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**EXPLANATION OF WHY THIS CASE IS NOT
OF PUBLIC OR GREAT GENERAL INTEREST**

This discretionary appeal involves the simple application of an established rule of law. This Court's decision in *Snyder v. Am. Fam. Ins. Co.*, 114 Ohio St.3d 239 (2007) addressed *precisely* the same issue that is presented in this case. Because there is no novel issue of law involved, this case presents no question of public or great general interest.

The sole proposition of law urged by Plaintiffs-Appellants Maria Marusa and Melanie Marusa relates to the availability of uninsured/underinsured motorist benefits where the tortfeasor is immune under the Ohio Political Subdivision Tort Liability Law. But because the question presented (on virtually identical facts) was answered five years ago by this Court's decision in *Snyder*, no novel, meaningful, or unsettled issue of law is presented by this appeal.

The Marusas claim that this case is of public or great general interest for two reasons. First, they incorrectly assert that a conflict exists between two court of appeals' decisions. Second, they maintain that this appeal affects many insureds that have purchased uninsured/underinsured motorist coverage in this state.

There is no conflict among the courts of appeal. This Court has explained that certification is only proper where the alleged conflict is on an issue of law, not on an issue of the application of facts to the law. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St. 3d 594 (1993). If the supposedly "conflicting" cases apply the correct rule of law laid down by the legislature and the Supreme Court, then they are *not* in "conflict" even if they apply the law to the facts in a different manner.

Here, this Court's decision in *Snyder* was applied by the lower courts. Based on the *Snyder* decision and the Erie policy language, the court of appeals determined that the Marusas

were not “legally entitled to recover” from the tortfeasor. Accordingly, under the provisions of the Erie policy, there was no uninsured motorist coverage.

Second, while many insureds within the State have uninsured/underinsured motorist coverage, this does not change the fact that this Court has already decided the legal issues presented. Nor does it change the fact that the lower courts cited and applied this Court’s controlling decision in *Snyder*.

Article IV of the Ohio Constitution provides that judgments of the courts of appeals shall serve as the ultimate and final adjudication of all cases, except those involving constitutional questions, conflict cases, felony cases, cases in which the court of appeals has original jurisdiction, and cases of public or great general interest. Except in these special circumstances, a party to a lawsuit has a right to but one appellate review. *Williamson v. Rubich*, 171 Ohio St. 253, 253-254 (1960) (applying a former version of Article IV, Section 6; analogous provisions now found within Article IV, Sections 1 and 2).

Cases of “public interest” refer only to those that involve some governmental entity. *See*, Hon. Paul M. Herbert, *Cases of Public or Great General Interest*, Ohio State Bar Assoc. Rep. 981 (Sept. 12, 1966). As Justice Herbert observed, the members of the Fourth Constitutional Convention of Ohio plainly intended “public” to mean cases involving some governmental entity. *Id.* at 985. No governmental entities are not involved in this matter. Consequently, this is not a case of “public interest”.

A case is of great general interest only if it affects “a good many people and [] have aroused general interest.” *Id.* at 986. The Fourth Constitutional Convention concluded that “one trial, one review” is sufficient to satisfy the ordinary demands of justice. *Id.* It is only the truly exceptional case that is entitled to further review in this Court.

Novelty is an important (if not essential) element in determining whether a case presents a question of public or great general interest. *Noble v. Colwell*, 44 Ohio St. 3d 92, 94 (1989) (“Novel questions of law or procedure appeal not only to the legal profession but also to this court’s collective interest in jurisprudence.”). In fact, under Rule 12.1 of the Supreme Court Rules of Practice, this Court may dismiss an allowed appeal *sua sponte* if the Court later discovers that there is no question of great general interest or that the same question has been raised and passed upon in an earlier case.

There is simply no way that this case—which involves applying settled principles of Ohio law—can fairly be described as being of “great general interest.” No novel legal issue is presented by this attempted appeal. The “critical issue” identified by Appellants concerns the interpretation of the phrase “legally entitled to recover” in an insurance policy and the definition of “uninsured motor vehicle”. This Court addressed that *exact issue* in *Snyder*. That Appellants do not agree with the outcome when this Court’s binding precedent is applied does not render this a matter of “great general interest”.

Further, even if this case presented some question of whether settled law was properly applied, which it does not, this Court’s discretionary jurisdiction does not extend to mere error correction. *State Auto. Ins. Co. v. Pasquale*, 113 Ohio St. 3d 11, ¶46 (2007) (Pfeifer, J., dissenting). This Court’s discretionary jurisdiction is properly reserved for cases addressing areas of the law that are unsettled, rather than applying settled law to the facts of any particular case. *See, e.g., State v. Urbin*, 100 Ohio St. 3d 1207, ¶13 (2003) (Moyer, C.J., concurring) (“[R]esolution of the case is dependent on factual determinations and the sufficiency of the evidence. The case does not warrant the exercise of our discretionary jurisdiction.”); *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St. 3d 480, 492 (2000) (Cook, J., concurring).

There being no issue of public or great general interest and no substantial constitutional question, this Court should decline jurisdiction in this case.

STATEMENT OF THE CASE

This case arises out of an automobile accident that occurred in November 2009. Sometime thereafter, the Marusas determined that they could not recover from the tortfeasor (a police officer responding to an emergency call) or his employer (a municipality) because both enjoyed statutory immunity from suit.

In November 2010, the Marusas filed suit against Erie Insurance Company, claiming that they were entitled to uninsured motorist benefits under an auto policy issued by Erie. Erie disagreed on the grounds that the *Snyder* decision precluded coverage.

The Marusas and Erie prepared and submitted a stipulated set of facts, and filed cross-motions for summary judgment. The trial court agreed with Erie that this Court's decision in *Snyder* was controlling, and granted summary judgment in Erie's favor.

On appeal, the court of appeals affirmed. After citing and discussing *Snyder*, it concluded that:

The Marusas were not legally entitled to recover from Officer Canda because of his immunity. Thus, when the definition and promise sections of the policy are read together, the Marusas were not entitled to coverage under the policy.

See, December 8, 2011 Journal Entry and Opinion at 6. The court of appeals concluded that, "In light of *Snyder*, the Murusas' two assignments of error are without merit and the trial court's judgment is affirmed." *Id.* at 7.

This attempted discretionary appeal followed.

STATEMENT OF FACTS

On November 11, 2009, Maria Marusa and her daughter Melanie were traveling eastbound on Edgerton Road in North Royalton. Maria Marusa had come to a full stop at the stop light at the intersection of State Route 94. When the light turned green, she began to proceed through the intersection. As she began to go through the intersection, a police cruiser driven by Officer Michael Canda came through against the red light and collided with the Marusas' vehicle, which resulted in bodily injuries.

When the accident occurred, Officer Canda was operating his police cruiser in his capacity as a police officer with the City of North Royalton and was responding to an emergency call. The accident and Appellants' injuries were proximately caused by Officer Canda's negligent operation of his police cruiser. The parties agree that Officer Canda and the City of North Royalton however, are immune from liability for the accident under the Ohio Political Subdivision Tort Liability Act, Ohio Revised Code Chapter 2744.

Maria Marusa was the named insured under the Erie Insurance Company Family Auto Policy No. Q06-6507891. Subject to the conditions, limitations, and exclusions contained therein, that policy provides uninsured/underinsured motorist coverage to persons who qualify as insureds under the policy. The uninsured/underinsured motorist endorsement in the policy provides that Erie will pay damages for bodily injuries that insured persons "are legally entitled to recover" from the owner or operator of uninsured or underinsured motor vehicles:

OUR PROMISE

"We" will pay damages for bodily injury that **"anyone we protect"** or the legal representative of **"anyone we protect"** are legally entitled to recover from the owner or operator of an **"uninsured motor vehicle"** or **"underinsured motor vehicle."**

The Marusas brought suit against Erie claiming that they were entitled to uninsured motorist benefits. Erie disagreed, citing this Court’s decision in *Snyder v. American Fam. Ins. Co.* (2007), 114 Ohio St. 3d 239. In *Snyder*, the police officer was pursuing a fleeing suspect during an emergency call. During the chase, the police cruiser accidentally struck the insured, throwing her onto the hood of the cruiser and into the windshield. The parties did not dispute that the officer was negligent.

The lower courts in *Snyder* concluded—and this Court agreed—that both the officer and his municipal employer were immune from liability under R.C. Chapter 2744, which is Ohio’s Political Subdivision Tort Immunity Act. Consequently, the issue presented in *Snyder* was whether the insured was permitted to recover under her personal uninsured motorist coverage.

In holding that no uninsured motorist coverage was available, this Court applied the S.B. 97 version of R.C. 3937.18, which is the same version of the statute that is in effect today. That statute—like the Erie policy—specifically includes persons who have “immunity under Chapter 2744 of the Revised Code” within the statutory definition of “uninsured motorist.” Further, the American Family policy in *Snyder*—just like the Erie policy here—required that the insured be “legally entitled to recover” from the uninsured motorist. This is so even though—as this Court observed—the S.B. 97 version of R.C. 3937.18 eliminated the former statutory requirement that insureds must be “legally entitled to recover” from the tortfeasor to avail themselves of UM/UIM coverage.

Because it found that *Snyder* was controlling, the trial court granted summary judgment to Erie. The court of appeals affirmed.

LAW AND ARGUMENT

I. The Court of Appeals Correctly Held That Appellants Are Not Entitled To UM/UIM Benefits Because Appellants Are Not “Legally Entitled to Recover” From The Uninsured Motorist [Response to Appellants’ Proposition of Law #1]

Uninsured/underinsured motorist (“UM/UIM”) benefits are available under the Erie policy if two conditions are met. First, an uninsured or underinsured motor vehicle must be involved in the accident. Second, the insured must be legally entitled to recover from the driver of the uninsured or underinsured motor vehicle.

Despite the clear and unambiguous language of the Erie policy and this Court’s prior decision in *Snyder*, the Marusas claim they are entitled to UM/UIM benefits if they establish that an uninsured or underinsured vehicle was involved in the accident, regardless of whether they are legally entitled to recover from the driver. They argue that by enforcing the “legally entitled to recover” provision, the court of appeals essentially permitted Erie to sell a policy that is illusory. This argument disregards both the explicit language of the Erie policy and this Court’s prior decision in *Snyder*.

In *Snyder*, the insured presented two arguments. First, she argued that under S.B. 97, a policy could not exclude uninsured motorist claims when the tortfeasor was statutorily immune from liability. Second, she argued that defining a person with statutory immunity as an “uninsured motorist” created an ambiguity when read in conjunction with the policy requirement that the insured be “legally entitled to recover” from the tortfeasor.

This Court rejected both of these arguments. First, it noted that “the 2001 statute for the first time permits policies... to limit or exclude coverage under circumstances that are specified in the policy even if those circumstances are not also specified in the statute.” The Court held

that while the statute specifically includes motor vehicle owners and operators who are immune from liability within the statutory definition of “uninsured motorist,” that alone is not dispositive because the statute permits insurers to add other conditions, including the condition that they be “legally entitled to recover” from the tortfeasor. In response to the claimant’s argument that such a reading was “illogical,” this Court responded that:

Snyder argues that it would be illogical and inconsistent for R.C. 3937.18(B) to include tortfeasors immune under R.C. Chapter 2744 within the definition of “uninsured motorists” but then also permit policy terms to exclude coverage because of that same immunity. But in revising the statute to remove the mandatory-offering requirement and in seeking to end more than a decade of uncertainty and instability regarding its interpretation and application, it was not illogical for the General Assembly to define statutorily the term “uninsured motorist” as it did but also to provide flexibility for uninsured—and underinsured—motorist policies to contain additional provisions modifying that definition.

Had the policy in this case not contained the “legally entitled to recover” language, the police cruiser would have been an uninsured vehicle within the meaning of R.C. 3937.18(B)(5), and, absent another policy condition excluding coverage, Snyder would have been entitled to recover. But this policy did contain an additional condition for coverage, and under the facts of this matter, Snyder did not meet that condition.

* * *

Accordingly, a policy provision limiting the insured's recovery of uninsured—or underinsured—motorist benefits to amounts which the insured is “legally entitled to recover” is enforceable and its effect will be to preclude recovery when the tortfeasor is immune under R.C. Chapter 2744.

Id. at ¶¶27-29 (emphasis added).

The Court rejected the insured’s “ambiguity” argument for much the same reasons. It cited and discussed a decision from 20 years ago—*State Farm v. Webb* (1990), 54 Ohio St. 3d 61—in which it had held that fellow-servant immunity meant that the insured was not “legally entitled to recover” from the tortfeasor. Relying on this decades-old precedent, the Ohio

Supreme Court held that the same rationale applied in the context of the immunity of a negligent police officer:

Based on *Webb's* construction of the phrase "legally entitled to recover," we conclude that the phrase in Snyder's policy is both clear and enforceable.

Id. at ¶133.

In sum, as the courts below readily recognized, this Court's decision in *Snyder* is controlling and is directly in point. In *Snyder*—as here—a statutorily-immune police officer qualified as an "uninsured motorist," but the policy also imposed a requirement that the insured be "legally entitled to recover" from the tortfeasor. In *Snyder*—as here—the police officer was negligent, but both he and his municipal employer were immune under Chapter 2744. Under these circumstances, this Court held in *Snyder* that the policy provisions unambiguously preclude uninsured motorist coverage.

There is no difference between the Erie policy provisions and the ones before this Court in *Snyder*. The "legally entitled to recover" language is enforceable and it bars coverage in cases like this. Because the Marusas are not "legally entitled to recover" from a police officer who enjoys statutory immunity, uninsured motorist coverage is not available under the Erie policy.

CONCLUSION

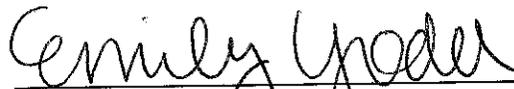
This case is indistinguishable from *Snyder*. Both cases involved accidents caused by the negligence of a police officer who was immune from liability under the Political Subdivision Tort Liability Act. In both cases, the police officer was protected by the same statutory immunity. And in both cases, the policy provided that, for uninsured motorist coverage to apply, the insured had to be "legally entitled to recover" from the uninsured motorist.

In *Snyder*, this Court held that the restriction of UM/UIM coverage to occasions when the claimant was “legally entitled to recover” from the tortfeasor was “both clear and enforceable.” Because statutory immunity is a defense to liability, the plaintiff in *Snyder* was not “legally entitled to recover” from the immune officer, and therefore was not entitled to UM/UIM benefits under her own auto policy.

That is exactly the same situation presented here. The courts below correctly determined that, under *Snyder*, Erie was and is entitled to summary judgment as a matter of law on the Marusas’ claims for uninsured motorist benefits.

This attempted appeal does not involve a question of public or great general interest. It involves nothing more than one party’s dissatisfaction with the application of settled Ohio law to the undisputed facts of the case. Accordingly, Defendant-Appellee Erie Insurance Company respectfully requests that this Court decline to accept this discretionary appeal.

Respectfully submitted,



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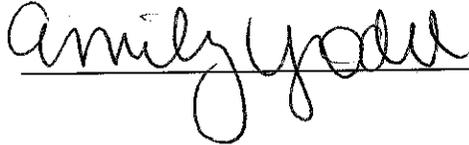
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CERTIFICATE OF SERVICE

A true copy of the foregoing was served by regular U.S. mail on February 16, 2012 upon:

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