

IN THE SUPREME COURT OF OHIO

Steve and Megen 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

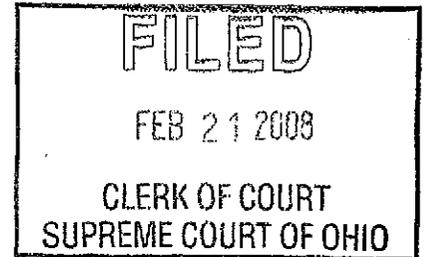
Pacific Indemnity Company

Defendants-Appellees

And

Benjamin White, et al.

Defendants



FILED UNDER SEAL PURSUANT  
TO PENDING MOTION TO SEAL

APPELLANT SAFECO INSURANCE COMPANY OF AMERICA'S MEMORANDUM  
IN OPPOSITION TO MOTION TO STRIKE NOTICE OF PENDING APPLICATION  
FOR RECONSIDERATION OF MOTION TO CERTIFY CONFLICT

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**MEMORANDUM IN OPPOSITION**  
**TO MOTION TO STRIKE**

On February 8, 2008 Appellant Safeco Insurance Company of America filed with this Court a timely Notice of Appeal of a December 28, 2007 Opinion of the First District Court of Appeals. On that same date Appellant also filed a Memorandum in Support of Jurisdiction, a Motion to Seal Record and Pleadings on Appeal and a Notice of Pending Application for Reconsideration of Motion to Certify Conflict. On February 13, 2008 Appellees Federal Insurance Company and Pacific Indemnity Company (hereinafter “Chubb”) served a Motion to Strike Appellant’s Notice. Chubb’s Motion to Strike should be denied.

Appellant filed the Notice because of Practice Rule II Section 2(B)(3) which states:

In a discretionary appeal or claimed appeal of right, if a party has timely moved the court of appeals to certify a conflict under Appellate Rule 25, the notice of appeal shall be accompanied by a notice, in accordance with S. Ct. Prac. R. IV, Section 4(A), that a motion to certify a conflict is pending with the court of appeals.

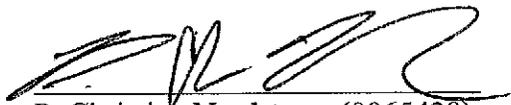
The purpose of this portion of Rule II, as discussed more fully in provisions of Practice Rule IV Section 4(A) and (C), is to make this Court aware of the possibility of a certified conflict and to permit this Court to consider both a discretionary appeal and a certified conflict arising from the same case simultaneously. As was set forth in more detail in the Notice of Pending Application for Reconsideration, Appellant filed a timely Motion to Certify a conflict pursuant to Appellate Rule 25 in the First District Court of Appeals. When that Motion to Certify was overruled as moot Appellant then filed with the First District a timely Application for Reconsideration pursuant to Appellate Rule 26(A). Thus, as of the time of filing the Notice of Appeal, the final disposition of Appellant’s Motion to Certify was unresolved, potentially meaning that the motion to certify conflict was still “pending” with the First District. Based upon the foregoing provisions of Practice Rule II and IV, Appellant assumed that this Court would want to be made

aware of the unresolved Motion to Certify despite the fact that the Practice Rules do not specifically address a pending Application for Reconsideration of a Motion to Certify Conflict.

The utility of such a filing is seemingly confirmed by the fact that the First District Court of Appeals on February 13, 2008 issued an Order granting the Application for Reconsideration, granting in part and denying in part Appellant's Motion to Certify and certifying a conflict pursuant to Article IV, Sec. 3(B)(4) of the Ohio Constitution. Appellant is simultaneously filing a Notice of Certified Conflict based upon this Order, and the Practice Rules clearly envision that this Court consider of the Notice of Certified Conflict and the Discretionary Appeal together.

For the foregoing reasons, Appellant respectfully requests that Chubb's Motion to Strike be denied.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Memorandum was sent via ordinary mail to the following on this 21<sup>st</sup> day of February, 2008:

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