IN THE SUPREME COURT OF OHIO

JACK R. ADVENT, Executor of the Estate of Valijean D. Advent, Deceased,	)	
	)	
Appellant,	)	**Supreme Court Case Nos. 06-2271 06-2393**
	)	
vs.	)	
	)	**On Appeal from the Franklin**
ALLSTATE INSURANCE COMPANY, et al.	)	**County Court of Appeals,**
	)	**Tenth Appellate District**
Appellee.	)	**Case No. 06AP-103**

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STATEMENT OF THE FACTS

Amicus Curiae Ohio Association of Civil Trial Attorneys (OACTA) hereby incorporates by reference the Statement of Facts set forth in the Merit Brief of Appellee Allstate Insurance Company.

ARGUMENT

Certified Conflict Question: Can the S.B. No. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two year guarantee period that commenced subsequent to the S.B. No. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. 97 amendments?

OACTA'S PROPOSITION OF LAW NO. I

> **PURSUANT TO R.C. 3937.31 AS AMENDED BY S.B. 267 (EFF. SEPTEMBER 21, 2000), STATUTORY AMENDMENTS BECOME INCORPORATED INTO AN EXISTING AUTOMOBILE INSURANCE POLICY AT THE TIME OF THE POLICY'S RENEWAL, EVEN IF SUCH RENEWAL OCCURS DURING A TWO-YEAR GUARANTEE PERIOD. WOLFE v. WOLFE (2000), 88 Ohio St.3d 246, SUPERCEDED FOR POLICIES GOVERNED BY R.C. 3937.31(E).**

This appeal presents this Honorable Court with an opportunity to end the chaos created by the appellate court's decision below which created a conflict between appellate jurisdictions as to the vital issue of when statutory amendments become incorporated into existing automobile insurance policies. The threshold issue of what law applies to a policy is, as in this case, often determinative of the entire action.

The issue raised in this appeal is different from that raised in Young v. Cincinnati Ins. Co. (2005) 105 Ohio St. 3d 1252, which was dismissed as improvidently allowed by this honorable Court. Young, supra, dealt with a loss which occurred after the S.B. 267 amendment of R.C. 3937.31 added Section (E) to the statute but before a new two year guarantee period had begun for the policy. The issue was whether R.C. 3937.31(E) authorized an insurer to incorporate a statutory provision which negated UM coverage at the time of the policy's next six month renewal despite the fact the two year guarantee period which began before S.B. 267 took effect had not yet expired.

> In Young [v. Cincinnati Ins. Co., 8th Dist. No. 82395, 2004 Ohio 54] and Slone [v. Allstate Ins. Co., 5th Dist. No. 2004CA0021, 2004 Ohio 3990], the insurance companies sought to incorporate S.B. 267 into their policies upon a renewal date that occurred after the effective date of S.B. 267, but during the two-year guarantee period provided by R.C 3937.31(A) In each case, application of S.B. 267 would have precluded the insured from receiving UM coverage, whereas without the application of S.B. 267, the insured would have received UM coverage.

Shay v. Shay (2007), 113 Ohio St. 3d 172, P. 14), citing Shay v. Shay, 164 Ohio App. 3d 518, P. 13).

The issue raised by this appeal is different that that presented in this Court's recent decision in Shay v. Shay, supra. Shay also involved a policy which had a two year guarantee period beginning before the S.B. 267 addition of Section (E) to R.C. 3937.31 but which had a six month renewal of the policy before the loss occurred. In contrast to Young, application of the new statutory provisions at the time of the interim renewal in Shay would have mandated that UM coverage be extended. This Court refused to incorporate the new statutory language of R.C. 3937.31 at the time of the policy's next six month interim renewal given that there was still a pre-S.B. 267 guarantee period in effect at the time of the loss.

This appeal presents this Court with the opportunity to squarely address the effect of R.C. 3937.31(E) since, at the time of the accident herein, the insurance policy in question had a new guarantee period which began following the S.B. 267 amendment to add Section (E) to the guaranteed renewal statute.

The Ohio Supreme Court first addressed the issue of when statutory amendments are incorporated into automobile insurance policies in Benson v. Rosler (1985), 19 Ohio St. 3d 41. In Benson, supra, the Court ruled that: "statutes pertaining to a policy of insurance and its coverage, which are enacted after the policy's issuance, are incorporated into any renewal of such policy if the renewal represents a new contract of insurance separate from the initial policy." Id. at 44. The Court then held that each six-month renewal of an insurance policy constituted a new, term contract of insurance so that any statutory amendments would be incorporated into the policy at the time of its next renewal.

> . . .Although the statute provides that automobile insurance policies shall be issued "for a policy period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years * * *," ***such policies, when written for specific periods, may be considered term policies rather than continuing policies.***
>
> * * *

> ***We determine the language of these policies to constitute term coverage and, at the expiration of the six-month period with the company's subsequent acceptance of the premiums, there was a new contract of insurance coverage entered into by the parties.*** Appellants renewed the policies herein three times before the automobile accident occurred on November 13, 1981.

Benson, supra, at 44-45. Emphasis added.

The Ohio General Assembly amended R.C. 3937.31 four years after Benson was decided pursuant to H.B. 381, effective July 1, 1989. Significantly, the legislature did nothing to supercede the interpretation of the statute emanating from the Benson decision when it amended the statute in 1989. The re-enactment of a statutory provision without change after a Supreme Court decision has interpreted it is deemed to be an approval by the legislature of the court's prior interpretation.

> ...[t]he re-enactment of that section without change after that decision, * * * may be accepted as an unqualified recognition of the legislative intention as so judicially declared.

Doll v. Barr (1898), 58 Ohio St. 113, 121. c.f. Geiger v. Geiger (1927), 117 Ohio St. 451, 469 and Seeley v. Expert, Inc. (1971), 26 Ohio St.2d 61, 72-73.

The Benson decision was reversed, in part, by Wolfe v. Wolfe (2000), 88 Ohio St. 3d 246. In Wolfe, supra, the Court agreed that amendments to R.C. 3937.18, enacted after a policy was issued, would automatically become incorporated into existing policies. The Court disagreed with the Benson holding that statutory amendments would become incorporated at the time of each six-month renewal. Instead, the Court held that, due to the ***former*** Two-Year Guarantee Statute, R.C. 3937.31, new legislation would only become incorporated into a policy at each two-year anniversary.

> 1. Pursuant to R.C. 3937.31(A), every automobile liability insurance policy issued in this state must have, at a minimum, a guaranteed two-year policy period during which the policy cannot be altered except by agreement of the parties and in accordance with R.C. 3937.30 to 3937.39.

Wolfe, supra, syllabus to the case.

The Wolfe decision was announced on March 29, 2000. At that time, S.B. 267 was already pending in the legislature. The bill solely addressed amendments to the Uninsured Motorist Coverage Statute, R.C. 3937.18. The Ohio General Assembly reacted to the Wolfe decision with lightning speed. Within two months, it added language to S.B. 267 to add Section (E) to the Two Year Guarantee Statute, R.C. 3937.31. The bill was signed by the Governor on June 21, 2000, and took effect on September 21, 2000.

In interpreting the varying interpretations now being given to R.C. 3937.31(E), the Court should be mindful of the objective of the legislature in amending the statute.

> Since the statutory provision at issue is subject to varying interpretations, it is fair to say that it is ambiguous. Therefore, R.C. 3937.31(A) must be construed to give effect to the legislative intent. *Harris v. Van Hoose* (1990), 49 Ohio St. 3d 24, 26, citing *Cochrel v. Robinson* (1925), 113 Ohio St. 526, paragraph four of the syllabus. It is a cardinal rule of statutory interpretation that a court must first look to the language of the statute itself to determine legislative intent. *Provident Bank v. Wood* (1973), 36 Ohio St. 2d 101, 105. In addition, R.C. 1.49 provides that if a statute is ambiguous, the court, in determining the intention of the legislature, may consider, among other matters, both the objective of the statute and the consequences of any particular construction.

Wolfe, supra, at 248, 249.

The General Assembly's disagreement with the Court's reversal of the Benson decision in Wolfe and its objective to return the law to its pre-Wolfe status could not have been clearer. The General Assembly allowed the pertinent sections of R.C. 3937.31 to remain unchanged for fifteen years after Benson determined that statutory enactments were to be automatically incorporated into automobile insurance policies at the time of their next renewal. Conversely, the General Assembly had a revision to R.C. 3937.31 ready for the Governor's signature within two months after Wolfe reversed the Benson decision and held that statutory enactments could not be incorporated until the policies two year anniversary. "[A] legislative body in enacting amendments is presumed to have in mind prior judicial constructions of the section." State ex rel. Board of Education v. Howard (1957), 167 Ohio St. 93, 96.

The legislature superseded Wolfe by adding subsection (E) to R.C. 3937.31, which states that, despite the two-year guaranteed renewal requirement, new statutory amendments are incorporated into a policy of insurance at the time of each renewal of the policy.

> (E) Nothing in this section prohibits an insurer from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of this section.

R.C. 3937.31(E), as amended by S.B. 267.

Further, the Ohio General Assembly included staff notes, or "uncodified law" which made clear that it was the intent of the General Assembly to incorporate statutory amendments into existing insurance policies at the time of any renewal within this two-year guarantee period.

> SECTION 5. It is the intent of the General Assembly in amending section 3937.31 of the Revised Code to make it clear that an insurer may modify the terms and conditions of any automobile insurance policy to incorporate changes that are permitted or required by that section and other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of that section.

Despite the new statutory language set forth in R.C. 3937.31(E), policyholders continue to argue that Wolfe remains good law. They argue that: R.C. 3937.31(A) still precludes any changes in "coverages" during a two-year guarantee period; the statute is internally conflicting; and, the statute, is ambiguous in its intent. The argument was framed in Arn v. McLean (2005), 159 Ohio App. 3d 662, as follows:

> [P27] According to the McLeans, this language means that an insurer must retain all pre-existing coverages, including UIM coverage arising by operation of law, when it renews a policy of insurance during the two year period. We disagree. In the first place, this argument ignores the clear meaning of R.C. 3937.31(E), which was added by S.B. 267. It also ignores the very explicit intent of the legislature, as expressed in Section 3 of S. B. 267. As we noted, the legislature stated that insurers may modify policies during the two-year period of guaranteed coverage. Admittedly, the legislature could have changed the second sentence of R.C. 3937.31(A) to remove any ambiguity. However, in view of the explicit description of legislative intent, we are not going to grasp at straws to invalidate the General Assembly's intended result.

Id. at P. 27.

While the language of R.C. 3937.31(E) could perhaps have been worded clearer, the legislature's intent that no other provision of R.C. 3937.31 be used to prevent statutory amendments from becoming incorporated into the renewals of insurance policies was certainly obvious. When considering how R.C. 3937.31(E) fits together with the rest of the statute, the legislature wrote that "nothing in this section prohibits an insurer from incorporating" new law into the insurance contracts at the time of their next renewal. Id. The Appellant's argument that other sections of R.C. 3937.31 preclude insurers from incorporating statutory changes is in direct contravention of the legislature's instruction that "nothing" in the statute shall be used to stop insurers from doing so.

It should be noted that, in an effort to harmonize division (E) of the statute with division (A), the legislature also deleted the word "policy" from the first sentence of division (A) so that it now reads:

> (A) Every automobile insurance policy shall be issued for a ~~policy~~ period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years.

R.C. 3937.31(A)

The lower appellate courts have had an opportunity to review the impact of R.C. 3937.31(E) in cases where the new statutory language applies. In Arn v. McLean (2005), 159 Ohio App.3d 662, the Second Appellate District agreed that the new statutory language in R.C. 3937.31 intended to automatically incorporate statutory amendments into automobile insurance policies at the time of their next renewal.

> [*P25] In response to State Farm's arguments, the McLeans contend that the amendment in S.B. 267 was not substantive, and that *Wolfe's* two-year guaranteed period of coverage was not eliminated. In particular, the McLeans rely on the fact that the legislature retained the second sentence in R.C. 3937.31(A), which refers to cancellation. Specifically, this sentence says that:
>
> [*P26] "where renewal is mandatory, 'cancellation,' as used in sections 3937.30 to 3937.39 of the Revised Code, includes refusal to renew a policy with at least the coverages, included insureds, and policy limits provided at the end of the next preceding policy period."

> [*P27] According to the McLeans, this language means that an insurer must retain all pre-existing coverages, including UIM coverage arising by operation of law, when it renews a policy of insurance during the two year period. We disagree. In the first place, this argument ignores the clear meaning of R.C. 3937.31(E), which was added by S.B. 267. It also ignores the very explicit intent of the legislature, as expressed in Section 3 of S. B. 267. As we noted, the legislature stated that insurers may modify policies during the two-year period of guaranteed coverage. Admittedly, the legislature could have changed the second sentence of R.C. 3937.31(A) to remove any ambiguity. However, in view of the explicit description of legislative intent, we are not going to grasp at straws to invalidate the General Assembly's intended result.

Arn, supra, at ¶¶ 25 - 27.

In Arn, the issue was whether UM/UIM coverage was required to be extended "by operation of law" because the insurer had not obtained a valid rejection of coverage when the policy was initially issued. The policy had renewed once after the legislature amended R.C. 3937.18 pursuant to S.B. 97 to make UM/UIM coverage a purely optional coverage. The policy had not yet had a new guarantee period begin after S.B 97 took effect. The Arn court ruled no UM/UIM coverage was available because the insured did not buy it, S.B. 97 was incorporated at the time of the policy's renewal and precluded courts from creating coverage by operation of law. In Arn the court found that, if it refused to allow the insurer to incorporate S.B. 97 at the time of the policy renewal, it would be ignoring "the clear meaning of R.C. 3937.31(E), which was added by S.B. 267." Id. at ¶ 27. It further found that refusing to incorporate the statute would "ignore the very explicit intent of the legislature, as expressed in Section 3 of S.B. 267. As we noted, the legislature stated that insurers may modify policies during the two-year period of guaranteed coverage." Id. at ¶ 27. Finally, the court recognized that, given the "explicit description of legislative intent, we are not going to grasp at straws to invalidate the General Assembly's intended result." Id. at ¶ 27.

In McDaniel v. Rollins, Allen App No. 1-4-82, 2005 Ohio 3079 (Ohio Ct. App. 2005), the Third Appellate District agreed with Arn's interpretation of the new statutory language and concluded the addition of paragraph (E) to R.C. 3937.31 superseded the holding in Wolfe.

> We note that R.C. 3937.31 has been amended and now provides in division (E) that:
>
> > Nothing in this section prohibits an insurer from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of this section.
>
> Therefore, the holding in *Wolfe* that an insurer could not make unilateral changes to an insurance policy during the two-year guaranteed coverage period has been superseded by statute. Arn v. Mclean, 159 Ohio App. 3d 662, 2005 Ohio 654, at P27.

Id. at P 21.

The Tenth Appellate District below also agreed with Arn that division (E) of R.C. 3937.31 abrogated the holding in Wolfe so that changes in the law would thereafter become incorporated into an insurance policy at the beginning of the next policy term.

> **[*323]** Under *R.C. 3937.31(E)*, where a policy is "guaranteed renewable for successive policy periods totaling not less than two years[,]" as permitted by *R.C. 3937.31(A)*, an insurer may incorporate changes permitted by the Ohio Revised Code at the beginning of any policy period. Thus, to the extent that it held that insurance policies could not be altered during the two-year guarantee period except by agreement of the parties, *R.C. 3937.31(E)* abrogated *Wolfe*. See *Arn*; *McDaniel at P12, fn. 1.*

Advent v. Allstate Insurance Company (2006), 169 Ohio App. 3d 318, 323, P. 13.

The Twelfth Appellate District recently considered the impact of newly added division (E) of R.C. 3937.31 and came to the same conclusion that division (E) superseded Wolfe so that insurers could again incorporate statutory changes at the beginning of any policy period within a two year guarantee period.

> **[*P23]** The intent of this amendment was to allow insurers to modify terms and conditions or to incorporate changes at the beginning of any policy period within the two-year period in *R.C. 3937.31(A). Arn at P20.*

Westfield National Ins. Co. v. Young, Warren App. No. CA2005-12-135, 2006 Ohio 5839, P. 23. (Ohio Ct. App. 2006)

The First Appellate District also weighed in on the issue and, consistent with the Second, Third, Tenth and Twelfth Appellate Districts, held that by its express terms, R.C. 3937.31(E) authorized insurers to incorporate statutory changes at the time of the insurance policies' next renewal.

> **[*P11]** The court's holding in *Wolfe* prevented an insurer during this two-year guaranteed period from canceling bargained-for coverages, except by agreement of the parties and in accordance with the relevant statutory provisions governing cancellations. Additionally, the holding prevented an insurer during this two-year guaranteed period from adopting statutory changes that would have the effect of canceling coverages that had arisen by operation of law. In other words, under *Wolfe*, an insurer could not incorporate new statutes such as S.B. No. 97 into the policy until after the expiration of the two-year guaranteed period and the start of a new guaranteed period.
>
> **[*P12]** In amending *R.C. 3937.31*, the legislature did not state its intent to supersede any part of the *Wolfe* holding. But the language used by the legislature in the statute indicates an intent to do so. As a result, we hold that when a policy is actually renewed as defined in the contract during the two-year guaranteed period, the law in effect at the time of the renewal governs the scope of the UM/UIM coverage.
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> **[*P13]** Our holding is consistent with the Second Appellate District's decision in *Arn v. McLean* n10 and the Tenth Appellate District's decision in *Advent v. Allstate Ins. Co.*, in which the respective courts entertained facts very similar to those in this case.

St. Clair v. Allstate Ins. Co., Hamilton App. No. C-060028, 2006 Ohio 6159, P. 11-13. (Ohio Ct. App. 2006)

The only appellate district which has refused to enforce R.C. 3937.31(E) and to allow insurers to incorporate statutory changes at the beginning of the next policy renewal is the Eighth Appellate District. In Storer v. Sharp, Cuyahoga App. No. 86525, 2006 Ohio 1577 (Ohio Ct. App. 2006) the court noted that the insurer argued that division (E) of R.C. 3937.31 authorized it to incorporate a statutory change at the time of the next renewal of the policy. With no analysis of division (E), the Court simply said: "We reject defendant's arguments." The court in Storer,

supra, then relied on two pre-S.B. 267 appellate decisions which held that, pursuant to R.C. 3937.31(A), an insurer had to wait until a two year anniversary of the policy to incorporate statutory changes.

> [*P14]...Defendant further argues that, when R.C. 3937.18 was amended on October 31, 2001, it no longer permitted UM/UIM coverage to arise by operation of law. Thus as a result of S.B. 267, the amended version of R.C. 3937.18 is incorporated into plaintiffs' September 18, 2002 renewal policy and, therefore, UM coverage cannot arise by operation of law to cover plaintiff's accident in February 2003. We reject defendant's arguments.
>
> [*P15] As noted by this court in *Young v. Cincinnati Ins. Co.*, 8th App. No. 82395, 2004 Ohio 54, a policy cannot be amended to reflect statutory changes that occur during the guaranteed two-year period; an amendment does not take effect until the expiration of that two-year period. R.C. 3937.31(A); *Shay v. Shay*, 164 Ohio App. 3d 518, 2005 Ohio 5874; *Slone v. Allstate Ins. Co.*, Richland App. No. 2004CA0021, 2004 Ohio 3990.

Id. at P. 14-15.

The problem with the Storer decision, supra, is that it ignores the fact that the legislature inserted an entire new paragraph into R.C. 3937.31 that specifically addresses when statutory changes are to become a part of insurance policies and further instructed that "nothing" in the rest of the statute would prohibit an insurer from doing so. The new language in R.C. 3937.31(E) cannot be ignored. "It is a basic tenet of statutory construction that 'the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose.' *State, ex rel. Cleveland Electric Luminating Company v. Euclid* (1959) 169 Ohio St. 476, 479." State v. Wilson (1999), 77 Ohio St.3d 334, 336.

Finally, Appellant argues that "something" was required to be done by the insurer at the time of the policy renewal to incorporate the statutory changes. The Ohio Supreme Court also addressed this issue in Benson. In Benson, the policyholder argued that the anti-stacking

language in the policy was null and void due to previous Supreme Court decisions. The legislature responded by amending R.C. 3937.18 to authorize the use of anti-stacking clauses. Just as Appellant argues herein, the policyholders in Benson argued that the insurer was required to issue some type of endorsement to put valid contractual language back in the policy and/or to incorporate the statutory change. The Ohio Supreme Court rejected that argument, holding that the new statutory language automatically became part of the policy and, at the time of each renewal, a new contract was deemed to be formed.

> ***Having been enacted into law and effective as of the date of the renewals of these policies, R.C. 3937.181 became a part of the policies and gave lawful force to the language as contained within the original policies relative to the stacking of insurance.*** There was no need to issue an endorsement or new policy because, as renewed, the language of the original policy contained the entire agreement between Farmers and these insureds. As stated by the court of appeals, "[i]n our view, the policy language was already in the policy and ***the renewals subsequent to the effective date of the amended statute operated to bring its original terms within the favor of the amended statute.***"

Benson v. Rosler, supra, at 44-45. Emphasis added.

Wolfe did not reverse the entire Benson decision. Wolfe only reversed the portion of the case dealing with six month renewals. The above law to the effect that statutory changes are automatically incorporated into insurance policies at their next renewal continues to apply. It is directly on point with the facts of this case and is controlling herein. It would be totally unworkable if any other scenario existed.

Accepting Appellant's argument that the parties to the insurance policy need do "something" in order to incorporate statutory changes would absolutely emasculate the ability of the legislature to uniformly govern insurance in Ohio. If insurers, or their policyholders, could at their own whim either agree or not agree to incorporate statutory changes to Ohio's insurance law by their own actions or inactions the result would be pandemonium. Instead of having uniform laws applicable to all policies of insurance in Ohio, the result would be a mish mash of laws applicable to any given policy in Ohio. The courts would then be faced with litigating

whether the parties agreed to each of the statutory enactments that may have taken effect over a period of perhaps a decade just to determine which laws apply to a given policy.

It should be more than obvious that insurance is a highly regulated industry, governed primarily by the laws set forth in Chapter 39 of the Ohio Revised Code. Insurers and their policyholders do not and should not have the option of agreeing to either follow or ignore the laws passed by the General Assembly related to insurance. A bright line rule governing when newly enacted legislation becomes a part of an insurance contract is essential. The legislature, in its infinite wisdom, has decided that newly enacted legislation ought to automatically become incorporated at the time the automobile insurance policies next renew instead of having to wait up to two years for the anniversary date of the guarantee period.

CONCLUSION:

In 1985 the Ohio Supreme Court decided Benson v. Rosler, supra, holding that statutory amendments are incorporated into automobile insurance policies at the time of their next renewal. The General Assembly did nothing over the next 15 years to disturb that holding, despite amending the statute on one occasion during that period. On September 21, 2000, just months after the Wolfe v. Wolfe case was decided by the Ohio Supreme Court, the legislature enacted S.B. 267. This legislation added subpart (E) to R.C. 3937.31, which allowed insurers to incorporate statutory changes each time the policy renewed. The legislature instructed that "nothing" in the remainder of R.C. 3937.31 ought to be used to thwart insurers from doing so. The legislature also amended subpart (A) of R.C. 3937.31 to remove the requirement that all automobile insurance policies have a mandatory policy period of two years so as to harmonize subpart (A) with newly added subpart (E).

Since its enactment, the First, Second, Third, Tenth and Twelfth Appellate Districts have all come to the same conclusion. That is, newly enacted legislation becomes part of an insurance

policy at the time the policy next renews. The only appellate district to disagree, the Eighth Appellate District, failed to analyze the impact of R.C. 3937.31(E) and relied on appellate decisions interpreting the pre-S.B. 267 version of the statute to conclude that Wolfe still applied.

Amicus Curiae respectfully submits that this Honorable Court should respond to the certified question posed by responding that R.C. 3937.31(E) provides for the automatic incorporation of statutory amendments into automobile insurance policies at the time of their next renewal and "nothing" else in R.C. 3937.31 prohibits insurers from doing so. Wolfe continues to govern only those policies whose last two year guarantee period began before R.C. 3937.31(E) took effect. The Wolfe decision has no continuing effect for policies governed by R.C. 3937.31(E).

Respectfully submitted,

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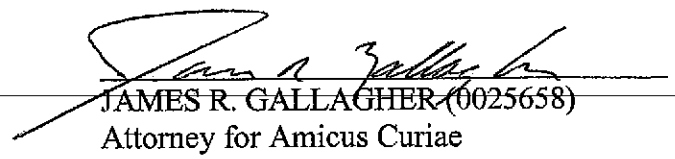
CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Amicus Curiae Ohio Association of Civil Trial Attorneys in Support of Appellee Allstate Insurance Company was served by regular U.S. mail, postage pre-paid, upon John M. Gonzales and Timothy J. Snyder, Attorneys for Appellant Jack R. Advent, Executor, at John M. Gonzales, LLC, 140 Commerce Park Drive, Westerville, Ohio

43082; upon Rick E. Marsh and Monica L. Waller, Attorneys for Appellee Allstate Insurance Company, at Lane, Alton & Horst, LLC, Two Miranova Place, Suite 500, Columbus, Ohio 43215-7052; upon Mark Segreti, Jr., Attorney for Amicus Curiae Ohio Academy of Trial Lawyers, 1405 Streamside Drive, Dayton, Ohio 45459; and upon Paul W. Flowers, Ohio Academy of Trial Lawyers Amicus Curiae Chairman, 50 Public Square, Suite 3500, Cleveland, Ohio 44113 on this 12th day of June, 2007.



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