

IN THE SUPREME COURT OF OHIO

RONALD AND NIKKI ROSE, : CASE NO.: 2005-1828
Plaintiffs-Appellees :
v. : On Appeal from the Cuyahoga County
CITY OF GARFIELD HEIGHTS, : Court of Appeals,
8th Appellate District
NATIONWIDE INSURANCE CO., :
Defendant-Appellee : Court of Appeals Case Nos.:
CA 04 085420
CLARENDON NATIONAL INS. CO. : CA 04 085426
Defendant-Appellant :

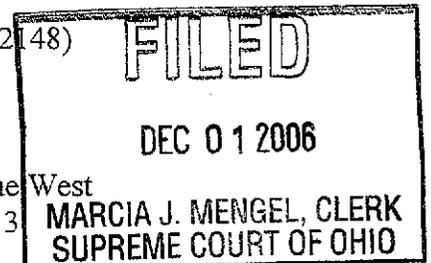
APPELLEES RONALD AND NIKKI ROSE'S RESPONSE IN OPPOSITION TO
CLARENDON NATIONAL INSURANCE COMPANY'S
MOTION FOR RECONSIDERATION

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Appellees Ronald and Nikki Rose respectfully request this court to deny the motion for reconsideration of appellant Clarendon National Insurance Co., (Clarendon). Contrary to Clarendon's assertion, R.C. 4509.71 is irrelevant to the resolution of this uninsured motorist insurance coverage case. This case involved an actual contract offer of UM coverage by Clarendon to the City of Garfield Heights as part of the motor vehicle liability policy that Clarendon sold to the city. The offer/rejection form for the UM endorsement offered to the city by Clarendon did not meet the requirements set forth in this court's holdings in *Linko v. Indemnity Ins. Co. of N. America*, (2000) 90 Ohio St.3d 445, 739 N.E.2d 338; *Kemper v. Michigan Millers Mut. Ins. Co.*, 98 Ohio St.3d 162, 781 N.E.2d 196, 2002-Ohio-7101; and *Hollon v. Clary*, 104 Ohio St.3d 526, 2004-Ohio-6772. Because Clarendon's contract offer of UM coverage failed to satisfy the *Linko* requirements, rejection of that offer was invalid, and UM coverage arose by operation of law. See *Hollon* at 528.

In its motion for reconsideration, Clarendon argues that R.C.4509.71 is the cornerstone of the case, even though the Proposition of Law it asked this court to accept did not mention R.C. 4509.71. Clarendon argued that the motor vehicle liability policy that Clarendon sold to the city that insured almost 100 vehicles, "did not constitute an automobile liability, or motor vehicle liability policy of insurance, as defined by former R.C. 3937.18." Clarendon's assertion that R.C. 4509.71 somehow eliminated the former statutory duty of an insurance company to offer UM coverage with an auto liability policy that is proof of the ability to respond in damages for accidents arising out of the use of the motor vehicles insured by the policy, is not supported by any legal precedent.

Clarendon's argument with respect to R.C. 4509.71 is a red herring that doesn't matter anyway, because Clarendon actually offered UM coverage with its motor vehicle liability

insurance contract. In oral argument, counsel for Clarendon admitted that in a case where UM coverage was “offered and contracted for”,... “this argument is not going to fly.” Once Clarendon offered UM coverage in this case, the contract formation rules set out by this court in *Linko*, *Kemper*, and *Hollon* determined the existence of UM coverage in the Clarendon policy.

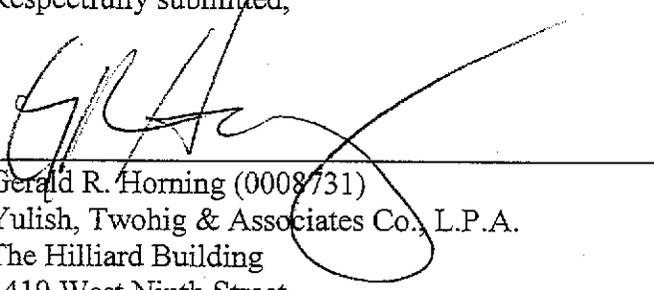
Whether or not the exemptions of R.C. 4509.71 apply only to motor vehicles owned by government entities, or also to the individual employees who operate these vehicles is not germane to the offer/rejection of UM coverage contract formation issues in this case. If a decision addressing the novel R.C. 4509.71 issues raised by Clarendon were truly a matter of great public or general interest, Clarendon should be able to cite any number of cases decided or pending where these issues are in play. Clarendon is unable to cite any such cases because there are none that raise this novel issue.

Since the mandatory offer of UM coverage requirement of former R.C. 3937.18 was eliminated from the UM statute over five years ago, it is unlikely that these issues will arise in any future case. Uninsured motorist coverage in accord with the guidelines of the present UM statute is a matter of permissive contract between insurance companies and the parties to whom they sell policies of insurance.

CONCLUSION

For the foregoing reasons, appellees Ronald and Nikki Rose respectfully request this court to deny Clarendon’s Motion for Reconsideration of this case, as the court has unanimously decided that the appeal was improvidently accepted.

Respectfully submitted,



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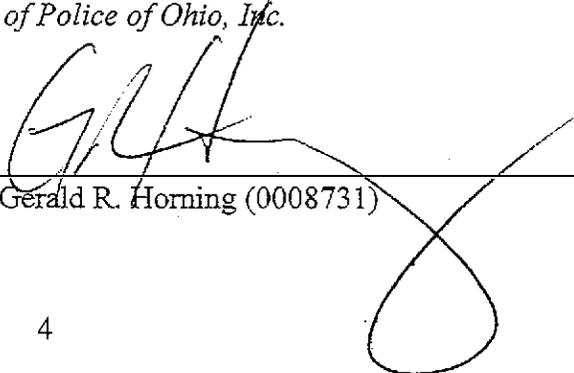
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following by Regular U.S. Mail, postage prepaid on this / day of December, 2006:

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