

ORIGINAL

No. 13-1405

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IN THE  
**SUPREME COURT OF OHIO**

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DUANE HOYLE,  
*Plaintiff-Appellee*

-and-

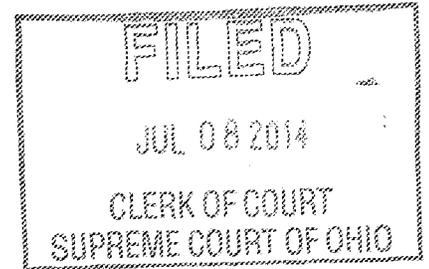
THE CINCINNATI INSURANCE COMPANY  
*Intervening Plaintiff-Appellant*

v.

DTJ ENTERPRISES, INC., et al.,  
*Defendants-Appellees.*

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JURISDICTIONAL APPEAL FROM THE  
COURT OF APPEALS, NINTH APPELLATE DISTRICT  
SUMMIT COUNTY, OHIO  
CASE NOS. CA-26579 & CA-26587



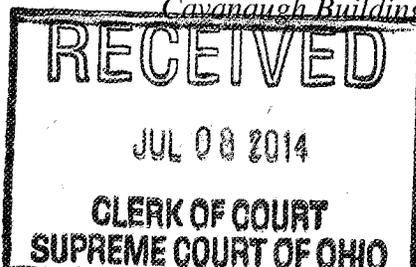
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**APPELLEES DTJ ENTERPRISES, INC., AND  
CAVANAUGH BUILDING CORPORATION  
BRIEF IN OPPOSITION TO APPELLANT'S  
POST-ORAL ARGUMENT SUPPLEMENTAL BRIEF**

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Mark W. Bernlohr (0038640)  
Jackson Kelly PLLC  
17 South Main Street, 1<sup>st</sup> Floor  
Akron, OH 44308  
tele: 330.252.9060 / fax: 330.252.9078  
mwbernlohr@jacksonkelly.com  
*Counsel for Defendants-Appellees,  
DTJ Enterprises, Inc. and  
Cavanaugh Building Corporation*

David G. Utley (0038967)  
Davis & Young, LPA  
One Cascade Plaza  
Suite 800  
Akron, OH 44308  
tele: 330-376.1717 / fax: 330.376-1797  
dutley@davisyoung.com  
*Counsel for Defendants-Appellees,  
DTJ Enterprises, Inc. and  
Cavanaugh Building Corporation*



Tod T. Morrow (0042367)  
Morrow & Meyer, LLC  
6269 Frank Avenue, NW  
North Canton, OH 44720  
tele: 330.433.6000 / fax: 330.433.6993  
tmorrow@morrowmeyer.com  
*Counsel for Defendants-Appellees,  
DTJ Enterprises, Inc. and  
Cavanaugh Building Corporation*

Timothy J. Fitzgerald (0042734)  
(Counsel of Record)  
Koehler Neal, LLC  
3330 Erieview Tower  
1301 East Ninth Street  
Cleveland, OH 44114  
tele: 216.539.9370 / fax: 216.916.4369  
tfitzgerald@koehlerneal.com  
*Counsel for Intervening Plaintiff-Appellant  
The Cincinnati Insurance Company*

Stephen J. Chuparkoff (0039141)  
50 South Main Street, Suite 615  
Akron, OH 44308  
tele: 330.376.1600 / fax 330.376.3337  
stephen\_chuparkoff@staffdefense.com  
*Counsel for Intervening Plaintiff-Appellant  
The Cincinnati Insurance Company*

Michael M. Neltner (0063555)  
P.O. Box 145496  
Cincinnati, OH 45250-5496  
tele: 513.603.5082 / fax: 513.870.2900  
michael\_neltner@staffdefense.com  
*Counsel for Intervening Plaintiff-Appellant  
The Cincinnati Insurance Company*

Paul W. Flowers (0046625)  
(Counsel of Record)  
Paul W. Flowers Co., LPA  
Terminal Tower, 35th Floor  
50 Public Square  
Cleveland, OH 44113  
tele: 216.344.9393 / fax 216.344.9395  
pwf@pwfco.com  
*Counsel for Plaintiff-Appellee,  
Duane Hoyle*

David R. Grant (0065436)  
Plevin & Gallucci  
55 Public Square, Suite 2222  
Cleveland, OH 44113  
tele: 216.861.0804 / fax: 216.861.5322  
dgrant@pglawyer.com  
*Counsel for Plaintiff-Appellee Duane Hoyle*

T. Andrew Vollmar (0064033)  
Freund, Freeze & Arnold  
Fifth Third Center  
1 South Main Street, Suite 1800  
Dayton, OH 45402-2017  
tele: 937.222.2424 / fax 937.222.5369  
avollmar@fflaw.com  
*Counsel for Amicus Curiae Ohio  
Association of Civil Trial Attorneys*

## BRIEF IN OPPOSITION

The Appellant, The Cincinnati Insurance Company (“CIC”), has filed a document entitled “Post-Oral Argument Supplemental Material,” seeking to persuade this Court of the following:

1. That the undersigned counsel, Mark Bernlohr, misspoke during the oral argument and incorrectly indicated to this Court that Appellees DTJ Enterprises, Inc./Cavanaugh Building Corporation (“DTJ/Cavanaugh”) did not receive a refund from CIC for the coverage at issue in this case; and
2. That the fact that CIC retroactively issued a premium rate adjustment for the period of time from March 23, 2010 to March 31, 2010 is somehow relevant to the determination of the merits of this case.

Not only does S.Ct.Prac.R. 17.09(A) expressly prohibit the filing of such “material,” but CIC is flat out wrong on both points.

First, as shown by the Affidavit of Michael B. Cavanaugh, former President of DTJ/Cavanaugh (which Affidavit is attached hereto as Exhibit A and incorporated herein) the Plaintiff was injured on March 24, 2008. DTJ/Cavanaugh received no refund or credit for premiums paid during this time period, and coverage was not in any way affected by CIC’s allegation that CIC issued a refund for premiums paid for the period March 24, 2010 through March 31, 2010. Mark Bernlohr did not misspeak and was 100% accurate with respect to the issue of whether DTJ/Cavanaugh received a refund or credit against the premium paid for the coverage period at issue in this case.

Secondly, CIC’s position that its alleged issuance of a retroactive reduction in the premium rate charged to DTJ/Cavanaugh following this Court’s decision in the *Kaminski and Stetter* cases issued March 23, 2010 for the period of time from March 23, 2010 to March 31, 2010 somehow has a bearing on this case is absolutely without merit. Again, the period of time

at issue in this case is for the period of time in which the injury occurred – March 24, 2008. At that time, the alleged intentional tort was covered by DTJ/Cavanaugh’s intentional act coverage which was in effect at that time. The fact that CIC allegedly issued a premium reduction for the time period following the *Kaminski and Stetter* decision is of no consequence or effect.

Respectfully submitted,

JACKSON KELLY PLLC



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Mark W. Bernlohr (0038640)  
17 South Main Street, 1<sup>st</sup> Floor  
Akron, OH 44308  
330-252-9060 Telephone  
330-252-9078 Facsimile  
mwberlohr@jacksonkelly.com

*Counsel for Defendants-Appellees,  
DTJ Enterprises, Inc. and Cavanaugh  
Building Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Brief in Opposition has been transmitted via e-mail pursuant to S.Ct.Prac.R. 3.11(B)(1) this 7 day of July 2014 to the following:

Timothy J. Fitzgerald (0042734)  
(Counsel of Record)  
Koehler Neal, LLC  
3330 Erieview Tower  
1301 East Ninth Street  
Cleveland, OH 44114  
tele: 216.539.9370 / fax: 216.916.4369  
tfitzgerald@koehlerneal.com  
*Counsel for Intervening Plaintiff-Appellant  
The Cincinnati Insurance Company*

Stephen J. Chuparkoff (0039141)  
50 South Main Street, Suite 615  
Akron, OH 44308  
tele: 330.376.1600 / fax 330.376.3337  
stephen\_chuparkoff@staffdefense.com  
*Counsel for Intervening Plaintiff-Appellant  
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Michael M. Neltner (0063555)  
P.O. Box 145496  
Cincinnati, OH 45250-5496  
tele: 513.603.5082 / fax: 513.870.2900  
michael\_neltner@staffdefense.com  
*Counsel for Intervening Plaintiff-Appellant  
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Paul W. Flowers (0046625)  
(Counsel of Record)  
Paul W. Flowers Co., LPA  
Terminal Tower, 35th Floor  
50 Public Square  
Cleveland, OH 44113  
tele: 216.344.9393 / fax 216.344.9395  
pwf@pwfco.com  
*Counsel for Plaintiff-Appellee,  
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David R. Grant (0065436)  
Plevin & Gallucci  
55 Public Square, Suite 2222  
Cleveland, OH 44113  
tele: 216.861.0804 / fax: 216.861.5322  
dgrant@pglawyer.com  
*Counsel for Plaintiff-Appellee Duane Hoyle*

T. Andrew Vollmar(0064033)  
Freund, Freeze & Arnold  
Fifth Third Center  
1 South Main Street, Suite 1800  
Dayton, OH 45402-2017  
tele: 937.222.2424 / fax 937.222.5369  
avollmar@fflaw.com  
*Counsel for Amicus Curiae Ohio  
Association of Civil Trial Attorneys*

JACKSON KELLY PLLC



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Mark W. Bernlohr (0038640)



2. That I am the former President of DTJ Enterprises, Inc. and Cavanaugh Building Corporation ("DTJ/Cavanaugh"), and was President of DTJ/Cavanaugh on or about March 24, 2008.

3. That I am familiar with the business records of DTJ/Cavanaugh, and specifically the Cincinnati Insurance Policy No. CPP 081 75 12 and the intentional act coverage (Policy's Employers Liability Coverage endorsement form GA 106 014 0196) purchased by DTJ/Cavanaugh for the period of time covering the incident which occurred on or about March 24, 2008, when Duane Hoyle was unfortunately injured. I have also reviewed the insurance audits performed by CIC.

4. That the alleged rate adjustment by CIC for the period of time March 23, 2010 to March 31, 2010 did not affect the covered period of time on March 24, 2008, when the incident occurred and a refund was not issued for that covered period of time; and DTJ/Cavanaugh were instead covered by the intentional act policy purchased by DTJ/Cavanaugh, referred to above in paragraph 3.

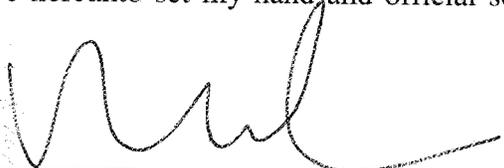
FURTHER AFFIANT SAITH NAUGHT.

7/2/14  
Date

  
MICHAEL B. CAVANAUGH

Before me, a Notary Public in and for the above County and State, personally appeared MICHAEL B. CAVANAUGH, who acknowledged that he did sign the foregoing Affidavit, and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Akron, Ohio, this 2 day of July 2014.

  
Notary Public  
MARGARET W. BROWN, ATT  
NO EXPIRATION