

ORIGINAL

IN THE SUPREME COURT OF OHIO

NATIONWIDE MUTUAL	)	Case No. 10-0114
INSURANCE COMPANY	)	
	)	On Appeal from the Stark
Appellant	)	County Court of Appeals
	)	Fifth Appellate District
vs.	)	
	)	Court of Appeals
COREY M. BRIGGS	)	Case No. 2009 CA 00108
	)	
Appellee	)	

**MOTION FOR RECONSIDERATION OF APPELLANT,  
NATIONWIDE MUTUAL INSURANCE COMPANY**

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## MOTION

Pursuant to Supreme Court Rule XI, Section 2(B)(1), Appellant, Nationwide Mutual Insurance Company, hereby moves the Court for an order to reconsider its decision refusing to grant jurisdiction to hear Appellant's discretionary appeal.

In the instant case, reconsideration is appropriate because resolution of this matter may be dependant upon this Court's interpretation of insurance policy language and law involved in a case where this Court only very recently decided to accept jurisdiction – *Allstate Insurance Company, et al. v. Darlyn Campbell, et al.*, 2009-2358.

## LAW AND ARGUMENT

THE DOCTRINE OF INFERRED INTENT APPLIES TO THE INSTANT CASE AND DECISIONS ON THE MERITS IN THE INSTANT CASE AND *CAMPBELL* WILL PROVIDE GUIDANCE TO COURTS, LITIGANTS, AND ATTORNEYS REGARDING ISSUES OF THE AVAILABILITY OF INSURANCE COVERAGE FOR MANY TYPES OF CONDUCT.

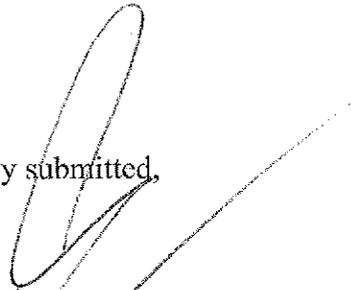
In the case of *Gearing v. Nationwide Insurance Company*, 76 OS3d 34 (1996) this court applied the doctrine of “inferred intent” in holding that incidents of intentional acts of sexual molestation of a minor do not constitute “occurrences” for purposes of determining whether liability insurance coverage is available. Approximately six weeks ago this Court accepted jurisdiction of a discretionary appeal in the above-mentioned *Campbell* case. In *Campbell*, this Court accepted jurisdiction on propositions of law regarding whether the doctrine of inferred intent in the content of an intentional act exclusion in a liability insurance policy extends to cases beyond sexual molestation and homicide where undisputed facts establish harm was substantially certain to occur as a result of the insured's conduct and, also, whether an objective standard, as opposed to a

subjective standard, should be utilized in determining whether bodily injury or property damage was intended or expected by an insured rendering the insured's subjective intent irrelevant.

Similar issues are presented in the instant case where the Nationwide policy included both a "criminal acts" exclusion and also an "intentional acts" exclusion. Both the trial court and Court of Appeals concluded that Nationwide owed coverage to the Appellee. In light of this Court's decision to accept jurisdiction in *Campbell* to review the applicability of an intentional acts exclusion in that case, a similar opportunity is present to review the applicability of Nationwide's intentional acts exclusion in the instant case. Specifically, the Appellee's action in discharging fireworks adjacent to a schoolyard, residential homes and commercial structure which resulted in a dangerous fire causing \$175,000 in damages should be reviewed on the subject of whether the doctrine of inferred intent is applicable to exclude coverage and, also, whether an objective or subjective standard should be applied as to whether bodily injury or property damage was intended or expected by the Appellee. Decisions on the merits of both the *Campbell* and instant case would result in substantial guidance to persons, insurers, courts, litigants and attorneys to evaluate whether liability insurance is available to provide restitution in a number of instances. Consequently, a tremendous service would be provided to the public on these matters of great interest.

Wherefore, Appellant respectfully requests this Court to reconsider its prior decision and to issue an order granting Appellant's discretionary appeal in this case.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing has been sent postage prepaid via regular U.S. Mail to the following on this 23<sup>rd</sup> day of April, 2010:

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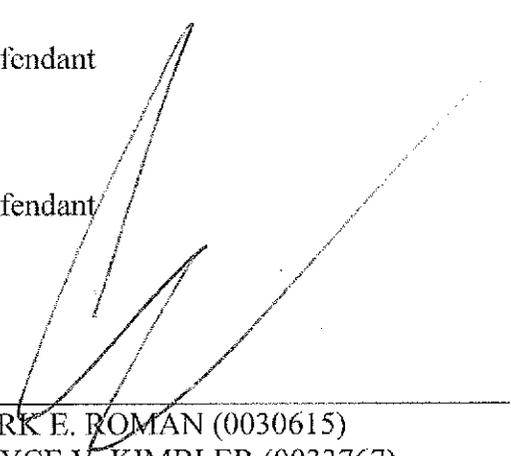
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