

**SUPREME COURT OF OHIO**

**COLUMBUS**

**ANNOUNCEMENT**

1:00 P.M.

WEDNESDAY  
December 19, 2001

**MERIT DOCKET**

**01-1777. State ex rel. Turner v. Ghee.**

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**01-1835. State ex rel. Sloan v. Wilkinson.**

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**01-1853. State ex rel. Block v. Ohio Adult Parole Auth.**

In Mandamus. On answer of respondents. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**01-1876. Hunter v. First Union Home Equity Bank.**

Certified State Law Question, Nos. 01CV7219 and 01CV7220. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The following questions were certified to the court by the United States District Court for the Northern District of Ohio, Western Division:

“(1) Did the inclusion of section 5301.234 in House Bill No. 163 of the 123<sup>rd</sup> General Assembly violate the single subject clause of Art. II, § 15(D) of the Ohio Constitution?

“(2) Did the adoption of section 5301.234 violate Art. IV, § 5(B) of the Ohio Constitution?”

The court declines to answer the certified questions. This cause is therefore dismissed.

Resnick, F.E. Sweeney, Cook and Lundberg Stratton, JJ., concur.

Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

**01-1934. Watkins v. Transcontinental Ins. Co.**

Certified State Law Question, No. 301CV7310. On review of preliminary memorandum pursuant to S.Ct.Prac.R. XVIII(6). The following questions were certified to this court by the United States District Court for the Northern District of Ohio, Western Division:

“Based on the facts set forth above, the Court hereby certifies the following questions of state law to the Ohio Supreme Court:

“Under both policies:

“1. Under the law of Ohio, is Edwin Watkins entitled to recover uninsured/underinsured motorist benefits under either policy issued by Transcontinental Insurance Company?

“2. If the answer to Question No. 1 above is in the affirmative, is the purchase of insurance that provides that type of coverage by an agency of the State of Ohio such as LTC contrary to the public policy of the state as evidenced by R.C. 9.83?

“3. Where an insurer fails to offer UM/UIM coverage in a commercial automobile insurance policy and/or a commercial general liability policy which qualifies as a ‘motor vehicle liability policy’ pursuant to the decision in *Selander, supra*, and UM/UIM coverage is thereby incorporated in said policies by operation of law, is language in the policy that requires prompt notice of claims and language in the policy that purports to give the insurer subrogation rights valid and enforceable for purposes of UM/UIM coverage created in said policies by operation of law?

“4. If the answer to Question No. 3 above is in the affirmative, when the Plaintiffs signed the release in favor of Hale, did that constitute a violation of the subrogation clause of the policy such that the Plaintiffs are not entitled to recover UM/UM coverage under the policy?”

“5. Do the decisions in *Scott-Pontzer*, *Selander* and *Ezawa* extend UM/UM coverage under said policies for the claim for loss of consortium of Plaintiff Deborah Watkins, the wife of Plaintiff Edwin Watkins at the time of the collision?”

“6. If UM/UM coverage is incorporated into the policy by operation of law rather than being in the policy by virtue of the express language of the policy, does the law of Ohio mandate that UM/UM coverage be extended to the spouse of an employee of the named insured when that individual is injured in an auto collision that is unrelated to his spouse’s employment?”

“Under Policy No. C1-44706618 (the commercial general liability policy):

“1. Does language in the policy that provides limited liability coverage for parking an auto on, or on the ways next to premises the insured owns or rents, and for the operation of mobile equipment including cherry pickers or similar devices mounted on automobile or truck chassis transform the policy into a ‘motor vehicle liability policy’ for which an offer of UM/UM coverage was mandated by the version of R.C. 3937.18 in effect at the time the policy was issued?”

The court declines to answer the certified questions. This cause is therefore dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Cook and Lundberg Stratton, JJ., concur.

Douglas and Pfeifer, JJ., dissent.

### **MOTION DOCKET**

#### **97-737. State v. Coleman.**

Clark C.P. No. 96CR0142. On motion requesting leave to file sealed motion. Motion denied.

Moyer, C.J., dissents.

#### **98-1475. State v. Hartman.**

Summit C.P. No. CR97091987. On motion for appointment of counsel for preparation of review pursuant to S.Ct.Prac.R. XI(5). Motion denied.

Moyer, C.J., and Cook, J., dissent.

**99-1152. State v. Group.**

Mahoning C.P. No. 97CR66. On motion for substitution of Annette L. Powers for Renee W. (Green) Turner as counsel for Scott A. Group. Motion granted.

**00-1145. Davis v. Wal-Mart Stores, Inc.**

Cuyahoga App. No. 75224. On motion for clarification of merits opinion. Motion denied.

**01-748. State ex rel. R.T.G., Inc. v. State.**

Franklin App. No. 98AP-1015. On request for oral argument and *sua sponte*, consideration of consolidation with case No. 01-976, *State ex rel. R.T.G., Inc. v. State*, Franklin App. No. 98AP-1015, for purposes of argument and decision. Request and consolidation granted.

**01-904. Hubbard v. Canton City School Dist. Bd. of Edn.**

Stark App. No. 2000CA00313. On motion to supplement record. Motion granted.  
F.E. Sweeney and Cook, JJ., dissent.

**01-976. State ex rel. R.T.G., Inc. v. State.**

Franklin App. No. 98AP-1015. On *sua sponte* consideration of scheduling for oral argument and *sua sponte* consideration of consolidation with case No. 01-748, *State ex rel. R.T.G., Inc. v. State*, Franklin App. No. 98AP-1015, for purposes of argument and decision. Oral argument and consolidation granted.

**01-1790. State v. Anderson.**

Delaware App. No. 00CAA12039. On motion for stay of sentence of incarceration pending outcome of appeals. Motion denied.

**01-1837. Allen v. Allen.**

Lucas App. No. L-01-1236. On motion for stay of lower court proceedings pending appeal. Motion denied.

Resnick, J., not participating.

**01-1867. Hillyer v. State Farm Fire & Cas. Co.**

Cuyahoga App. No. 79176. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Journal Entry filed October 12, 2001:

“Motion by appellant to certify a conflict to Ohio Supreme Court is granted. This court’s decision in *Hillyer v. State Farm Fire & Casualty Company* (Aug. 2, 2001), Cuyahoga App. No. 79176, unreported, is in conflict with the case *Wodrich v. Farmers Insurance of Columbus* (May 21, 1999), Greene App. No. 98CA103, unreported [1999 WL 317448]. In *Hillyer*, this court declined to follow the reasoning of *Wodrich*, which is in conflict with our holding in *Hillyer*. We hereby certify the following issue to the Ohio Supreme Court pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution and App.R. 25: Whether a clause in a homeowner’s policy providing auto coverage only for a resident employee injured in the scope of employment qualifies a family member for uninsured/underinsured motorist coverage through the homeowner’s policy.”

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

*Sua sponte*, cause consolidated with 01-1474, *Hillyer v. State Farm Fire & Cas. Co.*, Cuyahoga App. No. 79176, and cause to be argued on same date as 01-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251.

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

**01-1974. State v. Wyrick.**

Fairfield App. No. 01CA17. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Cook, JJ., dissent.

**01-2024. State v. Baker.**

Washington App. No. 00CA9. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**01-2028. State v. Strong.**

Lawrence App. No. 00CA35. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

On motion for leave to consolidate. Motion denied.

**01-2029. State v. Coston.**

Hamilton App. No. C-010369. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**01-2035. Calvary Investments, L.L.C. v. Vonderheide.**

Hamilton App. No. C-010359. On motion for stay of lower court proceedings. Motion denied.

Cook, J., dissents.

**01-2040. State v. Kellon.**

Cuyahoga App. No. 78668. On motion for stay of court of appeals' judgment and application for continuation of bond pending appeal. Motion and application denied.

Moyer, C.J., Pfeifer and Cook, JJ., dissent.

**01-2049. State v. DiCenzi.**

Cuyahoga App. No. 80119. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

**01-2051. State v. Thompson.**

Jefferson App. No. 94J8. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**01-2052. State v. White.**

Marion App. No. 9-98-52. On motion for leave to file delayed appeal. Motion denied.

**01-2057. State v. Dzubak.**

Geauga App. No. 2000-G-2285. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause held for the decision in 00-1869 and 00-2126, *State v. Weideman*, Portage App. No. 98-P-0109; briefing schedule stayed.

**01-2065. State v. Mader.**

Cuyahoga App. No. 78200. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

**01-2079. State ex rel. White v. Kilbane Koch.**

Cuyahoga App. No. 80426. On motion for stay of enforcement of temporary restraining order and hearing on preliminary injunction pending appeal. Motion granted.

Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

**APPEALS ALLOWED**

**01-1474. Hillyer v. State Farm Fire & Cas. Co.**

Cuyahoga App. No. 79176. Discretionary appeal allowed and cause consolidated with 01-1867, *Hillyer v. State Farm Fire & Cas. Co.*, Cuyahoga App. No. 79176; *sua sponte*, cause to be argued on the same date as 01-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251.

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

**01-1693. Spalding v. Coulson.**

Cuyahoga App. No. 76666.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

**01-1726. In re Maloney.**

Butler App. No. CA2000-08-168.

Douglas, Resnick and Lundberg Stratton, JJ., dissent.

**01-1732. State v. Latorres.**

Ashtabula App. Nos. 2000-A-0060 and 2000-A-0062.

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

**APPEALS NOT ALLOWED**

**01-1215. State v. Morgan.**

Lucas App. No. L-00-1114.

Resnick, J., not participating.

**01-1744. State v. Sears.**

Cuyahoga App. No. 79878.

**01-1747. State v. Mackey.**

Warren App. No. CA99-06-065.

**01-1748. LaConte Enterprises v. Cuyahoga Cty.**

Cuyahoga App. No. 78357.

Resnick, J., dissents.

**01-1750. Pasco v. State Auto. Mut. Ins. Co.**

Franklin App. No. 00AP-1354.

**01-1751. Pendleton v. Dayton Bd. of Edn.**

Montgomery App. No. 18781.

**01-1753. Smith v. Smith.**

Wyandot App. No. 16-01-03.

**01-1755. Plain Twp. Bd. of Trustees v. Biddle.**

Stark App. No. 2001CA00050.

**01-1764. Butler Cty. Bd. of Commrs. v. Hamilton.**

Butler App. Nos. CA99-12-216 and CA99-12-299. Discretionary appeal denied.

Moyer, C.J., dissents.

On motion for admission *pro hac vice* of Alan I. Robbins for city of Hamilton by Mark Brandenburger and on motion for admission *pro hac vice* of Michael E. Maundrell for Arthur C. Koski. Motions denied.

Moyer, C.J., and Douglas, J., dissent.

**01-1766. State v. Mercer.**

Lorain App. No. 01CA007777.

**01-1767. State v. Young.**

Stark App. No. 2001CA00055.

**01-1770. State v. Geboy.**

Logan App. No. 8-2000-36. Discretionary appeal denied.

Lundberg Stratton, J., dissents.

Discretionary cross-appeal denied.

Lundberg Stratton, J., dissents.

**01-1773. Smith v. Pacific Emp. Ins. Co.**

Delaware App. No. 01CAE08038.



**01-1776. State v. Keck.**

Fulton App. No. F-00-028.

**01-1778. State v. Coldiron.**

Auglaize App. No. 2-2000-31.

**01-1779. State v. Marcum.**

Stark App. Nos. 2001CA00036 and 2001CA00041.

**01-1780. Office v. Office.**

Montgomery App. No. 18693.

**01-1783. Wheeler v. O'Rourke.**

Gallia App. No. 01CA3.

**01-1785. Indiana Ins. Co. v. Denger.**

Greene App. No. 01CA0035.

Resnick and Pfeifer, JJ., dissent.

**01-1787. Byers v. Coppel.**

Ross App. No. 01CA2586.

Pfeifer and Lundberg Stratton, JJ., dissent.

**01-1788. State v. Manning.**

Cuyahoga App. No. 79200.

**01-1789. Stover v. Horton.**

Ottawa App. No. OT-01-004.

Resnick, J., not participating.

**01-1790. State v. Anderson.**

Delaware App. No. 00CAA12039.

**01-1791. Baker v. Baker.**

Lorain App. No. 01CA007801.

Douglas, J., dissents.

**01-1792. Fremont v. Corron.**

Sandusky App. No. S-01-001.

**01-1802. Williams v. Franklin Cty. Bd. of Commrs.**  
Franklin App. No. 01AP-153.

**01-1803. Natl. City Bank v. Facilities Asset Mgt., Inc.**  
Cuyahoga App. No. 78410.  
Pfeifer, J., dissents.

**01-1804. State v. McIntosh.**  
Hamilton App. No. C-000695.

**01-1805. State v. Creasey.**  
Cuyahoga App. Nos. 65717 and 65718.

**01-1806. State v. Aponte.**  
Franklin App. Nos. 99AP-695 and 99AP-696.

**01-1808. Brozovic v. State Farm Fire & Cas. Co.**  
Cuyahoga App. No. 79084.

Douglas and Resnick, JJ., dissent and would hold this cause for the decision in 01-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251.

**01-1809. State v. Hager.**  
Cuyahoga App. No. 79065.

**01-1812. Phelps v. PNC Bank, N.A.**  
Hamilton App. No. C-000518.

**01-1817. State v. Bassett.**  
Crawford App. No. 3-01-07.

**01-1833. State v. Bell.**  
Belmont App. No. 00BA25.  
Lundberg Stratton, J., dissents.

**01-1834. State v. Carter.**  
Summit App. No. 20572.

**01-1850. Decker v. Decker.**

Hancock App. No. 5-01-23.

Douglas, J., would allow on Proposition of Law No. I.

Pfeifer, J., would allow.

**01-1858. Trafalgar Corp. v. Miami Cty. Bd. of Commrs.**

Miami App. No. 2001CA6.

**01-1871. State v. Gray.**

Cuyahoga App. No. 76170.

**01-1883. Stanley v. Ayers.**

Greene App. No. 2001CA16.

**01-1918. Std. Plumbing & Heating Co. v. Farina.**

Stark App. Nos. 2001CA00018 and 2001CA00034.

**01-1920. State v. Jedd.**

Athens App. Nos. 01CA5, 01CA6, 01CA7, 01CA8 and 01CA9.

**01-2039. In re Nichol.**

Cuyahoga App. Nos. 78701 and 78742.

Moyer, C.J., and Lundberg Stratton, J., dissent.

**RECONSIDERATION DOCKET**

**01-1035. Columbus Metro. Hous. Auth. v. Flowers.**

Franklin App. No. 00AP-833. Reported at 93 Ohio St.3d 1472, \_\_\_ N.E.2d \_\_\_\_.

On amended motion for reconsideration. Motion denied.

**01-1564. State v. Gammalo.**

Cuyahoga App. No. 78531. Reported at 93 Ohio St.3d 1474, \_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

**01-1581. State v. Luckett.**

Cuyahoga App. No. 77527. Reported at 93 Ohio St.3d 1474, \_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**01-1592. State v. English.**

Montgomery App. No. 18648. Reported at 93 Ohio St.3d 1474, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

**01-1940. State ex rel. Bartone v. Montgomery Cty. Bd. of Elections.**

Montgomery App. No. 19055. Reported at 93 Ohio St.3d 1479, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

**01-1967. Evans v. Evans.**

Franklin App. Nos. 00AP-1459 and 00AP-1466. Reported at 93 Ohio St.3d 1478,  
\_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.