

ORIGINAL

IN THE SUPREME COURT OF OHIO

BOONE COLEMAN
CONSTRUCTION CO., INC.,

Plaintiff-Appellee,

vs.

VILLAGE OF PIKETON, OHIO

Defendant-Appellant.

Case No. 2014-0978

On Appeal from the Pike
County Court of Appeals,
Fourth Appellate District

Court of Appeals
No. 13CA000836

REPLY BRIEF OF

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STATEMENT OF THE CASE

This litigation was initiated by the Appellee, Boone Coleman Construction, Inc., on January 12, 2010, when it filed its complaint against the Appellant, Village of Piketon, in the Pike County Court of Common Pleas, asking for a judgment against the Appellant for the balance due under the parties' contract of July 27, 2007. The Appellant timely filed its answer denying the merits of the Appellees' claims and also filed a counterclaim asking for a judgment in its favor and against the Appellant based on a liquidated damages clause contained in the contract which forms the subject matter of the litigation. After over two years of depositions, hearings and written discovery the Appellant filed its motion for summary judgment on July 2, 2012. Appellee responded to the motion and on December 4, 2012, the trial court granted the Appellant a judgment in its favor and against the Appellee in the amount of \$130,423 plus prejudgment interest. The award was calculated by multiplying the contract per diem of \$700 by 397, this being the number of days following the deadline for the completion of the contract before the work contemplated by the contract was completed. The resulting product of this calculation, \$277,990, was reduced by the amount left unpaid the Appellee under the contract which was \$147,477.

The Appellee timely appealed the trial court's order to the Fourth District Court of Appeals, Pike County. Following the submission of appellate briefs and oral argument, the Fourth District issued its decision on May 22, 2014. In that decision the court of appeals extensively reviewed the record in the case and the legal arguments of counsel. After this review it concluded that the \$700 per day damage clause in the parties' contract was a penalty and unenforceable. Thus the case was remanded to the Pike County Court of Common Pleas for further proceedings.

Appellant has now prosecuted this appeal from the Fourth District's decision and the matter now comes before this Court for a decision on the merits.

STATEMENT OF FACTS

This litigation involves a construction project in Pike County, Ohio, at the intersection of Market Street, U.S. 23, and Pike Hill Road. Market Street intersects with U.S. 23 from the west and Pike Hill Road intersects U.S. 23 from the east. This intersection lies on the eastern boundary of the Village of Piketon, Ohio. The principal parties to the contract for this project are the Village of Piketon and Boone Coleman Construction Company. The Village used a company by the name of Woolpert, Inc. as its representative on the job.

The form contract documents bear the title *Pike Hill Roadway and Related Improvements*. (Emphasis added.) As the title to the contract suggests the work contemplated by the parties actually involved two separate projects: 1) the repair of the slippage of Pike Hill Road that was occurring immediately to the east of U.S. 23, rebuilding a retaining wall for that road and repaving the road, and 2) the installation of a traffic light at the intersection of U.S. 23, Pike Hill Road and Market Street. (Spencer, p. 50¹) According to the bid submitted by the Appellee, the road work was to cost \$559,860, and the light was to cost \$123,440, for a total price of \$683,300. Thus the traffic light represented 18% of the project cost.

The work on Pike Hill Road was quite extensive. As this road approaches U.S. 23 from the east it descends steeply from the top of a hill down to the highway. At the bottom of the hill traffic is required to cross over a set of railroad tracks that runs parallel to U.S. 23 on the east side of that road before entering the intersection with U.S. 23. Over the years the road had deteriorated from slippage resulting in cracks and indentations. The project called for the

¹ Mayor Billy Spencer, the current mayor of the Village of Piketon and also the mayor during the project.

complete excavation of that part of the road descending the hill and east of the railroad tracks, the construction of a substantial retaining wall for the road, and a re-excavation and paving of the road. Because of the extensive amount of work required for the project, Pike Hill Road had to be closed and traffic that would normally have used the road had to either take a 3 to 4 mile detour to avoid the construction, or take the temporary route that was established through the Pike County Fairgrounds that is situate immediately south of the intersection. (Spencer, p. 28)

The installation of a traffic light at this intersection had been something contemplated by the Village for 20 years. (Spencer, p. 20) Prior to the light becoming operational in July of 2009, this intersection had never had a light. (Spencer, p. 19) Traffic entering or crossing U.S 23 from either Market Street (on the west) or Pike Hill Road (on the east) was controlled by stop signs. According to Mayor Spencer, obtaining funding from the Ohio Public Works Commission (OPWC) for only a traffic light was difficult to achieve (Spencer, p. 22) and the project only became possible when the Village obtained funding for repair of the deteriorating Pike Hill Road. (Spencer, p. 20)

The parties entered into their contract on July 27, 2007, with a Notice to Proceed that directed the Plaintiff to commence work on July 30, 2007. The contract called for completion of all of the work within 120 days of its commencement. The project was confronted with delays from the inception. First, the Village had trouble getting easements from adjoining property owners that were required for the road work (Spencer, p. 53-54). Second, the Ohio Department of Transportation (ODOT) directed that the original traffic light plans be modified in October of 2007, and the final plans were not submitted until November 20, 2007. (Herman, p. 46. See also time line, p. 1 of Herman Exhibit 2²). Third, there was a six week delay in getting the steel for

² Rick Herman, an employee of Woolpert, Inc. at the time his deposition was taken.

the retaining wall. (Spencer, 113-115) As a result the parties agreed to extend the time for completing the project to May 31, 2008. (Herman, p. 17)

There is no question as to whether the majority of the work under the contract, the roadway excavation and improvement, was completed on time. By May 31, 2008, the intersection was open to traffic to the same extent that it had been prior to the start of the road excavation. (Spencer, p. 30, 55, and 65) In addition, Coleman was given a punch list of things that needed to be done to the roadway in August, 2009, which punch list was completed within a week. (Haas, p. 17-19³)

The traffic light was not made operational until July 7, 2009. While the Appellant in its brief chooses to repeatedly characterizes the delay in completing the light as “inexcusable”, in reality the delay was the result of factors beyond the Appellee’s control. First, is the fact that ODOT delayed in getting the final drawings and specs for the light as noted above. Second, was the fact that the Appellee’s subcontractor that was to install the light, WG Fairfield of Lancaster, Ohio, filed for bankruptcy in April 2008, less than two months before the deadline for the project to be completed. (McClennen Affidavit, Appellee’s Memorandum Contract to Motion for Summary Judgment) Third, steel shortages existing at the time in the United States caused delays in getting materials needed to erect the light Poles. (McClennen, p. 136) Finally, as explained below, was the failure of the Village to negotiate and enter into a contract with the Norfolk Southern Railway Company (N&S) that would control the synchronization of the railway crossing caution lights with the contemplated traffic signal.

The project plans called for the light to be synchronized with the railroad crossing signal that sets at the base of Pike Hill Road immediately to the east of the intersection so that vehicles were not given a green light to go east onto Pike Hill Road when a train approaches. (Jordan, p.

³ Kay Haas, construction inspector for the Village’s project representative, Woolpert.

14⁴). Woolpert's project engineer for the traffic light, Barbara Jordan, testified that the parties knew of the necessity of the railroad tie in from the beginning. (Jordan, p. 12) Everyone, including Mayor Spencer, agreed in their testimony that the tie in was an integral and necessary part to the new traffic light becoming operational. (Spencer, p. 62, 89) In addition, the signal would not be approved by ODOT without the tie in being completed. (Herman, p. 36-37)

Woolpert initially notified the N&S of the project in the Spring of 2007. (Herman, p. 37) At that point Woolpert needed to submit drawings for the project for the railroad's approval and then await its response. (Herman, p. 38-39) Woolpert has admitted that it was not Appellee's responsibility to deal with the railroad in regards to drawing and design issues for the interconnect. Nor was it Appellee's responsibility to deal with "insurance and signatures and official communications." (Herman, p. 39) The Engineer on the project, Woolpert, was responsible for the former, and the Village was responsible for the latter. (Herman, p. 39) Herman describes the N&S as being "not very responsive" as to getting the drawings approved. (Herman, p. 40) In addition, the railroad made insurance demands that caused some delay, although these demands were eventually withdrawn. (Herman, p. 40-41)

Barbara Jordan was principally involved in the discussions with the N&S regarding the design issues. (Jordan, p. 20) During her email exchanges with Rick Ray of the N&S regarding boring under the tracks to connect the beacon signal, she learned for the first time that a contract would be needed between the Village and the railroad for the tie in. (Jordan, p. 22, see Jordan Exhibit 10) These email exchanges took place in the fall of 2007 (Jordan, p. 24) which means the necessity of a contract between the Village and the railroad was not a requirement known by the Village, Woolpert or Coleman when the contracts were signed in July of 2007. In an email to Ms. Jordan dated May 2, 2008, in which the railroad for the first time forwarded the plans for the

⁴ Barbara Jordan, an employee of Woolpert, Inc. during the project.

interconnect, Rick Ray told Ms. Jordan that "[a]n agreement for the interconnect will be forwarded to you when it has been initiated by our contracts personnel." (Jordan, p. 25, Jordan Exhibit 11)

In reviewing the emails that make up Jordan Exhibit 11, the Court will see that the next exchange between Woolpert (Jordan) and the railroad does not take place until February 20, 2009, when Ms. Jordan informs Rick Ray that she still has not received the promised agreement and asks when it will be forthcoming. Looking at the Kay Haas' and Rich Herman time line (Herman Exhibit 2, at p. 4) there is an entry dated February 24, 2009, indicating that the railroad needed the Village's address. The next entry, dated March 4, 2009, indicates that the railroad could not give a timeline for the tie in because the Village had not signed the agreement. These two emails would lead to the conclusion that the Village was given the agreement for signing sometime between February 24, 2009, and March 4, 2009. An email dated March 12, 2009, from Kay Haas to the Village Administrator (part of supporting documents attached to Haas Exhibit 2A) reveals that as of March 12, 2009, the Village had some issues they had asked Ms. Haas to resolve for them regarding the contents of the agreement. Ms. Haas per this email advised the Village to sign the agreement, which the Village finally did on March 20, 2009. (Spencer, p. 104, Exhibit 13) After inspection by ODOT the light became operational on July 7, 2009.

The Appellee submitted its final bill for the work project in the amount of \$144,477. Appellant refused to pay the bill solely on the basis that the light had not been timely installed. At no time either prior to or during this litigation has the Village complained about defective material or workmanship. Its refusal to pay is based solely on its claim for the \$700 a day per diem set forth in the contract.

ARGUMENT

Proposition of Law. When making a determination as to whether a stipulated damages provision in a contract is fair compensation for the aggrieved party or an unlawful penalty, a court must look at both the circumstances existing at the time the contract was entered into and look at the contract as a whole, including the application of the liquidated damages clause to the facts and circumstances of the contract's performance.

The Appellant in this case asks this Court to adopt a blanket rule in every case involving a challenge to a liquidated damages provision that would require the judiciary to take a snapshot of the parties' circumstances at the time a contract is entered into and from that myopic perspective determine whether a stipulated damages clause is designed to provide an aggrieved party to the contract fair compensation or whether it is designed to be a penalty for nonperformance. To so limit courts that are faced with challenges to liquidated damage provisions would be contrary to the case law in this area and would ensure unjust results in these cases.

This Court has clearly articulated the requirements of an enforceable liquidated damages provision.

Where the parties have agreed on the amount of damages, ascertained by estimation and adjustment, and have expressed this agreement in clear and unambiguous terms, the amount so fixed should be treated as liquidated damages and not as a penalty, if the damages would be (1) uncertain as to the amount and difficult of proof, and if (2) the contract as a whole is not so manifestly unconscionable, unreasonable, and disproportionate amount as to justify the conclusion that it does not express the true intention of the parties, and if (3) the contract is consistent with the conclusion that it was the intention of the parties that damages in the amount stated should follow the breach thereof. *Samson v. Honeywell, Inc*, 12 Ohio St.3d 27 (1984) Syllabus citing *Jones v. Stevens*, 112 Ohio St. 43 (1925)

Nowhere in this Court's opinion in *Samson* does it endorse an approach to these cases such as is being recommended by the Appellant. Indeed certain principles of law enunciated within the opinion clearly run contrary to the proposition being advocated by the Village of Piketon. First

and foremost is the fact that the objective for contractual damages is to provide the aggrieved party “with reasonable compensation for actual damages”. *Samson*, p. 28. In most instances *actual damages* will not be discernible until the contract is breached. Second is that a determination whether a damages provision is a penalty will “depend upon the operative facts and circumstances surrounding each particular case.” *Samson*, p. 28-29 This directive is not in any way restricted to a consideration of only the facts and circumstances preceding the performance of the contract.

Many of the Ohio cases since *Samson* that have cited that case as authority for their result have declined to only apply that decision’s tests prospectively. In *Cad Cam, Inc v. Underwood*, 36 Ohio App. 3d 90 (1987) the court of appeals for the Second District, Montgomery County, struck down a damages clause in an employment contract that required an employee to pay to the employer half a year’s salary if the employee terminated his employment within a specified period of time and went to work for a competitor. In reaching the determination that this damages clause was a penalty the Court of Appeals found that the record revealed that any actual damage that the employer would experience from the employee working for a competitor would be negligible. *Cad Cam*, p. 94. This conclusion was reached by the court after looking at the fact that after the employment contract was signed the actual training the employee received had been minimal and the fact that the skills that the employee had been taught during his short tenure with Cad Cam were not that sophisticated. *Cad Cam*, p. 93-94

Since there is evidence in the record from which the trial court could properly have concluded that any actual damages likely to be sustained by Cad Cam as a result of Underwood's having gone to work for a competitor were negligible, the specification in Section 8 of the contract of one half of Underwood's annual compensation, or \$9,500, as the damages for his breach would seem to be unrealistically out of proportion to the actual damages likely to be sustained by Cad Cam. *Cad Cam*, p. 93-94

Thus, the court declined to accept Cad Cam's contention (p. 92 of the decision) that the damages clause was designed to compensate the company for the anticipated cost of training. Rather it looked to the actual length and substance of the training to arrive at the conclusion that the claimed damage was negligible and, therefore, the stipulated damages were in reality designed to punish the employee for leaving.

In Lakewood Creative Costumes v. Sharp, 31 Ohio App. 3d 116 (1986) the Eighth District Court of Appeals, Cuyahoga County, struck down a liquidated damages clause in a costume rental contract that required the individual renting the costume to pay one half of the daily rental rate for each day that the costume was not timely returned. The customer in this case forgot that she still had the costume and was 79 days late in getting it returned. In holding that the per diem was a penalty the court of appeals considered the fact that the owner of the costume had testified that he had only one customer to whom the costume could have been rented had it been returned on time. Based on this fact the court concluded that the liquidate damage clause was a penalty because "the sum stipulated is not reasonably proportionate to the loss sustained." Lakewood, p. 117. As in the Cad Cam case, *supra*, the court looked at the record to determine the practical application of the damages clause at issue and found that if enforced the clause would require the customer to pay forty times the owner's "actual damages".

In Harmon v. Haehn, 7th Dist. No. 10MA177, 2011-Ohio-6449, the court of appeals for the Seventh District, Mahoning County, found that a stipulated amount of \$250,000 to be paid by the lessor to the lessee in a written lease in the event of the lessor's early termination of the lease was a penalty. It arrived at this determination by reviewing the facts and circumstances that occurred during the performance of the lease. It looked at the fact that the lessee never took possession of the leased property, made only minimal improvements to the property, had

neglected to make some of the lease payment and that the actual damages sustained by the lessee were limited to \$25,166. *Harmon*, ¶53 Of further concern to this court was the fact that the stipulated damages of \$250,000 was almost one third of the sale price obtained by the lessor for the leased property by the lessor, the sale being the lessor's reason for the termination of the lease.

In upholding a liquidated damages clause calling for the parents of a student to pay a full year's tuition because they did not withdraw their child before a set deadline, this Court in *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376 (1993) looked in part at the fact that the stipulated damages were not "disproportionate to the actual damages suffered by Lake Ridge." *Lake Ridge*, p. 383. The actual damages were testified to by the school's headmaster in the case who explained that the school needed to finalize its budget by the deadline missed by the parents, which budget assumed the enrollment of the student and the payment of the tuition.

Giving courts that are faced with challenges to liquidated damages clauses the license to look at the whole picture makes abundant sense. Indeed, courts should be encouraged to look at all of the facts and circumstances surrounding both the drafting and negotiating of the damages clause, and its practical application once the contract is being performed. It does not take a great deal of imagination to foresee instances where unknown damages or events that take place during the performance of a contract render the rigid application of the stipulated damage provision unjust for either or both the obligor or the obligee, (e.g. the result of enforcing the damages clause in *Samson*) If it is the goal of our courts to award reasonable compensation for actual damages then it is difficult to conceive how this goal can be attained if, as is suggested by the Appellant herein, we ignore evidence of actual damages.

It is submitted that if consideration is given to all the facts and circumstances of this case, the \$700 per diem that is contained in the contract of the parties to this litigation is clearly a penalty. First and foremost is the fact that the actual damage sustained by the Village as a result of the delay was either nonexistent, as admitted by Mayor Spencer in his deposition (30-31), or was wholly out of proportion to the award issued by the trial court to the Village. Except during the time that the Pike Hill Road construction was underway, the traveling public experienced no inconvenience as a result of the delay in putting the light in operation. They used the intersection without interruption as it had been used since it was created years ago. And even during the time that Pike Hill Road was closed while work was going on, the only traffic that was interrupted was that traffic using Pike Hill Road to enter and exit U.S. 23. Traffic going north and south on U.S. 23 and traffic entering this highway from Market Street on the west experienced no interruption in their use of the intersection. Despite the negligible impact experienced by the Village as a result of the delay in putting the traffic light in operation, the Village is to receive an award equal to more than twice the actual cost of the light. Which is to say that the Appellant is not only getting the light for free, but it is also receiving an additional \$130,423.00 plus prejudgment interest.

Second is the fact that the Appellant is to receive this windfall from the Appellee despite the fact that the delay in turning the light on was in part the result of the Appellant not timely negotiating and entering into a contract with the Norfolk & Southern Company for the tie in to the railroad's crossing control systems. As noted in the Appellee's statement of facts the Village's representative on the project failed to get a contract from the railroad until February 2009. The contract was not executed until March 2009. Appellant has, and will argue, that the Appellee had a contractual responsibility to coordinate the tie in of the railroad under the

contract's Supplemental Conditions. Although the parties have a differing interpretation of what the word "coordinate" means, everyone agrees that Appellee had no authority to negotiate or sign a contract with the railroad for the Village. (See Clemmons⁵, p. 41, Herman, p. 439) Clearly, then, the Village's failure to get the required tie-in contract signed places some of the blame for the delay in making the traffic light operational on it. Yet despite this fact the Village is shamelessly claiming a right to be paid a substantial amount of money for the delay.

The Appellant argues that striking down the per diem incorporated in the parties' contract will encourage contractors to drag their feet in finishing public projects because they will be rewarded for being dilatory. This assertion naïvely assumes that contractors have no incentive to timely finish their projects. It ignores the fact that contractors on public projects (or any construction project for that matter) have a significant investment of their financial resources in equipment, material and labor to get the project finished. Until the project is finished they know they cannot expect to get paid for their work. Delay in completion means delay in payment. In addition, if one were to follow the Appellant's logic it could then reasonably be argued that enforcement of per diem awards is an incentive for project owners to interfere with the completion of the projects so they can assess the per diem amount and thereby reduce the project's costs. In reality, however, both sides have every incentive to finish the work contemplated under a contract and to reach a resolution of this case based on any other assumption would be erroneous.

Appellant also expresses the fear in its brief that if the holding of the Fourth District in this case is allowed to stand public owners will lose confidence in getting projects completed in a timely manner. Significantly, the Appellant does not express concern for public owners being compensated for actual costs resulting from delays. Rather the argument focuses public owners

⁵ Rhonda Clemmons, Village Administrator for Piketon, Ohio.

having a leverage to force timely completion, which argument is a tacit if not express admission on Appellant's part that the per diem is not designed to compensate owners for damages, but rather to punish contractors for being tardy. And as all of the cases in this area note punitive damages are not to be awarded in contract cases. *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 381 (1993). Finally, it should be noted that the Fourth District's opinion is not, nor was it intended to be, a general denunciation of all per diem clauses in public contracts. Rather, that court looked at the facts and circumstances of this case and determined that the award rendered by the trial court for twice the amount of the cost of the traffic light was "manifestly inequitable and unrealistic."

Even if we take the approach advocated by the Appellant and limit our review of this liquidated damage clause based solely on the circumstances known by the parties when the contract was executed, the provision fails the *Samson* tests. First is the fact that there is no evidence in the record that the parties jointly, or the Village by itself, made a conscious effort to "consider, estimate or adjust the damages that might reasonably flow from the negligent breach of the agreement." *Samson v. Honeywell*, *supra* p. 29. According to the statements that have been made by Appellant's counsel in his brief the Village used a form contract with a per diem figure suggested by ODOT as opposed to making its own estimate as to its probable damages that would result from a delay. (Appellant's brief p. 22, 26) Second, as further evidence that no conscious effort was made to calculate actual damages by the Village is the fact that the per diem is a rigid assessment imposed on the Appellee regardless of whether either or both phases of the project (the hill renovation and light installation) are timely completed. It cannot reasonably be argued that the damages sustained by the Village in having Pike Hill Road unavailable to the motoring public with its attendant detours and re-routing, and the damages the Village claims to

have sustained by not having a traffic light operating that had never before existed, are the same. And when one further considers the fact that the per diem for not having the traffic light is the same as if both phases of this project were not timely finished it is clear that the per diem has no logical relationship to any damage, both theoretical and actual, that the Village determined it would experience from a delay. Consequently, the only conclusion that can be reached in view of these facts is that the per diem is an arbitrary number that in practical application operates as an unreasonable surcharge against the contractor.

At no time during the almost five years that these proceedings have been pending, in deposition testimony, affidavits, or briefs (both trial and appellate), has the Village offered up an explanation as to how it arrived at the amount of \$700 as the probable and foreseeable damage it would sustain for each day of delay that a light never before operational was turned on.

This court has previously held where the appellants never testified to or presented any evidence of a method of calculation used to arrive at the stipulated damages amount, nor could their attorney recall any attempts at calculating the damages to arrive at the figure, there was no basis for concluding that the amount constituted anything more than a penalty, and that it was therefore unenforceable. *Harmon, supra at ¶54 citing Wright v. Basinger*, 7th Dist. No. 01 CA81, 2003–Ohio–2377, at ¶ 20.

CONCLUSION

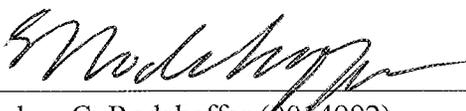
The Appellee does not contend that a liquidated damages clause in the form of a per diem is *per se* a penalty. Indeed, R.C. §153.19 would appear to require such a clause, although the statute limits the collection of the per diem to be a deduction “from any payment due or to become due to the contractor.” However, this section in no way endorses the imposition of a per diem that has no meaningful relationship to the damage caused by the delay, nor does it excuse

the public owner's responsibility to make a concerted attempt to calculate its probable and foreseeable damage that a delay would cause.

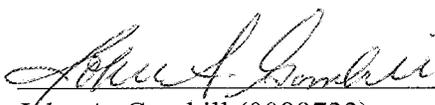
The goal of contract law is to compensate an aggrieved party for his actual not theoretical loss. In applying this principle the Fourth District Court of Appeals in its decision below found that in reviewing all of the facts and circumstances involving this case, the liquidated damage award was "manifestly inequitable and unrealistic". ¶43 Appellee submits that this conclusion is supported by the law and the facts in this case. A fair reading of the law in this area leads to the inescapable conclusion that a determination of a parties' claim for contractual damages, whether liquidated or unliquidated, requires a panoramic view of the entire contractual relationship. In this case such a review reveals that the Village of Piketon has not been fairly compensated by the trial court's judgment for actual damages sustained. Rather it has been made the beneficiary of a windfall amounting to twice the cost of this phase of the contract. If there is a precedent to be avoided in this case as is suggested by the Appellant, the precedent that should be of concern to this Court is the one that will be set if the anomalous judgment of the trial court is reinstated.

The Appellee asks that the judgment of the Fourth District Court of Appeals be allowed to stand and that the appeal of the Village of Piketon be dismissed.

Respectfully submitted,
STEPHEN C. RODEHEFFER, Counsel of Record

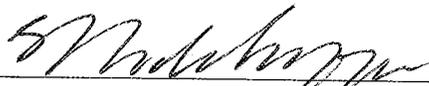
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CERTIFICATE OF SERVICE

A copy of the foregoing has been served via regular U.S. Mail upon **Eric Travers**, Attorney for Appellees, Capitol Square, Suite 1800, 65 East State Street, Columbus, Ohio 43215, and **Jack R. Rosati**, Counsel of Record for Amici Curiae The County Commissioners Association of Ohio, The Ohio Municipal League, The Ohio School Boards Association, and the Ohio Township Association, 100 South Third Street, Columbus, Ohio 43215-4291, this 30th day of December, 2014.



Stephen C. Rodeheffer, 0014992