

In the  
**Supreme Court of Ohio**

CITY OF AKRON, et al.,	:	Case No. 2014-0738
	:	
Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
OHIO STATE DEPARTMENT OF	:	
INSURANCE, et al.,	:	Court of Appeals Case Nos.
	:	13-AP-473, 13-AP-484, 13-AP-496
Appellants.	:	
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**RESPONSE OF  
OHIO POLICE AND FIRE PENSION FUND  
TO APPELLANTS' MOTION FOR RECONSIDERATION**

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Metcalfe and Biasella continue to litigate a different case. They want this Court to address a broad question of coordination-of-benefits law, *see* Motion at 2, but this case is about one city's choice to offer *secondary* insurance as a supplement, not *primary* insurance that must coordinate with other primary insurance coverage. That conclusion is apparent nearly everywhere one might look. Dismissal was thus appropriate.

*First*, the court of appeals in the related case described this dispute as involving “secondary” supplemental insurance, not coordination among primary insurance policies. That was the Ninth District's conclusion when it affirmed a judgment rejecting the argument that Akron never promised to provide Metcalfe, Biasella, and others with premium-free healthcare as a primary insurer. *Metcalfe v. Akron*, 2006-Ohio-4470 ¶ 25 (9th Dist.). This case simply does not pose a coordination-of-benefits question, let alone one of public or great general interest.

*Second*, the record shows that these plaintiffs do not face a coordination-of-benefits problem, even if this were a coordination-of-benefits case. Both Metcalfe and Biasella have other insurance. There is thus no conflict *in this case* between City of Akron insurance and Ohio Police & Fire Pension Fund insurance. *See* OP&F Supp. at S-118, 136-8 (Jan. 6, 2015) (Biasella has Medicare and his wife's private insurer ahead of other insurers); *id.* at 143-44 (Metcalfe has Medicare ahead of other insurers and Akron did pay for gaps in OP&F coverage). Whatever questions there may be about insurance law covering coordination questions for city plans, this case does not pose those questions.

*Finally*, the Motion for Reconsideration all but admits that this case is a one-off that will not reoccur. The motion decries the lower court’s judgment for creating a distinction among self-insurers, Mot. at 2, but acknowledges that this Court’s opinion confines the Tenth District’s decision to one, Akron, *id.* at 3. When the motion frames the allegedly lingering question, it does so only by discussing an entity not in the case. *See id.* at 2 (discussing Cleveland City School District). This Court’s dismissal with limitations eliminated any perceived problems created by the Tenth District’s judgment.

All told, this case fits the mold for an improv dismissal. The case should be dismissed because this Court “sits to settle the law, not to settle cases.” *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St. 3d 480, 492 (2000) (Cook and Lundberg-Stratton, JJ, concurring). There is no law to write here. This case should be dismissed because it is “highly fact specific.” *Lee v. Cardington*, 142 Ohio St. 3d 488, 2014-Ohio-5458 ¶ 33 (Pfeifer and O’Neill, JJ., dissenting). The case involves two claimants who no longer need Akron’s insurance. The case should also be dismissed because the record does not “definitely” show that it presents the proposition of law. *Cf. Infinite Sec. Solutions, LLC v. Karam Prop., II, Ltd* \_\_\_ Ohio St. 3d \_\_\_, 2015-Ohio-1101 ¶ 35 (Kennedy, J., dissenting). This case is about supplementary insurance, not coordination.

This case is unique, and this Court limited any unforeseen consequences of the lower court's judgment. The dismissal was appropriate. The motion should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by U.S. mail this 12th day of August,

2015, upon the following counsel:

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