

ORIGINAL

IN THE SUPREME COURT OF OHIO

<b>THE ESTATE OF JEFFREY K.</b>	:	
<b>HEINTZELMAN, et al.,</b>	:	
	:	<b>Case No. 08-2173</b>
<b>Plaintiffs-Appellees,</b>	:	
	:	<b>On Appeal from the Delaware</b>
<b>v.</b>	:	<b>County Court of Appeals, Fifth</b>
	:	<b>Appellate District</b>
<b>AIR EXPERTS, INC., et al.,</b>	:	
	:	<b>Court of Appeals</b>
<b>Defendants-Appellants.</b>	:	<b>Case No. 07CAE09-0045</b>

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**BRIEF OF *AMICUS CURIAE* THOMAS MARTEL  
IN SUPPORT OF APPELLEE**

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## STATEMENT OF FACTS

Thomas Martel purchased liability insurance for his sole proprietorship from American Family Insurance Company ("American Family"). He paid all premiums. Mr. Martel was hired to install an air conditioning unit in the attic of Jeffrey and Margaret Heintzelman's home. It required an electrical source. Jeffrey Heintzelman came in contact with the electrical receptacle that provided power to the condensation pump. Mr. Heintzelman was electrocuted. When Mr. Martel was sued in 2002 as a result of Mr. Heintzelman's death, he timely notified American Family of the suit. American Family hired an attorney to defend him. Mr. Martel cooperated with the attorney hired by American Family to defend him.

While suit was pending against Mr. Martel,<sup>1</sup> another lawsuit was filed. This time, American Family filed suit against Mr. Martel. In December 2003, American Family filed a declaratory judgment action against Mr. Martel. American Family did not join the Heintzelman Estate in the declaratory judgment action. Mr. Martel was the only defendant. American Family filed the declaratory judgment action in the Delaware County Common Pleas Court – the same court where the Heintzelman suit was pending. However, American Family did not tell the Court or the Clerk that the case was related to the Heintzelman suit. As a result, the case was randomly assigned to a judge. It was not assigned to the judge who was handling the Heintzelman suit.

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<sup>1</sup> The Heintzelman case was pending when American Family filed its declaratory judgment action and when American Family sought the default judgment. For some reason, the Court of Appeals incorrectly stated the Heintzelman's voluntarily dismissed their case in March 2003 and re-filed the case in April 2004. But, the record demonstrates the case was dismissed without prejudiced March 16, 2004 and re-filed a few weeks later on April 9, 2004. Despite the record being clear on this issue, American Family has told this Court that the wrongful death claim was not pending when it filed the declaratory judgment action.

When Mr. Martel received the papers for the declaratory judgment action, he contacted American Family about the suit. American Family did not tell Mr. Martel that the lawyer they already hired for him would not be representing him in the declaratory judgment action. Martel Affidavit at ¶3.<sup>2</sup> More troubling, American Family told Mr. Martel not to respond to the declaratory judgment action filed against him. Martel Affidavit at ¶4. As a result, Mr. Martel did not respond.

When no answer was filed in response to the declaratory judgment complaint, American Family filed a motion for default judgment. When he received the motion for default, Mr. Martel called American Family. Again, American Family told him not to oppose the motion for default. Martel Affidavit at ¶5. As a result, Mr. Martel did not respond. A default judgment entry was entered in March 2004. The default judgment entry prepared by American Family states:

This matter came before the Court on the Motion for Default Judgment filed by Plaintiff American Family Insurance Company. The Court has considered all relevant law, filings and the arguments of the parties involved.

This matter arises pursuant to Ohio Revised Code 2721.02. Plaintiff seeks a determination of its rights and obligations with respect to a Commercial Insurance Policy, Policy No. 34-X03305-01, that it issues to Defendant Tom Martel, dba Martel Heating & Cooling ("Martel"). Specifically, Plaintiff seeks a determination that it has no duty to indemnify Martel with respect to an alleged loss occurring on July 15, 2002, as set forth in Delaware County Common Pleas Case No. 02-CVH-12712.

Having fully considered the relevant law, documents and filings in this matter, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

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<sup>2</sup> Mr. Martel submitted an affidavit with his Amended Motion to Vacate Void Default Judgment filed March 8, 2007. A copy of his Affidavit is included in the Appendix.

1. Pursuant to the terms of Policy No. 34-X03305-01. Plaintiff American Family Insurance Company has no duty to indemnify Defendant Tom Martel, dba Martel Heating & Cooling, for the alleged loss occurring on July 15, 2002, in the event that a determination of liability is made against the Defendant or in the event that a decision is made by the Defendant to pay Margaret Heintzelman, individually or as the executor of the Estate of Jeffrey K. Heintzelman, any monies vis-à-vis a settlement agreement regarding the lawsuit filed in Delaware County by Margaret Heintzelman and baring Case No. 02-CVH-12712.

See Default Judgment Entry.<sup>3</sup>

When he received the default judgment, Mr. Martel again called American Family. Mr. Martel was told by American Family “not to worry about the default judgment entry because it would not have any impact” on him. Martel Affidavit at ¶6.

American Family obtained a default declaratory judgment stating there was no coverage and no duty to defend Mr. Martel. The default declaratory judgment entry prepared by American Family and submitted to the trial court, specifically referenced the Heintzelman action. Yet, American Family never told the Heintzelman lawyers about the default declaratory judgment. The lawyer hired by American Family to represent Mr. Martel continued to “defend” Mr. Martel in the Heintzelman action, but American Family already had its default declaratory judgment indicating no coverage existed.

In March 2005, a year after the default was entered, a jury returned a verdict against Mr. Martel and in favor of the Heintzelmans in the wrongful death case. The lawyer hired by American Family to defend Mr. Martel simply advised him to file bankruptcy. The Heintzelman plaintiffs attempted to collect a portion of the judgment from American Family. But, American Family claimed no coverage existed based upon the default declaratory judgment.

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<sup>3</sup> A copy of the Default Judgment Entry is included in the Appendix.

## ARGUMENT

**Proposition of Law: A final declaratory judgment obtained in an action between an insurer and its policyholder is not binding against a judgment creditor of the policyholder who later seeks recovery from the insurer unless the prior declaratory judgment action was initiated by the policyholder or the judgment creditor has actual knowledge of the suit, and the prior declaratory judgment was fully litigated under circumstances which do not suggest it was obtained through fraud or collusion.**

**A. American Family's Secret Declaratory Judgment Action Was Not Fair.**

This case represents a reprehensible and unfair perversion of the judicial system.

Mr. Martel purchased insurance from American Family to protect him. He paid his premiums because he believed American Family would protect him. When he was sued, he promptly notified American Family of the suit. American Family hired a lawyer to defend him. He believed American Family was protecting him. Then, American Family filed a secret declaratory judgment suit against him. It was secret because American Family never told the other parties or lawyers in the Heintzelman suit. American Family knew about the Heintzelman action. American Family knew the Heintzelmans were the very parties who were going to collect against the insurance policy Mr. Martel purchased. American Family knew the Heintzelman lawyers were the very people who might advise the Heintzelmans to release Mr. Martel from personal liability in exchange for the payment of the insurance policy limits. American Family hid the declaratory judgment action from Heintzelman lawyers.

American Family could have intervened in the Heintleman suit and sought declaratory judgment in that case. Or, American Family could have joined the Heintzelmans in the separate declaratory judgment action. In either situation, all the parties could address the issue. Coverage issues could have been resolved on the merits with all interested parties having an opportunity to advise the court of their arguments. Instead, American Family filed a secret action. And, the reason is clear.

When Mr. Martel received the summons and complaint from the secret declaratory judgment action, he contacted the American Family. The company he paid to protect him, told him not to respond to the declaratory judgment action. Martel Affidavit at ¶4 (“In fact, a representative of American Family Insurance advised me not to respond to this declaratory judgment lawsuit.”) When the motion for default was filed, Mr. Martel contacted American Family again. He was told not to respond to the motion for default. Martel Affidavit at ¶5 (“A representative of American Family Insurance also advised me not to oppose the Motion for Default Judgment filed by American Family Insurance.”) When the default judgment was issued, American Family told Mr. Martel not to worry because the default judgment would not affect him. Martel Affidavit at ¶ 6 (“After receiving the Default Judgment Entry against me in this case, I was surprised and contacted American Family Insurance for guidance. American Family Insurance informed me that I need not worry about the Default Judgment Entry because it would not have any impact on me.”).<sup>4</sup>

The secret declaratory judgment action and the fraudulent default occurred while Mr. Martel was being defended by the American Family lawyer hired to protect him. American Family never told Mr. Martel that the lawyer hired by American Family to represent him in the

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<sup>4</sup> Each time Mr. Martel received court papers filed by American Family, he called the person who signed the court documents. Mr. Martel was advised by that person not to respond to the complaint, not to respond to the motion for default and not to worry about the default because it would not impact him. The person who signed the court papers for American Family was Christy Holmes. Ms. Holmes is the Regional Legal Staff Attorney for American Family. She was the attorney of record for American Family in the secret declaratory judgment action. She is an in-house lawyer for American Family. In violation of DR 7-104 of the Ohio Code of Professional Responsibility (which applied at that time) as well as Rule 4.3 of the Ohio Rules of Professional Conduct, this in-house lawyer for American Family never told Mr. Martel he should obtain counsel. Instead, she induced him to default in an action that precludes him from obtaining insurance coverage for which he paid his premiums. She even gave him inaccurate legal advice “not to worry” about the default because “it would not have any impact on” him. That is troubling.

Heintzelman action would not protect his interests in the secret default action. Martel Affidavit at ¶3 (“When I was sued in this declaratory judgment action by American Family Insurance, although American Family Insurance had hired and paid for the lawyer representing me in the wrongful death action, American Family Insurance failed to inform me that the same lawyer would not represent me in this declaratory judgment action.”) And, even after the default judgment was issued on the secret declaratory judgment action, the lawyer hired by American Family continued to represent Mr. Martel in the Heintzelman case. To Mr. Martel, it seemed like American Family was doing exactly what it promised to do: protect him.

In reality, American Family did just the opposite. American Family misrepresented the policy language to Mr. Martel. Then, American Family misrepresented to the trial court that no coverage existed in the secret declaratory judgment action. American Family misrepresented the affect of the default judgment to Mr. Martel when he called to question it. American Family told Mr. Martel that a default judgment stripping him of insurance coverage would have no impact on him.

What happened here is wrong. There is coverage under the policy. But for the secret declaratory judgment action, Mr. Martel would have \$500,000 in insurance coverage. That coverage could be used to settle the claims against the Heintzelman Estate. That coverage could be used to pay for much of the judgment and protect Mr. Martel’s assets.

The entire purpose of Mr. Martel’s insurance policy is to pay people who sue him. Certainly, a party that sues Mr. Martel should be advised of a declaratory judgment action that might affect coverage. If the Heintzelman Estate was advised of the declaratory judgment action, they could have participated. They could have examined the merits of the declaratory judgment action. They may have settled the case against Mr. Martel based upon the merits of the

declaratory judgment action. They could have advised the trial court that American Family misrepresented the policy language. They could have demonstrated why coverage existed. At a minimum, it would have permitted the court to address the actual merits of the declaratory judgment action.

It is clear American Family did not want any of that. American Family did not want to resolve the declaratory judgment on its merits. American Family knew it would be easier to file a secret declaratory judgment action, convince its insured not to respond, obtain a default judgment and a year later when the verdict is announced and it is too late to file a Rule 60(B) motion to vacate, proclaim "Gotcha!" waiving the sham default declaratory judgment.

That is wrong.

**B. R.C. 2721.02 and R.C. 3929.06 Do Not Support American Family's Argument.**

American Family argues R.C. 2721.02 and R.C. 3929.06 permit the default judgment to control. They do not.

The very language in these statutes indicate they do not apply here. These statutes only apply to situations where the *policy holder* or the *judgment creditor* filed a declaratory judgment action. The first paragraph of R.C. 2721.02 (C) states:

In an action or proceeding for declaratory relief that *a judgment creditor commences* in accordance with divisions (A) and (B) of this section against an insurer that issued a particular policy of liability insurance....

R.C. 2721.02(C) (emphasis added). Likewise, the second paragraph of R.C. 2721.02 (C) states:

If, prior to the *judgment creditor's commencement* of the action or proceeding for declaratory relief, the *holder of the policy commences* a similar action or proceeding against the insurer for a determination as to whether the policy's coverage provisions....

R.C. 2721.02 (C) (emphasis added). Even the title of the statute suggests it applies to actions brought against the insurance company. The title of R.C. 2721.02 is: “Force and effect of declaratory judgments; action or proceeding *against* insurer.” (emphasis added).

Similarly, R.C. 3929.06(C)(2) contains essentially the same language found in R.C. 2721.02 (C):

If, prior to the *judgment creditor's commencement* of the civil action against the insurer in accordance with divisions (A)(2) and (B) of this section, the *holder of the policy commences* a declaratory judgment action or proceeding under Chapter 2721 of the Revised Code against the insurer for a determination as to whether the policy's coverage provisions . . . .

A plain reading of the statutes indicates they apply to situations where the *judgment creditor* or the *policy holder* commences a declaratory judgment action. In this case, the *insurance company* filed the action. The difference is significant. If the policy holder or the judgment creditor files the action, they have a vested interest in litigating the action. Here, American Family commenced the action, hid it from the potential judgment creditor and told its policy holder not to respond – and even obtained a default judgment against its own policy holder by telling him not to respond to the default motion. The reason the statutes do not apply to situations where the insurance company commences the action is for this very reason. The General Assembly did not want to have bogus default declaratory judgments obtained by insurance companies who might unscrupulously manipulate or collude with its policy holders.

There is no provision in the statutes for declaratory judgment actions brought by the insurance company. The statutes apply to situations where the *judgment creditor* or the *policy holder* commences a declaratory judgment action. The statutes address “defenses” the insurance company may use. The statutes do not address situations where the insurance company affirmatively files a declaratory judgment action. (And the statutes do not address a situation

where the insurance company obtains a sham default declaratory judgment by telling its insured not to respond to the declaratory judgment action or the motion for default.)

These statutes do not help American Family.

**C. Res Judicata is not a “Coverage Defense.”**

American Family argues R.C. 2721 and 3929.06 permit it to assert the defense of *res judicata* to bar coverage. They do not. These statutes indicate an insurer may assert any “coverage defenses” that the insurer could assert against the policy holder (in an action filed by the *judgment creditor* or *policy holder*.) *Res judicata* is not a “coverage defense.” American Family does not cite to any section in the insurance policy relating to *res judicata*. There is none. American Family does not cite any case stating *res judicata* is a coverage defense. There is none. “Coverage defenses” are defenses that affect coverage because the policy excludes coverage or because the insured failed to comply with a policy provision. Coverage defenses relate to the coverage. By the very name, a coverage defense emanates from the policy itself.

In contrast, *res judicata* requires a separate action. (In this case, the secret declaratory judgment action.) American Family is not claiming a lack of coverage because of *res judicata*. American Family is claiming there cannot be any *lawsuit* about coverage because of *res judicata* premised upon the sham default American Family obtained. That is very different.

**D. Res Judicata Does Not Apply Because There Are Different Parties.**

The common law principles of *res judicata* do not apply for another reason. One of the foundational pillars of *res judicata* is that the same parties must be in both actions. Quality Ready Mix, Inc. v. Mamone, 35 Ohio St. 3d 224, 227 (1988) (“It is readily apparent that a prior judgment, to have *res judicata* effect, must involve the same issues, and the same parties as the later proceeding. That is not the case in the present controversy.”); Butler v. Joshi, 2001 Ohio

App. LEXIS 2062 (Wayne May 9, 2001) (“However, a prior judgment will not be afforded *res judicata* effect where the later proceeding to which it is sought to be applied involved different issues and different parties.”); In re Estate of Minella, 1999 Ohio App. LEXIS 2539 (Hamilton June 4, 1999) (“*Res judicata* refers to the binding effect of a prior final judgment on the merits on a second, subsequent action involving the same issues and the same parties.”); McConnell v. Ohio Bureau of Empl. Servs., 1995 Ohio App. LEXIS 4424 (Franklin Oct. 5, 1995) (“In order for a prior judgment to have a *res judicata* or estoppel effect, the prior proceedings must have involved the same issues and the same parties as the later proceedings.”)

That is not the case here. In the secret declaratory judgment action, the parties were American Family and Mr. Martel. After obtaining the default declaratory judgment against Mr. Martel (by telling him not to respond), American Family claims the sham judgment should have preclusive affect in the lawsuit filed by the Heintzelman Estate against American Family. There are different parties. Mr. Martel is not a party to the action between the Heintzelman Estate and American Family. Therefore, common law *res judicata* does not apply.

American Family claims Mr. Martel assigned his rights to the Heintzelmans. That is not true. The Heintzelmans are judgment creditors of Mr. Martel. More importantly, when American Family obtained its sham default declaratory judgment, the Heintzelmans were actively pursuing a wrongful death action against Mr. Martel. He certainly had not assigned any rights to the Heintzelmans when the sham default was obtained.

Common law *Res judicata* requires the same parties to be in both actions to ensure all interested parties had the fair opportunity to fully litigate the issue in the first action. American Family’s secret declaratory judgment action and orchestrated default judgment did not provide

the Heintzelman Estate with any opportunity to litigate the coverage issues in the first action. American Family hid that action from them. Therefore, *res judicata* cannot apply.

**E. American Family Cannot Use *Res Judicata* Because It Has Unclean Hands and Obtained Judgment By Fraud and Collusion.**

American Family cannot use common law *res judicata* for another reason. American Family comes to this Court with “unclean hands.” *Res judicata* is an equitable defense. This Court has recognized many times: “one who seeks equity must do equity.” Greer-Burger v. Temesi, 116 Ohio St. 3d 324, 332, n. 5 (2007) (“The OCRC contends that we should not allow Temesi to assert this defense pursuant to the maxim that “he who seeks equity must do equity, and that he must come into court with clean hands.” Under this rule, equitable relief is not available to a person who has violated good faith by his prior-related conduct.”); State ex rel. Morgan v. City of New Lexington, 112 Ohio St. 3d 33, 42 (2006) (“The clean-hands doctrine specifies that he who seeks equity must do equity, and that he must come into court with clean hands.”); Hurst v. Hurst, 2008 Ohio 3462, P29 (“It is fundamental that he who seeks equity must do equity, and that he must come into Court with clean hands.”); Christman v. Christman, 171 Ohio St. 152, 154 (1960) (“It is fundamental that he who seeks equity must do equity, and that he must come into court with clean hands.”). American Family did not “do equity” when it obtained its sham default declaration.

This Court repeatedly has said *res judicata* applies only where there is no fraud or collusion. State ex rel. Rose v. Ohio Dep't of Rehab. & Corr., 91 Ohio St. 3d 453, 455 (2001) (“*Res judicata* provides that a final judgment rendered upon the merits, ***without fraud or collusion***, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue for parties and their privies in the same or any other judicial tribunal.”) (emphasis added); In re Lombardo, 86 Ohio St. 3d 600, 604 (1999) (“Under the doctrine of *res judicata*, an existing

final judgment rendered upon the merits, *without fraud or collusion*, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.") (emphasis added); Quality Ready Mix, Inc. v. Mamone, 35 Ohio St. 3d 224, 227 (1988) ("A comprehensive definition of *res judicata* is as follows: The doctrine of *res judicata* is that an existing final judgment rendered upon the merits, *without fraud or collusion*, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.") (emphasis added).

American Family comes to this Court with unclean hands. American Family's default declaratory judgment was the product of fraud and collusion. It constitutes reprehensible and deceptive conduct on the part of an insurance company.

- American Family filed a separate, secret declaratory judgment action with the very intent of hiding it from the Heintzelman Estate;
- American Family misrepresented to Mr. Martel what the policy language was and incorrectly told him there was no coverage;
- American Family misrepresented to the Court that no coverage existed in the declaratory judgment complaint;
- American Family's in-house lawyer did not tell Mr. Martel that he should obtain independent counsel to advise him about the declaratory judgment action;
- American Family's in-house lawyer told Mr. Martel not to respond to the declaratory judgment action after it was filed;
- American Family's in-house lawyer told Mr. Martel not to respond to the motion for default;
- American Family's in-house lawyer incorrectly told Mr. Martel that the default judgment would not impact him;

- American Family waited over a year (after the time to file a Civil Rule 60(B) motion to vacate) to let the Heintzelman Estate know it obtained a secret default declaratory judgment.

This case is the poster child for unclean hands, fraud and collusion. Permitting this conduct would condone secrecy, collusion and the defrauding of creditors. This Court should not let that happen.

### CONCLUSION

American Family manufactured a sham default declaratory judgment invalidating the insurance coverage Tom Martel purchased. American Family told Mr. Martel not to respond to the complaint or the motion for default. Now, American Family wants to seek “protection” from a resolution of the insurance coverage issues on the merits. American Family points to statutes that apply to declaratory judgment actions filed by policy holders or judgment creditors against insurance companies. American Family turns the statutes on their head. Moreover, American Family brazenly argues *res judicata*, an equitable defense, should protect it from having to actually litigate whether coverage exists under the policy. American Family obtained a default judgment through fraud, collusion and dishonest deception. Nothing American Family did to Tom Martel has been equitable.

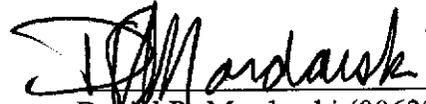
If this Court permits American Family to prevail, every insurance company would have the ability and incentive to file secret declaratory judgment actions in every case, regardless of the merits. Then, the insurance company simply needs to convince its insured (through manipulation or collusion) not respond to the secret declaratory judgment action so it can obtain a default judgment. Finally, the insurance company, if it is deceptively skillful enough, can attempt to delay the liability trial for more than a year so the one-year time for filing a Rule

60(B) motion expires on its sham default declaratory judgment. This case would open the door to Court sanctioned insurance fraud – perpetrated by the insurance company.

Is this really what the General Assembly intended?

Is this really the way we want insurance companies to conduct business in the Ohio?

Respectfully submitted,



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**APPENDIX**

Affidavit of Thomas Martel

Default Declaratory Judgment

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Brief Of Amicus Curiae, Thomas Martel, In Support Of Appellee was served upon the following counsel of record, by ordinary U.S. mail, postage prepaid, this 1<sup>st</sup> day of June, 2009:

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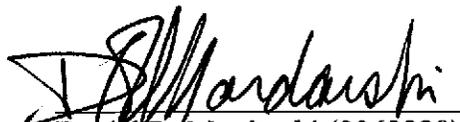
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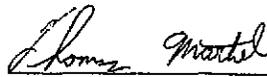
  
\_\_\_\_\_  
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6. After receiving the Default Judgment Entry against me in this case, I was surprised and contacted American Family Insurance for guidance. American Family Insurance informed me that I need not worry about the Default Judgment Entry because it would not have any impact on me.

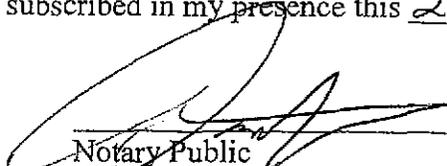
7. Based on the representations made to me by American Family Insurance, I did not believe that it was important that I appear in this matter or defend myself against the declaratory judgment action.

FURTHER AFFIANT SAYETH NAUGHT.

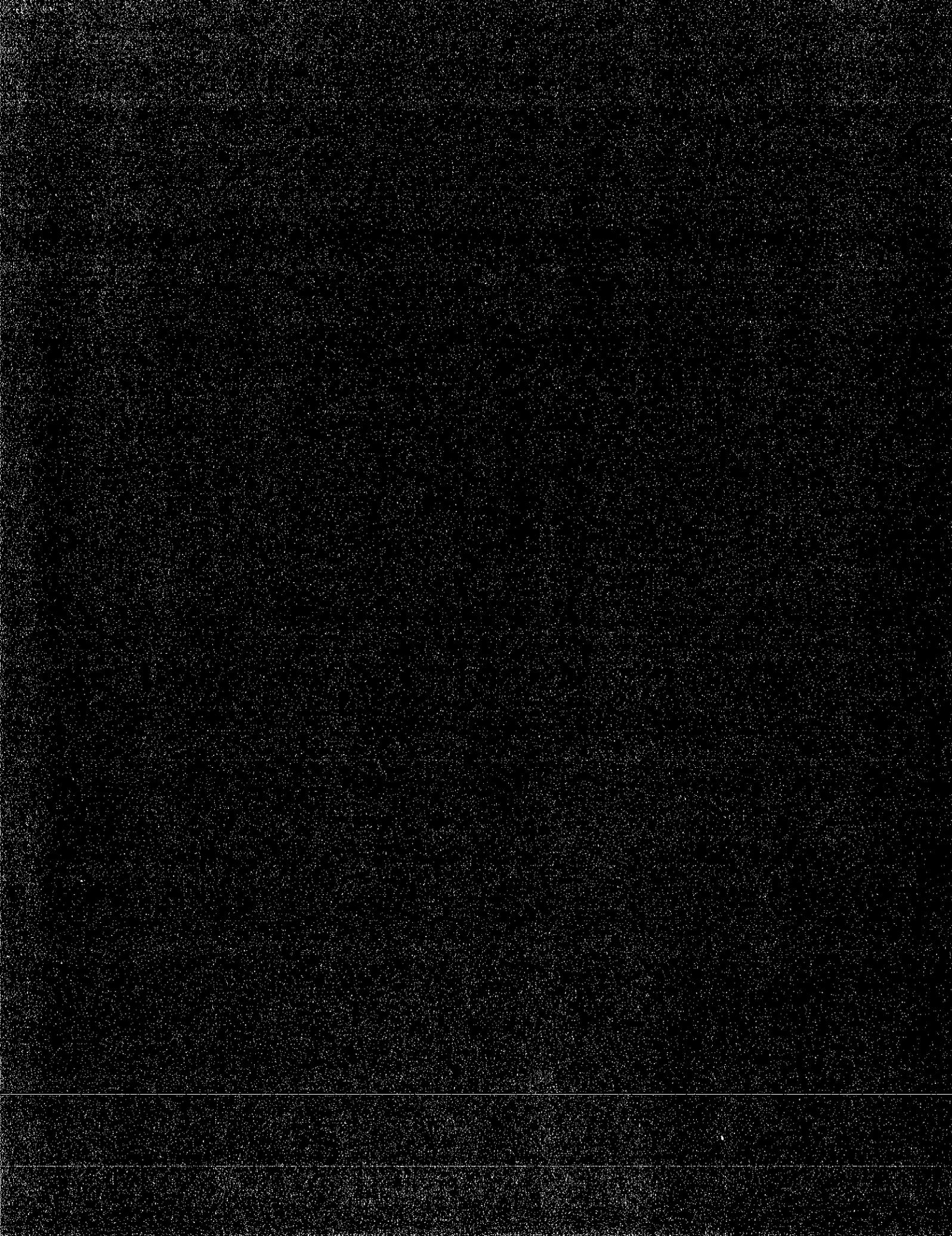


Thomas Martel

Sworn to before me and subscribed in my presence this 28 day of February, 2007.

  
Notary Public

DAVID A. BROWN, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.63 R.C.



IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

JAM ANTONOPLOS  
CLERK

2004 MAR 10 AM 8:47

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

AMERICAN FAMILY INSURANCE :  
COMPANY :  
8415 Pulsar Place :  
Suite 400 :  
Columbus, Ohio 43240-2028 :

Case No. 03 CVH 12896

Judge Whitney

Plaintiff,

vs.

103  
345/346

DEFAULT JUDGMENT ENTRY

TOM MARTEL, DBA MARTEL :  
HEATING & COOLING :  
11480 State Route 36 :  
Marysville, Ohio 43040, :

Defendant.

This matter came before the Court on the Motion for Default Judgment filed by Plaintiff American Family Insurance Company. The Court has considered all relevant law, filings and the arguments of the parties involved.

The matter arises pursuant to Ohio Revised Code 2721.02. Plaintiff seeks a determination of its rights and obligations with respect to a Commercial Insurance Policy, Policy No. 34-X03305-01, that it issued to Defendant Tom Martel, dba Martel Heating & Cooling ("Martel"). Specifically, Plaintiff seeks a determination that it has no duty to indemnify Martel with respect to an alleged loss occurring on July 15, 2002, as set forth in Delaware County Common Pleas Case No. 02-CVH-12712.

TERMINATION CODE   G   TERMINATION CODE   G

Having fully considered the relevant law, documents and filings in this matter, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

1. Pursuant to the terms of Policy No. 34-X03305-01, Plaintiff American Family Insurance Company has no duty to indemnify Defendant Tom Martel, dba Martel Heating & Cooling, for the alleged loss occurring on July 15, 2002, in the event that a determination of liability is made against the Defendant or in the event that a decision is made by the Defendant to pay to Margaret Heintzelman, individually or as the executor of the Estate of Jeffrey K. Heintzelman, any monies vis-à-vis a settlement agreement regarding the lawsuit filed in Delaware County by Margaret Heintzelman and bearing Case No. 02-CVH-12712.

  
\_\_\_\_\_  
JUDGE