

Pursuant to Rule XI, § 2(4) of the Ohio Supreme Court Rules of Practice, Appellant Clarendon National Insurance Company (“Clarendon”) respectfully urges this Court to reconsider its decision dismissing, sua sponte, this cause as having been improvidently accepted. For the reasons that follow, this Court should issue a decision on the merits in this case.

R.C. 4509.71 is central to the resolution of this case. This Court has never issued a decision addressing R.C. 4509.71. For this reason alone, this Court should take this opportunity and issue a decision on the merits. R.C. 4509.71 provides:

Sections 4509.01 to 4509.79, except section 4509.06, of the Revised Code do not apply to any motor vehicle owned and operated by the United States, this state, any political subdivision of this state, any municipal corporation therein or any private volunteer fire company serving a political subdivision of the state. Section 4509.06 of the Revised Code does not apply to any vehicle owned and operated by any publicly owned urban transportation system.

R.C. 4509.71.

This case demonstrates that there is a conflict as to the interpretation of this statute. In oral argument, counsel for Appellee Rose suggested that the financial responsibility exemption R.C. 4509.71 affords does not extend to individual public employees. Thus, counsel for Appellee Rose argued that a political subdivision, such as the City of Garfield Heights, is required to secure proof of financial responsibility for the individual operators of the vehicles the City’s owns (i.e., the difference between an “owners” policy versus an “operators” policy). Clarendon, of course, contends that the plain language of the statute affords the exemption across the board and that by virtue of R.C. 4509.71 a political subdivision never has to secure or provide proof of financial responsibility—either for the vehicles or for those that operate the vehicles owned by the political subdivision. Of course, this issue is of great interest to all political subdivisions and municipal corporations in this state. Resolution of this issue alone warrants a decision on the merits in this case.

Although the UM/UIM issue in this case involves former R.C. 3937.18, the cornerstone of the issue in this case involves R.C. 4509.71. R.C. 4509.71 has never been addressed by this Court, and this case provides this Court with the perfect opportunity to clarify the rights and responsibilities conferred by the statute. Accordingly, this Court should issue a merit decision in this case.

The Court may desire additional briefing to flesh out the issues regarding whether the R.C. 4509.71 exemption extends to individual public employees and the effect of that on the UM/UIM issue. Clarendon certainly would welcome any such request.

CONCLUSION

Clarendon respectfully urges this Court to issue a decision on the merits in this case. This case does present an issue of great public and general interest that does merit this Court's attention. Specifically, this Court should address R.C. 4509.71, and this case provides this Court with the perfect opportunity to do so. If the Court requires additional briefing, Clarendon welcomes that opportunity.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following by regular U.S. mail, postage paid, on **November 27, 2006**:

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FILED

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The Supreme Court of Ohio

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Ronald Rose et al.

Case No. 05-1828

v.

JUDGMENT ENTRY

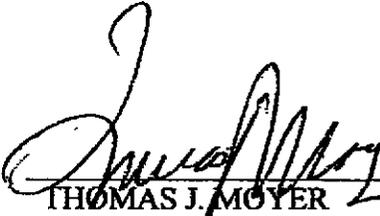
The City of Garfield Heights, Nationwide
Insurance Company, Clarendon National
Insurance Company

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, this cause is dismissed, sua sponte, as having been improvidently accepted. The opinion of the court of appeals may not be cited as authority except by the parties inter se.

It is further ordered that costs are assessed pursuant to S.Ct.Prac.R XI(5) and that a mandate be sent to the Court of Common Pleas for Cuyahoga County to carry this judgment into execution and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

(Cuyahoga County Court of Appeals; Nos. 85420 and 85426)


THOMAS J. MOYER
Chief Justice

[Cite as *Rose v. Garfield Hts.*, 111 Ohio St.3d 1209, 2006-Ohio-5698.]

**ROSE ET AL., APPELLEES, v. CITY OF GARFIELD HEIGHTS ET AL.; CLARENDON
NATIONAL INSURANCE COMPANY, APPELLANT.**

[Cite as *Rose v. Garfield Hts.*, 111 Ohio St.3d 1209, 2006-Ohio-5698.]

Appeal dismissed as improvidently accepted.

(No. 2005-1828 — Submitted September 20, 2006 — Decided
November 15, 2006.)

APPEAL from the Court of Appeals for Cuyahoga County,
Nos. 85420 and 85426, 2005-Ohio-4165.

{¶ 1} The cause is dismissed, sua sponte, as having been improvidently accepted.

{¶ 2} The court orders that the opinion of the court of appeals may not be cited as authority except by the parties inter se.

MOYER, C.J., BOGGINS, PFEIFER, LUNDBERG STRATTON, O'CONNOR,
O'DONNELL and LANZINGER, JJ., concur.

JOHN F. BOGGINS, J., of the Fifth Appellate District, sitting for RESNICK, J.

Yulish, Twohig & Associates Co., L.P.A., and Gerald R. Homing, for appellees.

Reminger & Reminger Co., L.P.A., and Amy S. Thomas, for appellant.

Paul L. Cox, urging affirmance for amicus curiae, Fraternal Order of Police of Ohio, Inc.
