

IN THE SUPREME COURT OF OHIO

CASE NO. 09-1936

DON B. KINCAID, JR.
Plaintiff-Appellee

v.

ERIE INSURANCE COMPANY
Defendant-Appellant.

ON APPEAL FROM THE CUYAHOGA COUNTY
COURT OF APPEALS CASE NO. 92101

BRIEF OF DEFENDANT-APPELLANT
ERIE INSURANCE COMPANY IN OPPOSITION TO THE APPELLEE'S
MOTION FOR RECONSIDERATION

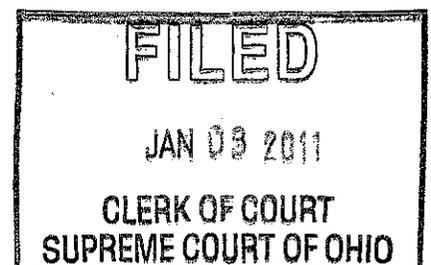
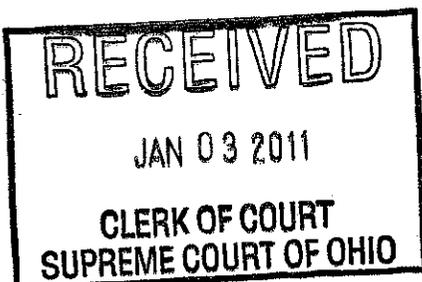
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The Plaintiff-Appellee filed its Motion for "Reconsideration" on December 27, 2010. That motion could more properly be described as a Motion for "Clarification", as plaintiffs are not seeking to reconsider or reverse this court's holding.

In response, the Defendant-Appellant Erie Insurance Company opposes reconsideration because the language of the court is clear, correct and well reasoned, as it presently is articulated.

If the Court accedes to appellee and revises its language, then it will be asked to do this on a regular basis, since almost any court opinion is likely to contain a sentence that could arguably be misused if applied to a different factual situation. Indeed, the factual situation that the appellee now asks the Court to deal with in its opinion is the exact opposite of the situation that is the subject of the Court's opinion -- i.e, where the plaintiff has never presented any claim to the insurance company.

In the alternative, however, if the court is inclined to clarify the language further then the defendant-appellant suggests the following substitute language:

"Unless and until the insured has presented a claim to his or her insurer and (where appropriate) proof of how much is owed, and the insurer has either (1) denied the claim or (2) failed to respond to the claim after having had an adequate opportunity and reasonable time within which to respond, then there is no controversy and the insured has no standing to file a complaint in litigation."

It is agreed that a plaintiff does not have to wait an inordinately long period of time within which to file suit if an insurer simply ignores his claim. However, it should be carefully stated that an insured must present his claim in a documented fashion and an insurer must have a reasonable period of time within which to review the claim and respond, either accepting or denying the claim or requesting additional documentation before the insured can be permitted to file suit, much less a "class action".

Otherwise, the defendant-appellant opposes the plaintiff's Motion for Reconsideration to the extent that it seeks any revision or reversal of the outcome of the court's prior decision. The court's previously announced decision is correct, fully articulated and well reasoned.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was sent via regular mail to the following on this 30 day of December, 2010:

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