

MOTION

Westfield Insurance Company moves this Court to reconsider its Memorandum In Support of Jurisdiction pursuant to Supreme Court Rule XI, Section 2(A).

On December 13, 2006, this Court declined to accept jurisdiction of this case, with three Justices dissenting on the basis that they would accept this case for consideration of Proposition of Law No. 1. That Proposition of Law states:

Proposition of Law No. 1: When a business owns vehicles and selects and purchases UM/UIM coverage for "owned autos only" under a standard ISO business auto policy, that coverage does not extend to those who drive their personal vehicles within the scope of employment.

Since this Court's 2003 *Galatis* decision [*Westfield Insurance Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849], multiple appellate districts in Ohio have been interpreting the same standardized insurance policy forms and interpreting them differently, with different coverage results based on where in Ohio the case is filed. Here, the First District held that the declarations page of Plaintiff's employer's insurance policy, which limited coverage to "owned autos only" [i.e., those owned by his employer], was ambiguous because it conflicted with the standard UM/UIM endorsement (Opinion, pp.8-9). That Court extended the employer's policy to provide coverage to Plaintiff while driving his personal vehicle within the scope of employment.

Analyzing the same declarations and UM/UIM endorsements, the Sixth and Third Districts have come out the other way, holding that since UM/UIM coverage is provided only with respect to "covered autos" (defined as "owned autos only"), the employee is not insured for UM/UIM when they are not driving a "covered auto," as the policy "...clearly and unambiguously limits UM coverage to those employees who, at the time of an accident, are both acting within the scope of employment and occupying a "covered auto." *Musser v. Luckey Farmers, Inc.*, 6th Dist. No. S-06-

016, 2006-Ohio-3392, 2006 WL 1793681, at ¶ 30; *Olmstead v. New Hampshire*, 3rd Dist. No. E-04-017, 2005-Ohio-39, 824 N.E.2d 158, 159 Ohio App.3d 457, at ¶ 16; *Wright v. Small*, 3rd Dist No. 13-02-34, 2003-Ohio-971, 2003 WL 728943. [emphasis added.]

The question presented in this Proposition of Law will occur over and over again. Employees commonly drive their personal vehicles on business for their employers and employers commonly pay premiums to insure only the vehicles they own. It is a question that was left unresolved by the *Galatis* decision and this Court should accept jurisdiction of this case to resolve it.

Stare decisis requires that this Court maintain stability and predictability in the legal system, so that a litigant receives uniform application of the law regardless of the appellate district in which he is litigating. Consideration of this case will provide that. This is particularly true here where the named insureds admitted they never intended coverage for employees driving their personal vehicles in the scope of employment and that all employees and partners knew that they needed to insure their own vehicles. After all, the true intent of the parties is paramount and is the touchstone of all insurance cases. *Galatis*, 100 Ohio St.3d at p. 219.

CONCLUSION

Appellant Westfield Insurance Company urges this Court to accept jurisdiction and to consider this case on its merits so that Ohio's insureds and insurers receive a uniform application of the law regardless of the appellate district in which they are litigating.

Respectfully submitted,



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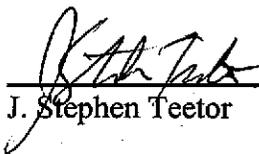
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