

IN THE SUPREME COURT OF OHIO

LINDA ACKISON, Administratrix of  
the Estate of Danny Ackison )

Plaintiff-Appellee, )

vs. )

ANCHOR PACKING CO., et al., )

Defendants-Appellants )

Case No. 2007-0219; 2007-0415

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

Court of Appeals  
Case No. 05CA46

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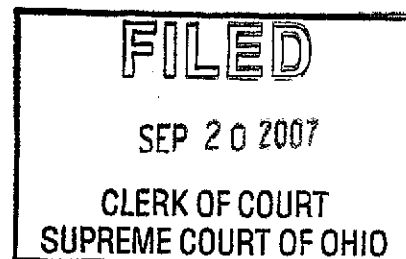
PLAINTIFF-APPELLEE'S OPPOSITION TO DEFENDANT-APPELLANT  
OWENS-ILLINOIS, INC.'S MOTION TO STRIKE

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Fourth District Court of Ohio – Lawrence County  
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Order of the Supreme Court of Ohio  
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Pursuant to Rules of Practice of the Supreme Court of Ohio Rule XIV, Section 4(B), Plaintiff-Appellee hereby responds to and opposes Defendant-Appellant Owens-Illinois, Inc's Motion to Strike.

Defendant-Appellant alleges, incorrectly, that Plaintiff-Appellee's Appendix included with his merit brief contains statements and documents that are not "part of the record in this case." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 1. The primary focus of Defendant-Appellants motion is the inclusion of Dr. Arthur Frank's report as Exhibit L in Plaintiff-Appellee's Appendix. Defendant-Appellant asserts, in error, that the report in question is an "extra-record document." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 3. Defendant-Appellant is apparently unaware of the record transmitted to this Honorable Court. Dr. Frank's report is included in the record certified to this Court from the Court of Appeals of Ohio, Fourth Appellate District, Lawrence County. Specifically, it appears as "Exhibit F" to "Reply Brief of Plaintiffs-Appellants," which is item number twenty-five (25) in the Court of Appeals Record transmitted to this Honorable Court from the Fourth Appellate District Court of Ohio for Lawrence County. *See* Attached Exhibit 1, "Court of Appeals Record." That record was transmitted by order of this Court. *See* Attached Exhibit 2, "Order of the Supreme Court of Ohio," Case No. 2007-0219, Entered April 18, 2007.

It is the decision of the intermediate appellate court, not the trial court, which is on review in this Court. Below, the intermediate appellate court, reviewing the decision of the trial court *de novo*, based its decision on the entire record, including the report of Dr. Arthur Frank at issue. "The determination of the constitutionality of a statute presents a question of law, which is reviewed *de novo*. *Andreyko v. Cincinnati*, (1<sup>st</sup> Dist.), 153 Ohio App.3d 108, 112, 2003-Ohio-2759, 791 N.E.2d 1025; *Castlebrook, Ltd. v. Dayton Properties Ltd. Partnership*, (2<sup>nd</sup> Dist. 1992), 78 Ohio App.3d 340, 346, 604 N.E.2d 808." If Defendant-Appellant Owens-Illinois, in the course

of filing its multiple briefs, which are duplicative of the primary briefing of lead counsel for Defendants-Appellants represented by Vorys, Sater, Seymour & Pease, LLP, had misgivings about the inclusion of Dr. Frank's report in the record, it should have objected either at the intermediate appellate level or in filing its initial merit brief with this Court. Rather, Defendant-Appellant, without knowledge of or a due diligent review of the record on appeal, waited until this eleventh hour to take issue with the report and ask this Court to strike Plaintiff-Appellee's merit brief.<sup>1</sup> It should be noted that prior to filing this reply, counsel for Plaintiff-Appellee advised counsel for Owens-Illinois of its error, on September 19, 2007 and requested that Defendant-Appellant withdraw its motion. Defendant-Appellant responded that it will file an amendment but will not withdraw its motion.

Similarly, Defendant-Appellant asserts that "the Appellee's Merit Brief and Appendix are full of extra-record factual assertions regarding *Wilson v. AC&S, Inc.* (12<sup>th</sup> Dist.) 169 Ohio App.3d 720, 864 N.E.2d 682, 2006-Ohio-6704." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 3. Defendant-Appellant Owens-Illinois is correct that Plaintiff-Appellee includes in his Merit Brief a review of facts underlying the *Wilson* decision and a discussion, in contrast to the *Ackison* decision, of the reasoning employed by the Court of Appeals of Ohio, Twelfth Appellate District, Butler County and where the Plaintiff-Appellee respectfully argues that the Twelfth Appellate District Court erred. Such an analysis is necessary and appropriate whereas this matter is on appeal to this Court based on Defendant-Appellant's Rule 25 Motion to Certify A Conflict between the underlying Fourth District *Ackison* decision and the Twelfth District's decision in *Wilson*. Indeed, it is the logic and result of the *Wilson* decision that the Defendant-Appellants

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<sup>1</sup> Thus Defendant-Appellant is simply wrong when it claims that Dr. Franks report "was never mentioned in the . . . Appellate Court proceedings, but was first introduced in the Appellee's papers in this Court." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 3, paragraph 7.



urge this Court to follow. Collectively in their merit briefs, Defendant-Appellants cite to *Wilson* almost twenty times and repeatedly ask this court to follow the Wilson court's analysis and result. In replying to the appeal, Plaintiff-Appellee cites to substantially the same facts that are included by the Twelfth District Court of Appeals in its decision.<sup>2</sup> Indeed, each such "fact" is followed by a cite to the decision the Defendant-Appellants so heavily rely upon.

Laced within Defendant-Appellant's motion is an inappropriate attempt to use its pleading to argue that the Plaintiff-Appellee's cause of action did not accrue prior to September 2, 2004. Regrettably, Plaintiff-Appellee is therefore forced to respond. Defendant-Appellant backhandedly seeks to cast doubt on the accrual of Plaintiff-Appellee's claims by misrepresenting the documents at issue and the trial court's decision on the prima facie case. Defendant-Appellant first argues that Plaintiff-Appellee's claims that Mr. Ackison had "symptoms of asbestosis" and was "injured and symptomatic" is "completely at odds with the Record." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 1, paragraph 2-3. It must be noted that these assessments derive directly from Dr. Frank's report which, as established above, is unquestionably a part of the record on appeal. In turn, those findings were based upon Mr. Ackison's medical records submitted at the trial court level. Additionally, once again ignorant of the record on appeal, Defendant-Appellant asserts in support of its ill placed argument that "[n]othing in the Record suggested that the plaintiff had any bodily injury caused by asbestos, much less a 'vested' claim." *Defendant-Appellant Owens-Illinois, Inc's Motion to Strike*, p. 2, paragraph 6. Yet, in the trial court, the *Defendants* submitted to the trial court the report of Dr. Robert Altmeyer, M.D., from a September, 2000 exam of the Plaintiff-Appellee, in which Dr. Altmeyer opines "with a reasonable

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<sup>2</sup> Appellee acknowledges that the only facts not included in the *Wilson* decision which are cited in the Appellee's merit brief are a calculation of the passage of time during the procedural travels of the *Wilson* matter and the fact that Mr. Wilson had children. The inclusion of these two facts, by way of background, under no circumstances warrants the striking of Appellee's merit brief.

degree of medical certainty, that this man has asbestos related pleural thickening.”<sup>3</sup> This report appears in the record on appeal at item 125, included with “*Defendants Memorandum In Opposition Of Plaintiff’s Motion For Prima Facie Case.*” Once again, Plaintiff-Appellee advised Owens-Illinois of its error prior to filing this response and requested that Defendant-Appellant withdraw its motion. It refused.

Further, Defendant-Appellant Owens-Illinois misrepresents the trial court’s holding, claiming that the lower court found that the documents at issue were “not prima facie evidence of bodily injury *caused by asbestos.*” *Defendant-Appellant Owens-Illinois, Inc’s Motion to Strike*, p. 1, paragraph 2-3. Yet, what the court actually held was that the documents did not meet the new standard of H.B. 292. Specifically, at page two in the Court of Common Pleas *Entry Denying Plaintiff’s Motion To Prove Prima Facie Case*, which appears in the Court of Common Pleas record number 134, with respect to Mr. Ackison’s non-malignant claim, the trial court found that “Plaintiff fails to meet the criteria for maintaining an injury claim for non-malignant condition *under R. C. 2307.92(B)*” and “that Mr. Ackison was diagnosed by a competent medical authority with at least a Class 2 respiratory impairment . . . .” The trial court, despite Defendant-Appellant’s assertion, made no finding that Plaintiff-Appellee did not suffer from an asbestos related disease; rather, the trial court merely determined, that the disease he had, that gave rise to

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<sup>3</sup> Given this report, there can be little doubt that Mr. Ackison’s claim accrued prior to the enactment of H.B. 292, based on the language of Ohio R.C. Sec. 2305.10(B)(5):

[U]pon the date on which plaintiff is informed by competent medical authority that the plaintiff has an injury, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

Dr. Altmeyer’s report, in 2000, would certainly lead a person of reasonably diligence to know, or such a person should know, that he has an asbestos related injury, despite the alteration of the alteration of Ohio common law effect by H.B. 292.

his claim, did not meet the new standard “for non-malignant condition *under R. C. 2307.92(B)*.” *Id.*

What remains, admittedly, is Plaintiff-Appellee’s over-zealous inclusion of Appendix items H, I, M and N: Chester Wilson’s medical records, civil complaint, Dr. Samuel Hammar’s report and Curriculum Vitae.<sup>4</sup> Plaintiff-Appellee respectfully submits that the inclusion of these documents, only one of which Plaintiff-Appellee actually refers to in his merit brief - the report of Dr. Samuel Hammar - in no way warrants striking Plaintiff-Appellee’s merit brief. Plaintiff-Appellee regrets the erroneous inclusion of these documents and appreciates that this Honorable Court expects compliance with the Rules of Practice. *See State ex rel. Physicians Comm. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 843 N.E.2d 174, 206 Ed. Law Rep. 707, 2006 -Ohio- 903 (2005). However, this Court has refused to strike merit briefs where the violations at issue are technical and do not interfere with the opposing party’s ability to respond or address the issues on appeal. *See Id.* (Motion to strike denied “despite admitted and serious deficiencies in PCRM’s brief . . . [because] that brief does provide the court with a statement of facts and the relevant legal arguments on the public-records issue in question . . . a second round of briefs in this case would delay a ruling on the merits and would unnecessarily increase the cost of resolving the parties’ dispute . . . [t]he PCRM brief, while certainly not a model for others to follow, provides a coherent legal argument on the public-records issue and explains why PCRM believes that Ohio law supports its request for a writ of mandamus . . . [the Court] can complete [its] work in this case using the briefs before [it], and because OSU was able to respond to the defective brief despite its shortcomings . . . .” There can be little dispute that

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<sup>4</sup> Appellant also cites “extra record” item Appellee’s Appendix J, “Entry and Opinion in *Wilson v. A.C. & S, Inc., et al.* (Butler Cty. C.P., filed March 7, 2006) No. CV 2001 12 3029.” This decision constitutes Ohio legal authority consistent with the Fourth District Court of Appeals logic and holding in *Ackison* and can not be categorized an “extra record” item.

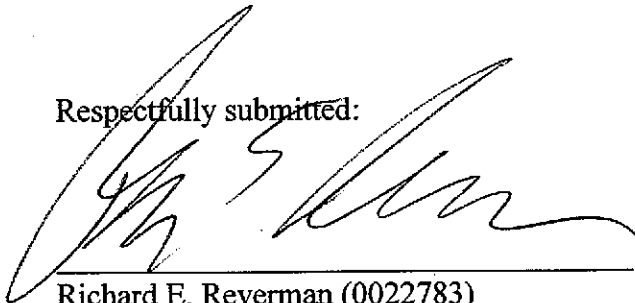
Defendant-Appellants were more than capable of addressing the issues on appeal. Indeed, they filed the initial merit briefs. Further, it should not go without noting that counsel for all Defendant-Appellants *other than* Owens-Illinois filed their reply briefs without filing a similar motion to strike or joining in the instant motion. Indeed, Owens-Illinois, despite its motion, clearly had no difficulty drafting a fourteen page reply brief subsequent to its thirty-nine page merit brief. *See State ex rel. Wilcox v. Seidner*, 76 Ohio St.3d 412, 667 N.E.2d 1220, 1996 -Ohio- 390 (“[I]t appears that only S.Ct.Prac.R. VI(1)(B)(5)(a) was technically violated. Given the relatively minor violation of this rule and *the fundamental tenet of judicial review in Ohio that courts should decide cases on their merits, this court denies appellee's request to strike appellants' briefs.*”) (citing *State ex rel. Montgomery v. R & D Chem. Co.*, 72 Ohio St.3d 202, 204, 648 N.E.2d 821, 823 (OH 1995); quoting *DeHart v. Aetna Life Ins. Co.*, 69 Ohio St.2d 189, 193, 23 O.O.3d 210, 213, 431 N.E.2d 644, 647 (1982) (“ Fairness and justice are best served when a court disposes of a case on the merits.” )) (emphasis added).

Additionally, Defendant-Appellant’s argument that these items are so intertwined [in Plaintiff-Appellee’s brief] that they can not be stricken is wholly without merit. Dr. Hammar is referred to in passing on only two of the almost fifty pages of Plaintiffs-Appellees brief. Other than Plaintiff-Appellee's reference to Dr. Hammar, any discussion of Wilson is derived not from the Plaintiff-Appellee's Appendix items but from the Wilson decision itself. As noted above, given the Court's acceptance of the instant appeal as in conflict with Wilson, and Defendant-Appellants’ overwhelming reliance upon Wilson as authority, it is incumbent upon Plaintiff-Appellee to respectfully demonstrate what Plaintiff-Appellee perceives to be the errors in the analysis of the Butler County decision based on the facts as that Court reported and why, in contrast, this Court should affirm the Ackison decision. Further, Appendix items H, I and N are

simply not cited to at all.<sup>5</sup> If this Honorable Court should find it necessary, the sentences in question and Appendix items at issue can easily be stricken from Plaintiff-Appellee's brief and Plaintiff-Appellee is more than willing to withdraw said Appendix items with the Court's permission.

Thus, Plaintiff-Appellee respectfully asserts that the inadvertent inclusion of the few Appendix items mentioned above do not approach the errors found in the merit briefs that were otherwise accepted in *State ex rel. Physicians Comm. for Responsible Medicine* and *State ex rel. Wilcox*, and asks that Defendant-Appellant Owens-Illinois' motion be denied. Nonetheless, should the Court find these superfluous items troubling, Plaintiff-Appellee at a minimum requests an opportunity, *as suggested by the Defendant-Appellant*, to re-file this brief without the offending Appendix items or to otherwise remedy and revise Plaintiff-Appellee's submission as directed by this Honorable Court.

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<sup>5</sup> Thus, while Appellants cites *State ex rel. Blair v. Balraj* (1994) 69 Ohio St.3d 310, 313, 631 N.E.2d 1044, 1047 for the proposition that a party may not rely on extra record, there is no cite in Appellee's brief relying upon Appendix items H, I and M.

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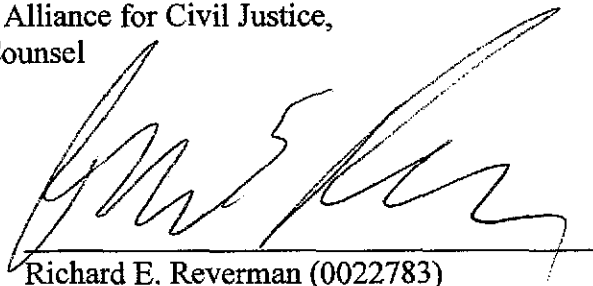
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And Ohio Chemistry Technology Counsel



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## APPENDIX

## **EXHIBIT 1**

FOURTH DISTRICT COURT OF OHIO - LAWRENCE COUNTY  
LINDA ACKISON, AS ADMINISTRATRIX OF THE ESTATE OF DANNY ACKISON  
VS. ANCHOR PACKING CO., ETAL  
COURT OF APPEALS CASE NO. 05CA43

COURT OF APPEALS RECORD

<u>ITEM NUMBER</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>
1.	Notice of Appeal	Dec. 29, 2005
2.	Praecipe	Dec. 29, 2005
3.	Praecipe to Court Reporter	Dec. 29, 2005
4.	Assignments of Error	Dec. 29, 2005
5.	Docket Statement	Dec. 29, 2005
6.	Notice of Transmission	Feb. 7, 2006
7.	Motion for Oral Argument	Feb. 27, 2006
8.	Brief of Plaintiffs-Appellants	Feb. 27, 2006
9.	Motion for Extension of Time	March 10, 2006
10.	Journal Entry - extension of time granted	March 20, 2006
11.	Motion for Extension of Time on Behalf of All Defendants	March 23, 2006
12.	Atty. Gen. Jim Petro's Motion for Leave to File an Amicus Curiae Brief in Support of The Constitutionality of House Bill 292	March 23, 2006
13.	Atty. Gen. Jim Petro's Brief of Amicus Curiae in Support of the Constitutionality of House Bill 292	March 23, 2006
14.	Notice of Change of Address	March 24, 2006
15.	Journal Entry - Anchor Packing granted extension of time	March 31, 2006
16.	Plaintiffs-Appellants Motion for Extension of Time and Extra Page Length	March 31, 2006
17.	Journal Entry - Atty. Gen. granted leave to file amicus curia brief	Apr. 3, 2006
18.	Journal Entry - Plaintiffs-Appellants granted extension of time to file reply brief	Apr. 10, 2006
19.	Brief For Appellees	Apr. 19, 2006
20.	Supplemental Brief for Appellee Owens-Illinois Inc.	Apr. 20, 2006

21.	Motion for Oral Argument	Apr. 24, 2006
22.	Journal Entry - appellees' brief of Apr. 19, 2006 is stricken	May 1, 2006
23.	Journal Entry - appellee is ordered to file a certificate of service within 10 days	May 1, 2006
24.	Motion for Admission Pro Hac Vice	May 2, 2006
25.	Reply Brief of Plaintiffs-Appellants	May 2, 2006
26.	Brief for Appellees	May 4, 2006
27.	Amended Certificate of service	May 9, 2006
28.	Motion for Oral Argument	May 10, 2006
29.	Journal Entry - Atty. Greene appointed pro hac vice	May 11, 2006
30.	Motion for Additional Time for Oral Argument	May 26, 2006
31.	Motion for Admission Pro Hac Vice - Robert H. Riley	June 2, 2006
32.	Journal Entry - Robert H. Riley to be admitted Pro Hac Vice	June 12, 2006
33.	Plaintiffs-Appellants Response to Deft.-Appellee Owens-Illinois' Motion for Additl. Time for Oral Argument or Alternatively Plaintiffs-Appellants Motion for Additl. Time for Oral Argument	June 14, 2006
34.	Journal Entry - entry modifying the schedule for oral argument	July 12, 2006
35.	Decision - Dec. 20, 2006	Dec. 20, 2006
36.	Journal Entry - Judgment reversed & remanded	Dec. 20, 2006
37.	Appellees' Rule 25 Motion to Certify a Conflict	Jan. 4, 2007
38.	Notice of Appeal to the Supreme Court of Ohio	Feb. 2, 2007
39.	Journal Entry - Motion to Certify Conflict granted	Feb. 28, 2007
40.	Appellants' Notice of Certified Conflict	March 12, 2007
41.	Order to Certify Record	April 20, 2007
42.	Journal Entry - appeal accepted	April 20, 2007
43.	Journal Entry - order certifying conflict	April 20, 2007
44.	Transcript of Docket & Entries	May 1, 2007

IN THE COURT OF COMMON PLEAS, LAWRENCE COUNTY, OHIO

LINDA ACKISON, ETAL  
PLAINTIFF-APPELLANTS

VS.

ANCOR PACKING CO., ETAL  
DEFENDANT-APPELLEES

CASE NO. 04PI371  
NUMBER LISTING OF  
DOCUMENTS IN RECORD

2/7/06

ORIGINAL PAPERS

1. Complaint - May 5, 2004
2. Certified mail return receipt of Foster Wheeler - May 12, 2004
3. Answer of Deft., R.E. Kramig Inc. - May 17, 2004
4. Certified mail return receipt of Clark Industrial - May 18, 2004
5. Certified mail return receipt of McGraw Kokosing Inc. - May 18, 2004
6. Certified mail return receipt of McGraw Constr. Co. - May 18, 2004
7. Certified mail return receipt of Wheeler Protective - May 18, 2004
8. Certified mail return receipt of General Refractories - May 18, 2004
9. Certified mail return receipt of Quigley Inc. - May 18, 2004
10. Certified mail return receipt of Maremont Corp. - May 18, 2004
11. Certified mail return receipt of Anchem Products Inc. - May 18, 2004
12. Certified mail return receipt of Union Carbide Chemical & Plastics - May 18, 2004
13. Certified mail return receipt of Crown Cork and Seal Co. - May 18, 2004
14. Certified mail return receipt of John Crane Inc. - May 18, 2004
15. Certified mail return receipt of General Electric Co. - May 18, 2004
16. Certified mail return receipt of Cleaver Brooks Co. - May 18, 2004
17. Certified mail return receipt of Union Boiler Co. - May 18, 2004
18. Certified mail return receipt of Frank W. Schaefer Inc. - May 18, 2004
19. Certified mail return receipt of Anchor Packing Co. - May 18, 2004
20. Certified mail return receipt of Ohio Valley Insulating - May 18, 2004
21. Certified mail return receipt of George F. Reintjes Co. - May 18, 2004
22. Certified mail return receipt of Hobart Brothers Co. - May 18, 2004
23. Certified mail return receipt of International Chemicals Co. - May 18, 2004
24. Certified mail return receipt of Beazer East Inc. - May 18, 2004
25. Certified mail return receipt of R. E. Kramig Inc. - May 18, 2004
26. Certified mail return receipt of Georgia Pacific Corp. - May 18, 2004
27. Certified mail return receipt of International Minerals & Chem. Corp. - May 10, 2004
28. Certified mail return receipt of Airco Inc. - May 18, 2004
29. Certified mail return receipt of A.W. Chesterton Co. - May 18, 2004
30. Certified mail return receipt of Owens Illinois Corp. Inc. - May 18, 2004

31. Certified mail return receipt of Certainteed Corp. - May 18, 2004
32. Certified mail return receipt of Garlock Inc. - May 18, 2004
33. Certified mail return receipt of Ingersoll Rand Company - May 18, 2004
34. Certified mail return receipt of Lincoln Electric Co. - May 18, 2004
35. Certified mail return receipt of Uniroyal Holding Inc. - May 18, 2004
36. Certified mail return receipt of Industrial Holdings Company - May 18, 2004
37. Certified mail return receipt of D. B. Riley Inc. - May 18, 2004
38. Certified mail return receipt of Mobile Oil Corp. - May 18, 2004
39. Certified mail return receipt of Foseco Inc. - May 18, 2004
40. Certified mail return receipt of Allied Corp. - May 18, 2004
41. Answer of Pfizer Inc. - May 20, 2004
42. Certified mail return receipt of Rapid American Corp. - May 21, 2004
43. Certified mail return receipt of Uniroyal Holding Inc. - May 24, 2004
44. Certified mail return receipt of Metropolitan Life Ins. Co. - May 24, 2004
45. Certified mail return receipt of Metropolitan Life Ins. Co. - May 24, 2004
46. Certified mail return receipt of Pfizer Inc. - May 24, 2004
47. Defendant Beazer East, Inc.'s Answer to Complaint - May 24, 2004
48. Separate Answer of Deft., Foster Wheeler Energy Corp. to Plaintiffs' Complaint - May 24, 2004
49. Answer of John Crane, Inc. - May 24, 2004
50. Letter to Bigelow Liptak Company returned marked, "not deliverable as addressed - no forwarding order on file" - May 25, 2004
51. Appearance & Jury Trial Demanded - May 26, 2004
52. Separate Answer of Deft., Crown Cork & Seal Co., Inc. - May 26, 2004
53. Certified mail return receipt of Dana Corp. - May 27, 2004
54. Certified mail return receipt of Viacom Inc. - May 27, 2004
55. Answer of Deft., Quigley Company, Inc. - May 27, 2004
56. Notice of Appearance on Behalf of Deft., Frank W. Schaefer Inc. - May 27, 2004
57. Answer of Frank W. Schaefer Inc. - May 27, 2004
58. Answer of Frank W. Schaefer Inc. to any and all Cross Claims - May 27, 2004
59. Answer of Carborundum Co. fka Industrial Holding Corp. - June 1, 2004
60. Answer of Uniroyal Holding Inc. - June 1, 2004
61. Answer of Georgia-Pacific Corp. - June 1, 2004
62. Letter to Asarco Inc. returned marked, "Not Deliverable as Addressed - unable to forward" - June 2, 2004
63. Separate Answer of Clark Industrial Insulation Co. - June 3, 2004
64. Answer of Owens-Illinois Inc. - June 3, 2004
65. Answer of Viacom Inc. successor to Westinghouse Electric - June 4, 2004
66. Deft., Ingersoll Rand Company's Answer - June 9, 2004
67. Answer of Deft., Mallinckrodt Group Inc. - June 9, 2004



68. Answer of Separate Defts., Lincoln Electric Company, Hobart Brothers Co. and the BOC Group, Inc., fka Airco Inc. - June 9, 2004
69. Answer and Affirmative Defenses, and Answer to All Cross-claims Asserted or Which may e Asserted of Geo. P. Reintjes Co., Inc. to Plaintiffs' - June 10, 2004
70. Answer of Metropolitan Life Ins. Co. - June 10, 2004
71. Defendant Ohio Valley Insulating Company, Inc.'s Answer to Complaint and to any Cross Caims filed or to be filed - June 14, 2004
72. Answer of Separate Defendant A. W. Chesterton Company - June 14, 2004
73. Separate Answer of Deft., D.B. Riley Inc. - June 14, 2004
74. Separate Answer of Deft., The Anchor Packing Co. - June 14, 2004
75. Separate Answer of Deft., Garlock Sealing Technologies LLC - June 14, 2004
76. Answer-of Deft., Certainteed Corp. - June 14, 2004
77. Answer of Deft., Amchem Products Inc. - June 14, 2004
78. Answer of Deft., Union Carbide Corp. - June 14, 2004
79. Answer of Deft., Dana Corporation - June 14, 2004
80. Answer of Deft., Foseco Inc. - June 14, 2004
81. Answer and Affirmative Defenses of Deft., Wheeler Protective Apparel Inc. - June 14, 2004
- 81A. Answer of Deft., Mobil Corp. - June 16, 2004
82. Stipulated Leave to Plead - June 18, 2004
83. Journal Entry - J. 329, Pg. 344 - June 18, 2004
84. Letter to H.B. Fuller Co. returned marked, "Forwarding order expired" - June 30, 2004
85. Answer of Deft., General Electric Company - June 30, 2004
86. Deft., Maremont Corp's Motion for Leave to File Answer and Answer to Cross-claims, Instantner - July 1, 2004
87. Journal Entry - J. 329, Pg. 827A - July 1, 2004
88. Certificate of Service - July 1, 2004
89. Deft., Maremont Corporation's Answer & Answer to Cross-Claims - July 1, 2004
90. Deft., John Crane, Inc.'s, Answer to any Cross-Claim filed by or to be filed by any Co-defendan and/or third party Defendants in this Action - July 1, 2004
91. Journal Entry (stipulation for leave to plead) - J. 329, Pg. 927 - July 7, 2004
92. Defendants McGraw Constr. Co., Inc. and McGraw/Kokosing's Unopposed Joint Motion for Leave to File Their Joint Answer Instantner - July 12, 2004
93. Journal Entry - J. 330, Pg. 21 - July 12, 2004
94. Answer (Joint) - of Defts., McGraw Constr. Co. - July 12, 2004 (cannot locate this pleading - in case 04PI370)
95. Answer of Norton Company - July 12, 2004
96. Answer of M6bil Corp. - July 16, 2004 (not with this file - in case 04PI370)

97. Answer of UB West Virginia fka Union Boiler Co. - July 19, 2004
98. Journal Entry - J. 332, Pg. 727 - Sept. 13, 2004
99. Proof of Service - Sept. 13, 2004
100. Notice of Bankruptcy Filing and Imposition of Automatic Stay - Sept. 20, 2004
101. Journal Entry - J. 333, Pg. 741 - Sept. 30, 2004 (case removed from active docket - Quigley Co.
102. Answer of Deft., Rapid-American Corp. - Oct. 29, 2004
103. Plaintiffs' Motion for Extension of Time to Put Forth a Prima Facie Showing as to all Young, Reverman & Mazzei Asbestos Cases & Memorandum - Dec. 29, 2004 (with case #04PI370)
104. Journal Entry (agreed entry extending time to put forth prima facie showing as to Young, Reverman & Mazzei Asbestos Cases) - J. 336, Pg. 1053 - Dec. 29, 2004
105. Motion of Deft., Rapid-American Corp. to Excused From Appearance at Future Hearings - Dec. 30, 2004
106. Journal Entry - J. 336, Pg. 1144 - Dec. 30, 2004
107. Praecipe - March 29, 2005
108. Certified mail return receipt of H.B. Fuller Co. - April 21, 2005
109. Certified mail return receipt of Asarco Inc. - April 21, 2005
110. Certified mail return receipt of Minnesota Mining & Man. - April 22, 2005
111. Answer of Deft., 3M Company - May 17, 2005
112. Answer of Deft., H.B. Fuller Company - May 20, 2005
113. Answer of Honeywell International and Allied Corp. - May 23, 2005
114. Gloria Ferguson, Indv. & as Admrnx. of the Estate of Alfred Ferguson, Deceased's Motion for Extension of Time to File Prima Facie Case - June 30, 2005
115. Plaintiff, Danny Ackison's Motion to Prove Plaintiffs' Prima Facie Case and Motion for Trial Setting - June 30, 2005
116. Journal Entry (extending time to file prima facie of Gloria Ferugson) - J. 343, Pg. 977 - July 1, 2005
117. Notice of Partial Dismissal - July 8, 2005
118. Memorandum in Opposition to Plaintiff, Gloria Ferguson's Request for an Extension of Time to Prove its Prima Facie Case - July 18, 2005
119. Journal Entry - J. 345, Pg. 439 - Aug. 9, 2005
120. Certificate of Service - Aug. 9, 2005
121. Memorandum in Opposition to Plaintiff Gloria Ferguson's Req. for an Extension of Time to Prove Prima Facie - Aug. 23, 2005
122. Gloria Ferguson, Ind. and as Admrnx. of the Estate of Alfred Ferguson, deceased's Motion for Extension of Time to File Prima Facie Case - Sept. 7, 2005
123. Journal Entry - (extending time to prove prima facie case) - J. 346, Pg. 670 - Sept. 7, 2005
124. Notice of Videotaped Deposition De Bene Esse of Alexander

- Lesnewich, PH.D - Oct. 17, 2005
125. Memorandum in Opposition to Plaintiff's Motion to Prove Prima Facie case and Motion for Trial Setting of Defts., Georgia-Pacific Corp., Maremont Corp., McGraw Cosntr. Co. & McGraw/Kokosing, Inc. - Oct. 21, 2005
126. Notice of Joinder - Oct. 31, 2005
127. Notice of Joinder - Nov. 1, 2005
128. Notice of Joinder - Nov. 1, 2005
129. Deft., Mobil Oil Corp's Joinder in Memorandum in Opposition to Plaintiff's motion to Prove Prima Facie Case filed by Georgia-Pacific Corp., Maremont Corp., McGraw Constr. Co. and McGraw/Kokosing, Inc. - Nov. 2, 2005
130. Notice of Joinder - Nov. 9, 2005
131. Notice of Joinder of Deft., Beazer East Inc. - Nov. 19, 2005
132. Plaintiff, Linda Acison, as Admr. of the Estate of Danny Ackison, deceased's Memorandum in Support of Plaintiffs' Prima Facie Case and Motion for Trial Setting - Nov. 10, 2005
133. Notice of Change of Address & Telephone Number - Nov. 18, 2005
134. Journal Entry - J. 350, Pg. 113 - Dec. 2, 2005 (entry denying Plaintiff's Motion to Prove Prima Facie Case)
135. Notice of Appeal - Dec. 29, 2005
136. Praecept to Court Reporter - Dec. 29, 2005
137. Praecept - Dec. 29, 2005
138. Assignment of Error - Dec. 29, 2005 *Apr. 11, 2006 99.*
139. TRANSCRIPT OF PROCEEDINGS - FEB. 7, 2006 (WITH 04PI370 UNDER APPEAL NO. 05CA45 & 05CA46)
140. TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES - FEB. 7, 2006

## **EXHIBIT 2**

# The Supreme Court of Ohio

FILED

APR 18 2007

MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

Linda Ackison, as Administratrix of the  
Estate of Danny Ackison

Case No. 2007-0219

ENTRY

v.

Anchor Packing Co. et al.

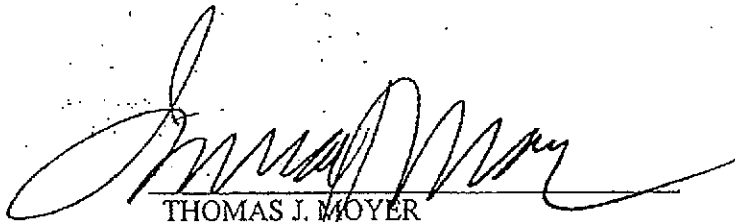
Upon consideration of the jurisdictional memoranda filed in this case, the Court accepts the appeal.

It is ordered by the Court that this cause is consolidated with Supreme Court Case No. 2007-0415, *Ackison v. Anchor Packing Co.*

It is further ordered that briefing in Case Nos. 2007-0219 and 2007-0415 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. VI and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI.

The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Lawrence County.

(Lawrence County Court of Appeals; No. 05CA46)



THOMAS J. MOYER  
Chief Justice

# The Supreme Court of Ohio

May 04, 2007

Richard Eugene Reverman  
Young, Reverman & Mazzei Co., LPA  
1014 Vine Street  
Suite 2400  
Cincinnati, OH 45202

Re: 2007-0219


Linda Ackison, as Administratrix of the Estate of Danny Ackison  
v.  
Anchor Packing Co. et al.

Dear Richard Eugene Reverman:

This is to notify you that the record in the above-styled case was filed with the Clerk's Office on May 4, 2007.

If, after reviewing the Supreme Court Rules of Practice, you have any questions about filing deadlines in the case, please feel free to call a deputy clerk at (614) 387-9530.

Sincerely,



Amie Vetter  
Records Assistant