Pease LLP (“Vorys”) and its attorneys identified below hereby give notice pursuant to S.Ct. Prac. R. 1.1 (B) of their withdrawal as counsel for Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association, and as counsel for Amicus Curiae Ohio Self-Insurers Association in connection with this action. In support of this notice, Vorys submits the following memorandum pursuant to Prof. Cond. Rule 1.12.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF NOTICE OF WITHDRAWAL

Vorys and the undersigned attorneys filed briefs on behalf of Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association, and on behalf of Amicus Curiae, Ohio Self-Insurers Association, in connection with this action.

Since filing those briefs, Vorys has become aware that James McMonagle, an attorney in Vorys' Cleveland office, was retained by the two parties to this dispute, Larry Hewitt and The L.E. Myers Co., and served as a mediator in an effort to settle their dispute in 2010, prior to the trial in this case. As a result of human error, Mr. McMonagle's prior involvement was not detected before Vorys later undertook the engagements for Amici Curiae in connection with the appeal of this action to this Court.

The briefs submitted by Vorys to this Court on behalf of the Amici Curiae identified above address the legal issue of the interpretation of R.C. 2745.01, in response to the ruling of the court of appeals published on October 20, 2011. Although no information divulged to Mr. McMonagle in his role as a mediator was ever disclosed to any other attorney at the Vorys firm, and no information or materials acquired by Mr. McMonagle was accessed or used in the preparation of the Amicus Curiae briefs authored by the Vorys firm, Vorys nevertheless believes that the prudent course is to withdraw from the continued representation of Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association and Amicus Curiae, Ohio Self-Insurers Association, in this matter.

The chronology of events related to this situation is as follows:

- June 15, 2010—Mr. McMonagle confirmed his retention to serve as a mediator in the parties' dispute.

- July 28, 2010—The mediation was convened at the Cleveland office of the Vorys firm. The mediation failed and thereafter Mr. McMonagle closed his file and sent all documents relating to the matter to an off-site storage facility.
- September 2010—Trial commenced in the Common Pleas Court of Cuyahoga County, Ohio.
- December 7, 2010— Appellant The L.E. Myers Co. filed a notice of appeal to the Eighth District Court of Appeals.
- October 20, 2011—The Eighth District Court of Appeals rendered its decision, affirming the judgment of the trial court.
- December 2, 2011—Vorys, on behalf of Amicus Curiae, Ohio Self-Insurers Association, and attorneys from two other firms, on behalf of Amici Curiae Ohio Chamber of Commerce and Ohio Chapter of the National Federation of Independent Business, filed a memorandum in support of Appellant’s memorandum in support of claimed jurisdiction, seeking review by this Court.
- February 22, 2012—This Court accepted jurisdiction of this appeal.
- May 14, 2012— Vorys, on behalf of Amicus Curiae, Ohio Self-Insurers Association, and attorneys from two other firms, on behalf of Amici Curiae Ohio Chamber of Commerce and Ohio Chapter of the National Federation of Independent Business, filed an Amicus Curiae brief in support of Appellant.
- May 14, 2012— Vorys, on behalf of Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association, filed an Amici Curiae brief in support of Appellant.
- May 18, 2012—Counsel for Appellee notified Vorys attorneys by email of his objection to Vorys’ participation as counsel for the Amici Curiae, on the basis of Mr. McMonagle’s service as a mediator two years earlier. This was the first notice Vorys received of such objection. Vorys contacted Appellee’s counsel and advised that the law firm would begin an immediate review of the circumstances surrounding counsel’s objection.
- May 18-21, 2012—Vorys undertook a review of its internal client engagement records and interviewed Mr. McMonagle and the Vorys attorneys involved in the Amicus engagements. It was discovered that due to human error, information about Mr. McMonagle’s prior service as a mediator was not communicated to the Vorys attorneys who undertook the Amicus Curiae engagements.
- May 22 and 23, 2012—Vorys initiated further discussions with Appellee’s counsel concerning Mr. McMonagle’s engagement as a mediator and the concerns previously expressed by Appellee’s counsel. Appellee’s counsel was informed

that (1) there had been no communication between Mr. McMonagle, in Vorys' Cleveland office, and the attorneys involved in the preparation of the Amicus briefs, in Vorys' Columbus office, about Mr. McMonagle's prior service as a mediator and (2) Mr. McMonagle and the attorneys involved in the preparation of the Amicus Briefs all affirmed that no information or documents about the mediation or communications in connection with the mediation was disclosed or accessed by the attorneys involved in the preparation of the Amicus Briefs.

- May 24-25, 2012—Vorys conducted research and analysis of its obligations to the parties, the Amicus Curiae clients, the Court, the public and the legal profession under the Ohio Rules of Professional Conduct and applicable law.
- May 25, 2012—Vorys concluded that the prudent course under the circumstances is to withdraw from the continued representation of Amici Curiae Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association and Amicus Curiae, Ohio Self-Insurers Association, and notified said clients of its decision to file the within Notice of Withdrawal and also notified counsel for Appellee of that decision.

Prof. Cond. Rule. 1.12 prohibits a law firm from knowingly accepting and continuing the representation of anyone in connection with a matter in which one of the firm's lawyers served as a mediator, unless that lawyer is timely screened from the representation and notice and consent procedures are implemented. Here, the Vorys attorneys who undertook the within Amicus Curiae engagements were not aware of Mr. McMonagle's service as a mediator in the parties' dispute prior to the acceptance of the Amicus Curiae engagements and submission of the Amicus Curiae briefs, no information about the mediation or communications during the mediation was disclosed to them, and the Amicus Curiae briefs address only legal issues that appear as a matter of public record in the opinion of the Eighth District Court of Appeals. Nonetheless, to avoid even the appearance of impropriety, Vorys has concluded that the prudent course is to discontinue its representation of Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association and Amicus Curiae, Ohio Self-Insurers Association, in this matter.

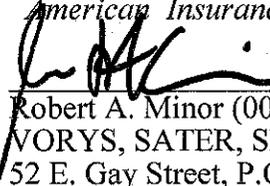
Vorys will assist Amici Curiae, Ohio Insurance Institute, National Association of Mutual Insurance Companies, Property Casualty Insurance Association of America, and American Insurance Association and Amicus Curiae, Ohio Self-Insurers Association, with the transition of its engagements to other counsel.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Notice of Withdrawal of Vorys, Sater, Seymour and Pease LLP* was served by U.S. mail this 29th day of May, 2012, on the following:

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