

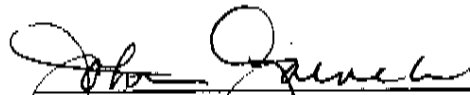
Secondly, as was pointed out in closing argument by the undersigned, the general contractor, relying upon the fact that it was awarded the contract on this project, executed numerous sub-contracts with, among others, certain Disadvantaged Business Enterprises. It should be noted that ODOT specifically requires that such contracts be completed, executed and submitted with the executed copy of the contract. If this project is delayed or re-bid, the general contractor would be exposed to claims in damages for breach of those contracts.

Finally, the specific issue which undersigned counsel mentioned in the scheduling meeting held on Tuesday, September 30, 2008, involves an option for purchase of land by the general contractor which is projected to provide a source for approximately 600,000 cubic yards of fill dirt necessary for completion of this contract.

The option expires on Friday, October 10, 2008. If, because this project is delayed and particularly, given the State's position that it would then potentially be re-bid, the Defendant Wagner will not be able to exercise its option. Various alternatives were examined during the bidding process and the nearest viable alternative would add \$1,054,000 to its cost of the project.

While the plaintiffs seek to minimize the impact of their claim upon the general contractor, it is respectfully submitted that the issuance of injunctive relief could well have a devastating effect on the party in this case against whom no substantive claims have been made.

Respectfully submitted,

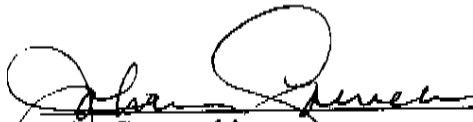


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CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of October, 2008, a copy of the foregoing **E.S. Wagner's Post-Hearing Memorandum** has been served by facsimile and by ordinary United States mail upon the following:

<p>Marion H. Little, Jr., Esq. John W. Zeiger, Esq. Christopher J. Hogan, Esq. Zeiger, Tigges & Little LLP 3500 Huntington Center 41 South High Street Columbus, OH 43215 Counsel for Plaintiffs (614) 365-7900 Fax</p>	<p>William Becker, Jr., Esq. Ohio Attorney General's Office 30 E. Broad Street Columbus, OH 43215 Counsel for Defendant Ohio Department Of Transportation (614) 644-9185 Fax</p> <p>Andrew J. Natale, Esq. Frantz Ward LLP 2500 Key Center 127 Public Square Cleveland, OH 44114 Counsel for Defendant John R. Jurgensen Company (216) 515-1650</p>
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 John Czarnecki
 Counsel for Defendant E.S. Wagner,3 Inc.