

**PONSER, ADMR., ET AL., APPELLEES, v. ST. PAUL FIRE & MARINE INSURANCE
COMPANY ET AL., APPELLANTS. (TWO CASES.)**

**[Cite as *Ponser v. St. Paul Fire & Marine Ins. Co.*, 101 Ohio St.3d 214, 2004-
Ohio-714.]**

*Discretionary appeal accepted — Court of appeals' judgment reversed on
authority of Westfield Ins. Co. v. Galatis — Certification of conflict
accepted only on the second certified question.*

(Nos. 2003-1730 and 2003-2125 — Submitted January 12, 2004 — Decided
March 3, 2004.)

APPEAL from and CERTIFIED by the Court of Appeals for Licking County, No.
2002CA000072, 2003-Ohio-4377.

{¶1} Case Nos. 2003-1730 and 2003-2125 are consolidated.

Case No. 2003-1730

{¶2} The discretionary appeal is accepted.

{¶3} The judgment against St. Paul Fire & Marine Insurance Company is reversed, sua sponte, on the authority of *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256. The remaining insurance companies, Motorists Mutual Insurance Company and Nationwide Insurance Company, are to brief the issues.

Case No. 2003-2125

{¶4} The certification of conflict by the Court of Appeals for Licking County is accepted only on the question certified on behalf of Motorists Mutual Insurance Company and Nationwide Insurance Company, which states:

{¶5} “If an insured does not file a wrongful death suit against the tortfeasor with[in] the two year statute of limitations set forth in R.C.

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[2125.02(D)], is he or she ‘legally entitled to recover damages’ against the tortfeasor under R.C. 3937.18 and, therefore, able to maintain an un[der]insured or uninsured motorists claim[?]”

{¶6} The judgments against Fireman’s Fund Insurance Company and St. Paul Fire & Marine Insurance Company are, sua sponte, reversed on the authority of *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256. The remaining insurance companies, Motorists Mutual Insurance Company and Nationwide Insurance Company, are to brief the certified question quoted above.

MOYER, C.J., LUNDBERG STRATTON, O’CONNOR and O’DONNELL, JJ., concur.

RESNICK, F.E. SWEENEY and PFEIFER, JJ., dissent.

Morrow, Gordon & Byrd, Ltd., and Adam K. Vernau, for appellees.

Rendigs, Fry, Kiely & Dennis, L.L.P., Kenneth B. Flacks and Ralph F. Mitchell, for appellant St. Paul Fire & Marine Insurance Company.

Gary L. Grubler, for appellant Nationwide Insurance Company.

Keener, Doucher, Curley & Patterson, L.P.A., W. Charles Curley and Jenifer J. Murphy, for appellant Motorists Mutual Insurance Company.

Ulmer & Berne, L.L.P., and David L. Lester, for appellant Fireman’s Fund Insurance Company.
