

IN THE SUPREME COURT OF OHIO

**Steve and Megan Hilmer, individually
and on behalf of Casey Hilmer, a minor**

Plaintiffs

v.

Lance White, et al.

Defendants

CASE NO.

08-0304

On appeal from the Hamilton County
Court of Appeals, First Appellate District

Court of Appeals
Case No. C-070074

Safeco Insurance Company of America

Plaintiff-Appellant

v.

Federal Insurance Company

And

Pacific Indemnity Company

Defendants-Appellees

And

Benjamin White, et al.

Defendants

FILED
FEB 08 2008
CLERK OF COURT SUPREME COURT OF OHIO

**APPELLANT SAFECO INSURANCE COMPANY OF AMERICA'S NOTICE OF
PENDING APPLICATION FOR RECONSIDERATION OF MOTION TO CERTIFY
CONFLICT**

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**NOTICE OF PENDING APPLICATION FOR RECONSIDERATION OF
MOTION TO CERTIFY CONFLICT**

Now comes Appellant Safeco Insurance Company of America pursuant to Supreme Court Practice Rule II Section 2(B)(3) and hereby gives notice that an Application for Reconsideration of Motion to Certify Conflict was filed February 1, 2008 and is currently pending with the First District Court of Appeals.

On December 28, 2007 the First District Court of Appeals issued an Opinion which affirmed the decision of the trial court and in an atypical manner sua sponte recognized two conflicts with decisions of other courts of appeal. The Opinion included specific language outlining two issues for this Court to review. On January 7, 2008 Appellant timely filed a Motion to Certify Conflict pursuant to Appellate Rule 25(A) agreeing with the two conflicts identified but requesting that this Court modify the language of one of the issues previously identified. Appellees served an opposition to Safeco's Motion to Certify Conflict on January 16, 2008. The First District Court of Appeals issued an Entry January 24, 2008. That Entry was received by Appellant's counsel in the mail late in the day on Monday, January 28, 2008. The Entry stated in its entirety:

This case came on to be considered upon the motion of appellant to certify a conflict under App. Rule 25(A) and upon memorandum in opposition.

The Court finds that the motion is not well taken and is overruled as moot. In its judgment entry and opinion, the Court sua sponte certified a conflict to the Ohio Supreme Court.

On January 31, 2008, Appellant attempted to file a Notice of Certified Conflict with the Clerk of this Court pursuant to Supreme Court Practice Rule IV. The Clerk refused to

accept the Notice for Filing on the basis that the Notice was required to be filed January 28, 2008 by 5 p.m., hours after the Entry overruling the Motion to Certify was received. Appellant has therefore filed an Application for Reconsideration with the First District Court of Appeals requesting that its Motion to Certify be granted in part and denied in part and an Order issued determining that a conflict exists between the First District's December 28, 2007 Opinion and Torres v. Gentry (Ohio App. 5 Dist.), 2007-Ohio-4781 with the issue described as follows:

When an insurance policy defines an 'occurrence' as an 'accident' that results in bodily injury, does an 'occurrence' include injuries that result from an intentional act when the insured seeking coverage are claimed to have been negligent in relation to that intentional act?

Appellant further requested that the Order determine that a conflict exists between the First District's December 28, 2007 Opinion and United Ohio Ins. Co. v. Metzger (Feb. 8, 1999), Putnam App. No. 12-98-1, 1999 Ohio App. LEXIS 920 with the issue described as follows:

When an insurance policy excludes an injury 'which is expected or intended by [an or any] insured * * *'; injuries 'arising out of an illegal act committed by or at the direction of an insured'; or 'any injury caused by a violation of penal law or ordinance committed by or with the knowledge or consent of any insured,' do the exclusions become ambiguous when read in conjunction with a 'Severability of Insurance' condition, in light of the announced expectation by policyholders that their negligence will be covered?

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice was sent via ordinary mail to the following on this 7th day of February, 2008:

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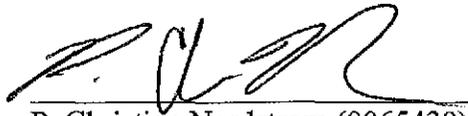
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