The Supreme Court of Ohio

FILED
FEB 16 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Don B. Kincaid, Jr., et al.

v.

Erie Insurance Company

Case No. 2009-1936

RECONSIDERATION ENTRY

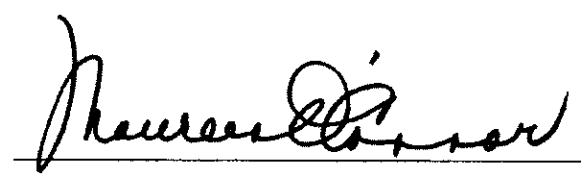
Cuyahoga County

It is ordered by the Court that the motion for reconsideration in this case is granted to the following extent:

Paragraph 20 of the opinion issued in this case is modified to read as follows:

"{¶ 20} We hold that there is no actual controversy between adverse parties in this case because Erie has not refused to pay Kincaid for expenses that may be covered by the "additional payments" provision of the policy. Unless and until the insured has presented a claim to his or her insurer and (where appropriate) proof of how much is owed, and the insurer has either (1) denied the claim or (2) failed to respond to the claim after having had an adequate opportunity and reasonable time within which to respond, then there is no controversy and the insured has no standing to file a complaint in litigation. A court may not issue an advisory opinion on whether an insured is entitled to insurance coverage, and an advisory opinion is what is being sought in this case, since no loss has been identified and no claim has been make for payment. Upon review of the pleadings, we hold that no material factual issues exist and that Erie was entitled to judgment as a matter of law. Therefore, Civ.R. 12(C) dismissal was appropriate. See *State ex rel. Midwest Pride IV, Inc. v. Pontius* (1996), 75 Ohio St.3d 565, 570, 664 N.E.2d 931."

(Cuyahoga County Court of Appeals; No. 92101)



Maureen O'Connor
Chief Justice