

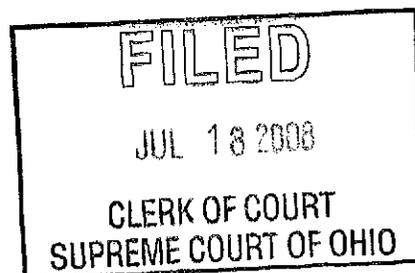
IN THE SUPREME COURT OF OHIO
CASE NO. 2007-0758

TERESA L. ANGEL	:	ON APPEAL FROM THE
	:	GEAUGA COUNTY COURT OF APPEALS
Plaintiff-Appellee,	:	ELEVENTH APPELLATE DISTRICT
	:	
vs	:	Court of Appeals
	:	Case No. C.A. 2005-G-2669
ERIC J. REED, et al.	:	
	:	
Defendants/Appellants.	:	

APPELLANT ALLSTATE INSURANCE COMPANY'S
MEMORANDUM IN OPPOSITION TO APPELLEE'S
MOTION FOR RECONSIDERATION

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Now comes Appellant, Allstate Insurance Company, by and through undersigned counsel, WILLIAMS, MOLITERNO & SCULLY CO., L.P.A., and submits its Memorandum in Opposition to Appellee's Motion for Reconsideration of this Court's Opinion in this case, issued July 3, 2008, cited as *Angel v. Reed*, Slip Opinion, 2008-Ohio-3193. As this Court is well aware, Supreme Court Rule XI, Section 2 permits Motions for Reconsideration to be filed within ten (10) days of after the Supreme Court's Judgment Entry or Orders filed with the clerk. As stated in the rule "a motion for reconsideration shall be confined strictly to the grounds for reconsideration, **shall not constitute a re-argument of the case**, and may be filed only with respect to the following...(4) a decision on the merits of the case." (Emphasis added) To the extent that Appellee's Motion for Reconsideration constitutes "re-argument of the case", Appellant requests that said portions be stricken and not be taken into consideration by this Court in ruling upon the Appellee's motion.

The Ohio Supreme Court has used its reconsideration authority to "correct decisions which, upon reflection, are deemed to have been made in error." *Buckeye Community Hope Foundation v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539 at 541. Additionally, a respondent's attempt to re-argue a contention is not authorized by the rules of practice of the Ohio Supreme Court. *State ex rel Shemo, et al. v. City of Mayfield Heights, et al.* (2002), 96 Ohio St.3d 379, 381. In Appellee's Motion for Reconsideration, she argues that she could not have known that the tortfeasor Eric Reed was uninsured in that she did everything she could do to make that determination. This is identical argument that was advanced in the plaintiff's Merit Brief (See Merit Brief of Appellee at Page 9). This is the very sort of re-argument of the case that is not permitted to be made in a Motion for Reconsideration.

Additionally, Appellee's Motion for Reconsideration advances the argument that the Court's holding in this case would encourage litigation, citing *Marsh v. State Auto Mut. Ins. Co.* (Montgomery Ct. App. 1997), 123 Ohio App.3d 356. This is also an identical argument that was

advanced in the Appellee's Merit Brief (See Merit Brief of Appellee at Page 13). Once again, this form of re-argument is explicitly not permitted for purposes of a Motion for Reconsideration.

Appellee in her Motion for Reconsideration concedes that the two year provision in the Allstate policy "requires some degree of care on her part to satisfy it." However, Appellee then states in her Motion for Reconsideration that "(she) did everything should could do respecting Mr. Reed." (sic). Despite the fact that the tortfeasor Eric Reed either was mistaken or dishonest with the insurance information he gave to the police, the Appellee simply needed to contact the purported insurance carrier, Nationwide, to confirm the existence of any coverage. Finding contact information for Nationwide Insurance Company, whose headquarters are in Columbus, Ohio, is not difficult. A simple search in a telephone book or even the Internet would have revealed enough information for Appellee to contact Nationwide in order to confirm coverage. Had Appellee taken the simple step of merely contacting Nationwide Insurance in order to confirm the existence of coverage, she would have undoubtedly been informed by Nationwide shortly after said contact that there was no policy in force at the time of the accident.

Appellee's Motion for Reconsideration raises a question about what would have happened if she tried to contact Nationwide and they did not respond? If, in fact, Appellee had contacted Nationwide and they did not respond with regard to the issue of coverage, that would raise serious questions and concerns. The prudent thing to do would then be for Appellee to contact her uninsured motorist carrier, in this case Allstate.

Appellee's Motion for Reconsideration argues that "the upshot may well be that plaintiffs have to pursue aggressive action against carriers situated like Nationwide." This begs the question as to what form of "aggressive action" does Appellee mean? A phone call to Nationwide? The writing of a single letter or email correspondence to Nationwide? Any of these types of actions would have resulted in Appellee learning of the tortfeasor's uninsured status.

Appellee argues that “for the sake of that third party carrier...this court should re-examine what the holding in this case **might mean.**” (Emphasis added) All that the unanimous holding of this Court in this case means for a third party carrier is that claimants will be contacting them shortly after incidents/accidents in order to confirm coverage. Exactly what claimants should be doing (and have been doing). Once again, if the third party carrier does not respond to the claimants efforts, that should raise an “alarm bell” with claimants as to the existence of coverage.

Appellee’s statement that she did everything she should or could do respecting Mr. Reed is, once again simply not so. The only efforts stated by Appellee “respecting” Mr. Reed were attempting to obtain service of the Complaint on him “several times.” Obviously, these efforts were done after the Complaint was already filed by Appellee against Mr. Reed, just before the applicable two year statute of limitations she had against Mr. Reed and the similar two year limitation policy for filing suit for uninsured motorist benefits with Allstate. She has not demonstrated anything she did do “respecting” Mr. Reed in the two years that passed between the date of the accident and when she filed her first lawsuit.

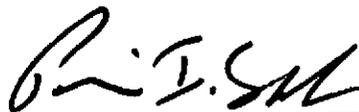
As stated by this Court in its unanimous decision on this appeal, “this case presents a standard uninsured motorist claim in which the tortfeasor was uninsured at the time of the accident.” *Angel v. Reed*, Slip Opinion No. 2008-Ohio-3193 at 6. There is no question that the applicable Allstate policy contained a valid two year suit provision and that Appellee failed to present her uninsured motorist claim in any fashion, whether by suit or notice to Allstate, within that two year limitations period.

For this reason, Appellant requests this Court issue an Order denying the Appellee’s Motion for Reconsideration and issue its mandate pursuant to Supreme Court Rule XI, Section 4.

Respectfully submitted,

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By:



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CERTIFICATE OF SERVICE

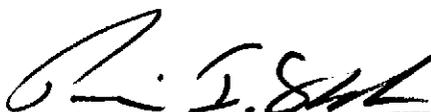
A true copy of the foregoing **Appellant Allstate Insurance Company's Memorandum in Opposition to Appellee's Motion for Reconsideration** was forwarded by regular U.S. mail, postage prepaid, on this 17th day of July, 2008, to:

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