

5. On October 9, 2020, Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. filed its Answer which set forth Rule 12(B)(4); Rule 12(B)(5); Motion to Dismiss for Lack of Service; Motion to Dismiss; Motion for Judgment on the Pleadings.

6. On November 23, 2020, Plaintiffs GAIL LEWIS HICKS and LARRY HICKS filed a Response to AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s Answer to the Complaint and said Answer did not include a Response to the allegations, set forth in the Complaint—which pursuant to Indiana Trial Rules of Procedure—can be taken as an admission to the Complaint therefore Plaintiffs requested this Court grant a Judgment on the Pleadings in response to Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s request for Judgment on the Pleadings.

7. That Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s request for Judgment on the Pleadings was replete with contradictory and purposefully confusing positions. This Court requested that Plaintiffs submit a proposed order for Judgment on the Pleadings and, upon such submission, this Court immediately granted said Order on December 7, 2020.

8. This Ruling has never been vacated.

9. On December 22, 2020, Defendant KEITH L. HEAD filed his Answer to the Complaint.

10. On January 4, 2021, Plaintiffs filed a motion for judgment of default against Defendant KEITH L. HEAD in that Defendant KEITH L. HEAD was five (5) months in filing Answer to the Complaint which provides for a default judgment. This Court denied default judgment in that the Answer had just previously been filed by Defendant KEITH L. HEAD on December 22, 2020—again, five (5) months late.

11. That Defendant KEITH L. HEAD's Answer to the Complaint was—not only five (5) months late but—was confusing and contradictory in that Defendant KEITH L. HEAD indicated that there was not sufficient information to either deny or admit to Rhetorical paragraph #1 even though the police report from the car accident indicates that the driver of Defendant KEITH L. HEAD's car (Vehicle #1) admitted that “she looked down and was distracted when Vehicle #1 impacted the rear bumper of Vehicle #2”.

(See copy of crash report from July 22, 2018 previously filed by Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. on May 18, 2021 *now* marked as **EXHIBIT A** *in five (5) pages* attached and made apart hereto).

12. On May 18, 2021, the Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. filed a motion for summary judgment. Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. had suggested earlier that this Court had already previously granted them judgment but somehow forgot that the Court granted it judgment. Therefore Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s specious request for a summary judgment is contradictory for asking the Court for a summary judgment if—in its view—the Court had already granted a motion for judgment.

(See copy of Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s partial pleading filed February 22, 2021—**Page 1, Items #5-#6**—where Defendant suggested that the Court forgot/made a mistake in its February 19, 2021 Order marked as **EXHIBIT B** *in one (1) page* attached and made apart hereto).

13. The Court denied Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.'s motion for summary judgment and, on or about July 12, 2021, Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. appealed to the Indiana Court of Appeals.

14. On February 7, 2022, the Indiana Court of Appeals granted Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. summary judgment—stating that the trial court erred in denying defendant’s (American Family’s) summary judgment.

15. This ruling by the Indiana Court of Appeals created **two (2)** summary judgments, in that, Judgment on the Pleadings in favor of plaintiffs had never been vacated and Judgment on the Pleadings is the same as a summary judgment under Indiana Rules of Trial Procedure 56.

16. That the Indiana Court of Appeals—in its ruling of summary judgment for Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.—indicated that said court did *not* have to read all of the pleadings. However, plaintiffs’ response—to defendant’s appeal in the Indiana Court of Appeals—set forth that there still existed a Judgment on the Pleadings in favor of plaintiffs, as set forth above in Item #7.

17. These duplicated Judgments, created by the Indiana Court of Appeals, left the trial court with the need to correct its rulings and pleadings and such power lies in the trial court’s authority through court of equity.

18. The doctrine of judicial estoppel serves to protect the integrity of the judicial system by preventing parties from asserting a position that is inconsistent with that party’s prior position in the same or a previous proceeding. Judicial estoppel is not a technical defense to prevent meritorious claims, and it differs from equitable estoppels, which focuses on the parties’ relationship with each other, as opposed to their relationship with the court. For the doctrine to apply, a party must have intentionally made a misrepresentation in bad-faith. Once a party shows that another party had knowledge and a motive to conceal, the burden of proof shifts to that party to show that the nondisclosure at issue was in good faith.

19. Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. was fully aware that there was, and still is, a Judgment on the Pleadings in favor of the plaintiffs. However, with that knowledge, defendant (Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.) filed a motion for summary judgment and argued issues involving whether or not plaintiffs were claimants or beneficiaries rather than pursuing the issue of whether or not plaintiffs' Judgment on the Pleadings was appropriate.

20. However, if Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. sought to pursue the issue of whether or not plaintiffs should have a Judgment on the Pleadings it is considerably past any rule or statutory timeframe to appeal. The length of time that has passed creates a waiver of any timely appeal and therefore the opportunity to appeal should have been made when the Judgment on the Pleadings was granted or should have been appealed to the Indiana Court of Appeals with the of appeal for summary judgment and, therefore, is considered *res judicata*. *Shewmaker v. Etter*, 644 N.E.2d 922 (1994);

The foregoing undisputed facts and the arguments of Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. also raise related but distinct doctrine of judicial estoppels, also known as the doctrine of inconsistent positions. Application of this doctrine precludes a party from asserting a position in a subsequent legal proceeding inconsistent with a position taken by that party (Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.) in the same or prior litigation. *In re Cassidy*, 892 F.2d 637, 641 (7th Cir.), *cert. denied*, 498 U.S. 812, 111 S.Ct. 48, 112 L.Ed.2d. 24 (1990); *Kale v. Obuchowski*, 985 F.2d 360, 361 (7TH Cir. 1993). The doctrine extends to inconsistent positions of law as well as fact. *Cassidy*, 892 F.2d at 642 (“[W]e think that the change of position on the legal question is every bit as harmful to the administration of justice as a change on an issue of fact.”).

Therefore, judicial estoppel is set forth herein to correct the erroneous and improper Summary Judgment granted to Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. by the Indiana Court of Appeals.

WHEREFORE, Plaintiffs – GAIL LEWIS HICKS and LARRY HICKS respectfully request this Court to grant Plaintiffs' Verified Motion for Judicial Estoppel to correct erroneous and improper Summary Judgment granted to Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. by the Indiana Court of Appeals, and for all other just and proper remedies in the premises.

Dated: **February 22, 2023**

Respectfully Submitted,

/s/ John H. Davis

John H. Davis
Attorney for Plaintiffs,
GAIL LEWIS HICKS and
LARRY HICKS

John H. Davis
Attorney at Law
P.O. Box 43
Crown Point, Indiana 46308
Phone: (219) 884 – 2461

VERIFICATION

I, John H. Davis, being duly sworn upon my oath and subject to the penalties for perjury, do state that I have prepared and read the foregoing averments and that said averments are true and correct to the best of my information, knowledge and belief.

Dated: **February 22, 2023**

/s/ John H. Davis
John H. Davis
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on **22nd** day of **February, 2023**, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on **22nd** day of **February, 2023** the foregoing document was served upon all counsel of record using the Indiana E-filing System (IEFS) via Odyssey.

By: /s/ John H. Davis
John H. Davis

EXHIBIT A

(In 5 Pages)



INDIANA OFFICER'S STANDARD CRASH REPORT

Electronic Version

903188984

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Local ID 18ME14789

Date of Crash 07/22/2018	Day of Week Sun	Actual Local Time 1:15 PM	County LAKE	Township ROSS	# Motor Vehicles 2	# Injured 4	# Dead 0	# Commercial Vehicles 0	# Door 0
Road Crash Occurred On SR53			Nearest/Intersecting Road/Mile Marker/Interchange 57TH AVE		If not an intersection, number of feet from	Direction	Road Classification STATE ROAD		
Inside Corporate Limits? YES	City/Town or Nearest City/Town MERRILLVILLE			Property?	Crash Latitude	Crash Longitude			
Driver #1 DICKERSON,PAMELA,R		Driver #2 HICKS,GAIL,L		Driver #3		Driver #4			

<p>Primary Cause</p> <p>Vehicle 1</p> <p>Vehicle 2</p> <p>Vehicle 3</p> <p>Vehicle 4</p>					<p>Primary Cause</p> <p>Vehicle 1</p> <p>Vehicle 2</p> <p>Vehicle 3</p> <p>Vehicle 4</p>					<p>Area Information</p>				
<p>Driver Contributing Circumstances</p> <p>Alcoholic Beverages</p> <p>Illegal Drugs</p> <p>Prescription Drugs</p> <p>Driver Asleep or Fatigued</p> <p>Driver Illness</p> <p>Unsafe Speed</p> <p>Failure to Yield</p> <p>Disregard Signal</p> <p>Left of Center</p> <p>Improper Passing</p> <p>Improper Turning</p> <p>Improper Lane Usage</p> <p>Following Too Closely</p> <p>Unsafe Backing</p> <p>Overcorrecting</p> <p>Ran off Road</p> <p>Wrong Way on One Way</p> <p>Pedestrian's Action</p> <p>Passenger Distraction</p> <p>Restriction Violation</p> <p>Jackknifing</p> <p>Cell Phone Usage</p> <p>Other Tomatics</p> <p>Driver Distracted</p> <p>Speed/Weather Conditions</p> <p>Unsafe Lane Movement</p> <p>Other</p> <p>None</p>					<p>Vehicle Contributing Circumstances</p> <p>Engine Failure or Defective</p> <p>Accelerator Failure or Defective</p> <p>Brake Failure or Defective</p> <p>Tire Failure or Defective</p> <p>Headlight(s) Defective or Not On</p> <p>Other Lights Defective</p> <p>Steering Failure</p> <p>Window/Windshield Defective</p> <p>Oversize/Overweight Load</p> <p>Insecure/Leaky Load</p> <p>Tow Hitch Failure</p> <p>Other</p> <p>None</p>					<p>Hit and Run</p> <p>School Zone</p> <p>Rumble Strips</p> <p>Locality URBAN</p> <p>Light Condition DAYLIGHT</p> <p>Weather Conditions CLOUDY</p> <p>Surface Condition DRY</p> <p>Type of Median</p> <p>Type of Roadway Junction FOUR-WAY INTERSECTION</p> <p>Road Character STRAIGHT/GRADE</p> <p>Roadway Surface ASPHALT</p> <p>Construction NO</p> <p>If Yes, Construction Type</p> <p>Traffic Control Devices TRAFFIC CONTROL SIGNAL</p> <p>Traffic Control Device Operational? YES</p>				
<p>Environment Contributing Circumstances</p> <p>Glare</p> <p>Roadway Surface</p> <p>Holes/Ruts in Surface</p> <p>Shoulder Defective</p> <p>Road Under Construction</p> <p>Severe Crosswinds</p> <p>Obstruction Not Marked</p> <p>Lane Marking Obscured</p> <p>View Obstructed</p> <p>Animal/Object in Roadway</p> <p>Traffic Control Missing/Obscure</p> <p>Utility Work</p> <p>Other</p> <p>None</p>					<p>Was this crash the result of aggressive driving? NO</p>									

Total Estimate of all damage in the Crash: \$2501 TO \$5000		
Other Property Damage (1)	State Property	Owner's Name and Address
Other Property Damage (2)	State Property	Owner's Name and Address

Witness/Other Participant			Non-Motorist		
<input type="checkbox"/> Witness	#	Name	(Last Name, First Name, MI)		
<input type="checkbox"/> Other Participant					
Address etc.			Non-Motorist Type	Non-Motorist Action	
Phone #	Location at Time of Crash		Apparent Physical Condition		
<input type="checkbox"/> Witness	#	Name	Cited?	Direction	
<input type="checkbox"/> Other Participant					
Address etc.			Street/Highway		
Phone #	Location at Time of Crash		Traffic Control?	If yes, was traffic control operational?	

Exhibit B

Local ID
18ME14789

903188984

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Type of Crash		REAR END			
Time Notified 1:15 PM	Time Arrived 1:20 PM	Other Location of Investigation AT SCENE ONLY			
Assisting Officer		ID No.	Agency	Investigation Complete? YES	Photos Taken? NO
Assisting Officer		ID No.	Agency	Date of Report 07/22/2018	
Investigating Officer MISKUS, J		ID No. 325	Agency MERRILLVILLE PD	Reviewing Officer	

Narrative

Vehicle #1 was traveling southbound on State Road 53 just north of the intersection of 57th Avenue. Driver #1 stated that she looked down and was distracted when Vehicle #1 impacted the rear bumper of Vehicle #2.

Vehicle #2 was traveling southbound on State Road 53 just north of the intersection of 57th Avenue when Vehicle #1 impacted the rear bumper of Vehicle #2.

UNIT INFORMATION

Local ID
18ME14789

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1		Driver's Name (Last, First, MI) DICKERSON, PAMELA R			Safety Equipment Used LAP + HARNESS		
		Address (Street, City, State, Zip) 690 CAPITOL DRIVE			Safety Equipment Effective? YES		
HOBART		IN 46342			Ejection/Trapped NOT EJECTED OR TRAPPED		
Date of Birth	Age 69	Gender FEMALE		EIAS No.	Immed Attn	Driver Injury Status	
Driver's License # 8923530542		Lic Type OP	CDL Class	Lic State IN	Nature of Most Severe Injury		
Apparent Physical Status <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Had Been Drinking <input type="checkbox"/> Handicapped <input type="checkbox"/> Ill <input type="checkbox"/> Asleep/Fatigued <input type="checkbox"/> Drugs/Medication <input type="checkbox"/> Unknown		Restrictions <input checked="" type="checkbox"/> Glasses/Contact Lenses <input checked="" type="checkbox"/> Outside Rearview Mirror <input type="checkbox"/> Daylight Driving <input type="checkbox"/> Automatic Transmission <input type="checkbox"/> Special Controls <input type="checkbox"/> Employment Only <input type="checkbox"/> Motorcycle Only <input type="checkbox"/> Tol/From Employment		Employer's Vehicle Only State-Owned Vehicles PP Chauffeurs Taxi Only Power Steering Special Restrictions Probation DWI Probation HTD None		Location of Most Severe Injury If Cited? <input type="checkbox"/> Infraction <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony	
Test Given NONE		Type Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		Alcohol Results PBT <input type="checkbox"/> Certified Test <input type="checkbox"/> Pending			
Veh # 1		Color WHITE	Vehicle Year 2013	Make Chrysler	Model 200	Style 4D	
# Occupants 1		Lic Year 2019	License # 817NKA	License State IN		Initial Impact Area <input type="checkbox"/> Undercarriage <input type="checkbox"/> Trailer <input type="checkbox"/> None <input type="checkbox"/> Unknown	
# Axles 2	Speed Limit 35	Insured By AMERICAN FAMILY		Phone Number N/A		<input type="checkbox"/> Undercarriage <input type="checkbox"/> Trailer <input type="checkbox"/> None <input type="checkbox"/> Unknown	
Vehicle Identification # 1C3CCBCG7DN580093		Registered Owner's Name (Last, First, MI) HEAD, KEITH L			<input type="checkbox"/> Same as Driver Areas Damaged (Multiples) <input type="checkbox"/> Undercarriage <input type="checkbox"/> Trailer <input type="checkbox"/> None <input type="checkbox"/> Unknown		
Address (Street, City, State, Zip) 690 CAPITOL DRIVE		HOBART IN 46342			Vehicle Use PERSONAL (FARM, COMPANY)		
Towed? NO		To By	Due to Disabling Damage		Emergency Run? Fire? NO		
License #		Lic State	Lic Year	Registered Owner's Name (Last, First, MI) <input type="checkbox"/> Same as Driver		Vehicle Type PASSENGER CAR/STATION WAGON	
Veh Year		Make	Address (Street, City, State, Zip)		Pro-Crash Vehicle Action GOING STRAIGHT		
Veh Year		Make	Registered Owner's Name (Last, First, MI) <input type="checkbox"/> Same as Driver		Direction of Travel SOUTH		
Veh Year		Make	Address (Street, City, State, Zip)		Type of Primary/Secondary Roadway <input type="checkbox"/> One Way Road <input type="checkbox"/> Two Lanes - Two Way <input type="checkbox"/> One Lane - One Way <input type="checkbox"/> Multi-Lane Divided (3 or more) - Two Way <input type="checkbox"/> Two Lanes - One Way <input type="checkbox"/> Multi-Lane Undivided Two Way Left Turn <input type="checkbox"/> Multi-Lanes (3 or more) - One Way <input type="checkbox"/> Multi-Lane Undivided (3 or more) - Two Way <input type="checkbox"/> Multi-Lane w/ Grass Median Only <input type="checkbox"/> Multi-Lane w/ Concrete Barrier <input type="checkbox"/> Multi-Lane w/ Center Turn Lane <input type="checkbox"/> Multi-Lane w/ Metal Guardrail Median <input checked="" type="checkbox"/> Multi-Lane w/ Curb Raised Median <input type="checkbox"/> Private Drive <input type="checkbox"/> Alley <input type="checkbox"/> Multi-Lane w/ Cable Barrier <input type="checkbox"/> Ramp		
HAZMAT Proper Shipping Name:		State DOT #		Event Collision With 1. ANOTHER MOTOR VEHICLE			
US DOT #	ICC #	CMV Inspection	If Yes				
Gross Vehicle Weight Rating		Cargo Body Type					
HAZMAT Placard	HAZMAT Release of Cargo	HAZMAT 4-Digit ID #	Hazard Class #				

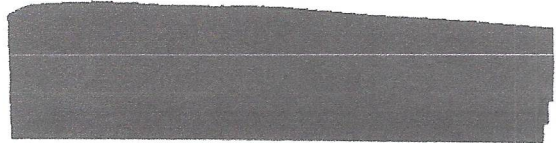
UNIT INFORMATION

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Local ID
18ME14789

2		Driver's Name (Last, First, MI) HICKS, GAIL, L			Safety Equipment Used LAP + HARNESS	
		Address (Street, City, State, Zip) 8200 PIERCE PLACE			Safety Equipment Effective? YES	
		MERRILLVILLE IN 46410			Ejection/Trapped NOT EJECTED OR TRAPPED	
Date of Birth		Age 55	Gender FEMALE		EMS No. 1142	Injured Attn YES
Driver's License # 2360005332		Lic Type OP	CDL Class	Lic State IN	Nature of Most Severe Injury COMPLAINT OF PAIN	
Apparent Physical Status <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Had Recent Drinking <input type="checkbox"/> Handicapped <input type="checkbox"/> Ill <input type="checkbox"/> Asleep/Fatigued <input type="checkbox"/> Drugs/Medication <input type="checkbox"/> Unknown		Restrictions <input type="checkbox"/> Glasses/Contact Lenses <input type="checkbox"/> Outside Rearview Mirror <input type="checkbox"/> Daylight Driving <input type="checkbox"/> Automatic Transmission <input type="checkbox"/> Special Controls <input type="checkbox"/> Employment Only <input type="checkbox"/> Motorcycle Only <input type="checkbox"/> Toll From Employment			Employer's Vehicle Only State-Owned Vehicles PP Chauffeurs Taxi Only Power Steering Special Restrictions Probation DWI Probation HTD <input checked="" type="checkbox"/> None	
Test Given NONE		Type Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		Location of Most Severe Injury BACK		
Alcohol Results PBT Certified Yest <input type="checkbox"/> Pending		Drug Results		If Cited? <input type="checkbox"/> Infraction <input type="checkbox"/> MIs demeanor <input type="checkbox"/> Felony		
Veh # 2		Color WHITE	Vehicle Year 2011	Make DODGE	Model CHARGER	Style 4D
# Occupants 4		Lic Year 2019	License # 268AKT	License State IN		
# Axles 2		Speed Limit 35	Insured By AAA	Phone Number N/A		
Vehicle Identification # 2B3CL3CG8BH591482		Registered Owner's Name (Last, First, MI) HICKS, GAIL, L		<input type="checkbox"/> Same as Driver		
		Address (Street, City, State, Zip) 8200 PIERCE PLACE		MERRILLVILLE IN 46410		
Towed? NO		To By	Due to Disabling Damage		Vehicle Use PERSONAL (FARM, COMPANY)	
License #		Address (Street, City, State, Zip)		Emergency Run? NO		
Veh Year		Make		Vehicle Type PASSENGER CAR/STATION WAGON		
Lic State		Lic Year	Registered Owner's Name (Last, First, MI) HICKS, GAIL, L		<input type="checkbox"/> Same as Driver	
License #		Address (Street, City, State, Zip)		Pre-Crash Vehicle Action GOING STRAIGHT		
Veh Year		Make		Direction of Travel SOUTH		
		Commercial Vehicle: Carrier's Name and Address		Type of Primary/Secondary Roadway <input type="checkbox"/> One Way Road <input type="checkbox"/> Two Lanes - Two Way <input type="checkbox"/> One Lane - One Way <input type="checkbox"/> Multi-Lane Divided (3 or more) - Two Way <input type="checkbox"/> Two Lanes - One Way <input type="checkbox"/> Multi-Lane Undivided Two Way Left Turn <input type="checkbox"/> Multi-Lanes (3 or more) - One Way <input type="checkbox"/> Multi-Lane Undivided (3 or more) - Two Way <input type="checkbox"/> Multi-Lane w/ Grass Median Only <input type="checkbox"/> Multi-Lane w/ Concrete Barrier <input type="checkbox"/> Multi-Lane w/ Center Turn Lane <input type="checkbox"/> Multi-Lane w/ Metal Guardrail Median <input checked="" type="checkbox"/> Multi-Lane w/ Curb Raised Median <input type="checkbox"/> Private Drive <input type="checkbox"/> Alley <input type="checkbox"/> Multi-Lane w/ Cable Barrier <input type="checkbox"/> Ramp		
HAZMAT Proper Shipping Name:		State DOT#		Event Collision With 1. ANOTHER MOTOR VEHICLE		
US DOT#		ICC#	CMV Inspection	If Yes		
Gross Vehicle Weight Rating		Cargo Body Type				
HAZMAT Placard	HAZMAT Release of Cargo	HAZMAT 4-Digit ID#	Hazard Class #			



NON-DRIVER INJURED INFORMATION

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Local ID
18ME14789

Injured Pre-crash Location: Veh# 2 INJURED			Safety Equipment Used LAP + HARNESS											
Name (Last, First, MI) HAMILTON, MARY			Safety Equipment Effective? YES											
Address (Street, City, State, Zip) 4600 DELAWARE STREET			Ejection/Trapped NOT EJECTED OR TRAPPED											
GARY		IN 46409	EMS No. 1142	Immed Attn YES	Injury Status INCAPACITATING -									
Date of Birth	Age 80	Gender FEMALE	Nature of Most Severe Injury COMPLAINT OF PAIN											
Position in or on Vehicle			Location of Most Severe Injury HEAD											
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input type="checkbox"/> Front <table border="1" style="margin: auto;"> <tr><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table> </div> <div style="text-align: center;"> <input type="checkbox"/> Rear </div> </div>			<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Test Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
Alcohol Results PBT			Certified Test <input type="checkbox"/> Pending		Drug Results									
Injured Pre-crash Location: Veh# 2 INJURED			Safety Equipment Used LAP + HARNESS											
Name (Last, First, MI) L M			Safety Equipment Effective? YES											
Address (Street, City, State, Zip) 8200 PIERCE PLACE			Ejection/Trapped NOT EJECTED OR TRAPPED											
MERRILLVILLE		IN 46410	EMS No. 1142	Immed Attn NO	Injury Status POSSIBLE									
Date of Birth	Age 10	Gender FEMALE	Nature of Most Severe Injury COMPLAINT OF PAIN											
Position in or on Vehicle			Location of Most Severe Injury HEAD											
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input type="checkbox"/> Front <table border="1" style="margin: auto;"> <tr><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table> </div> <div style="text-align: center;"> <input type="checkbox"/> Rear </div> </div>			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Test Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
Alcohol Results PBT			Certified Test <input type="checkbox"/> Pending		Drug Results									
Injured Pre-crash Location: Veh# 2 INJURED			Safety Equipment Used LAP + HARNESS											
Name (Last, First, MI)			Safety Equipment Effective? YES											
Address (Street, City, State, Zip) 8200 PIERCE PLACE			Ejection/Trapped NOT EJECTED OR TRAPPED											
MERRILLVILLE		IN 46410	EMS No. 1142	Immed Attn NO	Injury Status POSSIBLE									
Date of Birth	Age 9	Gender FEMALE	Nature of Most Severe Injury COMPLAINT OF PAIN											
Position in or on Vehicle			Location of Most Severe Injury HEAD											
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input type="checkbox"/> Front <table border="1" style="margin: auto;"> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table> </div> <div style="text-align: center;"> <input type="checkbox"/> Rear </div> </div>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Test Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
Alcohol Results PBT			Certified Test <input type="checkbox"/> Pending		Drug Results									
Injured Pre-crash Location: Veh#			Safety Equipment Used											
Name (Last, First, MI)			Safety Equipment Effective?											
Address (Street, City, State, Zip)			Ejection/Trapped											
Date of Birth			Injury Status											
Age			Nature of Most Severe Injury											
Gender			Location of Most Severe Injury											
Position in or on Vehicle			Test Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT											
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input type="checkbox"/> Front <table border="1" style="margin: auto;"> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table> </div> <div style="text-align: center;"> <input type="checkbox"/> Rear </div> </div>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Type Given <input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Breath <input type="checkbox"/> SFST <input type="checkbox"/> PBT		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
Alcohol Results PBT			Certified Test <input type="checkbox"/> Pending		Drug Results									

EXHIBIT B

(In 1 Page)

Defendant American Family filed
opposing pleadings and the Law
Office of Attorney John H. Davis
filed response.

2. In said reply, Plaintiffs set forth that Defendant—AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I. (“American Family”) is arguing issues that have been long ruled upon by this Court and they (American Family) are suggesting that this Court made certain rulings regarding Plaintiffs’ receiving grant of judgment on the pleadings and they (American Family) are suggesting, in a subsequent hearing, that the Court denied Plaintiffs judgment on the pleadings. This Court is aware that—at a hearing—the Court denied Plaintiffs’ motion for sanctions and denied Defendant’s (American Family’s) motion for sanctions. The Court **did not**—at any hearing—**vacate** Plaintiffs’ judgment on the pleadings **nor** did the Court grant Defendant American Family a judgment on the pleadings or summary judgment.

3. In Defendant’s American Family’s recent pleadings filed on March 17, 2023, if the Court granted their motion to correct errors, including vacating Plaintiffs’ judgment on the pleadings granted on December 7, 2020—as Defendant American Family continues to argue—there would be no reason for Defendant American Family to ask for a summary judgment which Defendant American Family did ask for on May 18, 2021.

4. Defendant American Family repeatedly argues issues of whether or not Plaintiff GAIL LEWIS HICKS were a claimant or third-party beneficiary. Those issues have long become moot as this Court has denied all of those issues and other contradictory issues and chaotic pleadings which are all now waived and/or time-barred.

5. Defendant American Family is suggesting that *this* Court does not understand the purpose of judicial estoppel which is clearly erroneous and contemptuous. Obviously, Defendant American Family does not understand the purpose and authority of judicial

estoppel which is designed to provide a trial court the authority to correct erroneous records—which in this case—in the reversing of this trial court’s denial of summary judgment involves the appellate court’s failure to note that a granting of summary judgment to the Defendant (American Family) would create opposing summary judgments. It appears that Defendant American Family seems to disagree that a judgment on the pleadings is same as summary judgment in that a judgment on the pleadings under Indiana Trial Rule 12(C) in that the motion is treated and disposed of as provided in Indiana Trial Rule 56—which Indiana Trial Rule 56 is a motion for summary judgment. *See* Indiana Trial Rule 12(C). It points to another area of Defendant American Family’s lack of knowledge in several areas of law.

6. Defendant American Family clearly lacks knowledge regarding the procedures for the United States Supreme Court. Defendant American Family filed the obligatory response to Plaintiffs petition for writ of certiorari. The response requires that the opposing party indicate to the U.S. Supreme Court whether or not the opposing party disagrees with the **factual** basis or **material** facts set forth by petitioners. By filing a Waiver, American Family indicated that they (American Family) did not object to nor oppose the factual basis set forth in the petition for writ of certiorari—even though U.S. Supreme Court Rule 15.2 indicates that “... Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition.” This is understandable in that the attorneys filing said obligatory document are not members of the United States Supreme Court as becoming a member is not merely by filing a petition. The petitioners’ attorney is a member of the U.S. Supreme Court.

7. Defendant American Family is in error when they (American Family) declare that the U.S. Supreme Court denied petitioner's writ for certiorari as ruling on the merits or in their favor. A petition for writ of certiorari is never docketed unless it contains the requisite format including a factual basis that the U.S. Supreme Court may entertain. The denial of the petition for writ of certiorari merely declares that the particular issue is not being ruled upon for its merits—only that the U.S. Supreme Court prefers to leave certain issues such as errors to be resolved by the lower courts as review on a writ of certiorari is not a matter of right, but of judicial discretion. Although, U.S. Supreme Court Rule 10 indicates that “A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law”, the possibility does exist.

(See partial copy of U.S. Supreme Court Rule 10—pgs 5-6 effective July 1, 2019 marked as **EXHIBIT A** in three (3) pages attached and made apart hereto.)

U.S. Supreme Court Rule 15.1 indicates that “A brief in opposition to a petition for writ of certiorari may be filed by the respondent ... but is not mandatory ...” and Rule 15.2 indicates “Counsel are admonished that they have an obligation to the Court to point out ... any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below ... may be deemed waived ...”

(See copy of U.S. Supreme Court Rule 15.1 and 15.2—pgs 14-15 effective July 1, 2019 regarding obligation to point out any perceived misstatements made in the petition, etc. marked as **EXHIBIT B** in three (3) pages attached and made apart hereto.)

See also U.S. Supreme Court Rules effective January 1, 2023 below:

<https://www.supremecourt.gov/filingandrules/2023RulesoftheCourt.pdf>

Had the petition for writ of certiorari been rarely granted, Respondent—American Family—waived objection to the factual basis in light of the fact that Rule 15.2 admonishes counsel that “they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition.”

(See copy of American Family’s response or WAIVER FORM, Item #1 waiving objection to opposing any factual basis or material facts marked as **EXHIBIT C** in two (2) pages attached and made apart hereto.)

https://www.supremecourt.gov/DocketPDF/22/22-137/243908/20221025163647630_20221025-163610-95757895-00001157.pdf

The only question before the U.S. Supreme Court had to do with error—having two (2) opposing summary judgments on the trial court’s record—and the petition for writ of certiorari may very well have been granted, even if rarely. Rather than Defendant American Family filing a response brief in opposition asserting that said petition for writ of certiorari contained non-factual perceived misstatements, Defendant American Family instead wants *this* trial court to now accept perceived misstatements about a phantom vacating of the December 7, 2020 judgment on the pleadings.

(See copy Petition for writ of certiorari Question #1 regarding opposing summary judgments marked as **EXHIBIT D** in two (2) pages attached and made apart hereto.)

8. It is clear based upon the record that Defendant American Family does agree with Plaintiffs that the issue is the fact that there are two (2) opposing summary judgments on record in the trial court. It is clear also that this Court should put an end to Defendant's American Family's circular, repetitive, moot and time-barred arguments and strike their recent pleading filed on March 17, 2023. It is unlikely that the appellate court will allow the Defendant to pursue further arguments in this matter given the inconsistent statements and the fact that Defendant American Family has not been fully candid with the appellate court.

WHEREFORE, Plaintiffs—GAIL LEWIS HICKS and LARRY HICKS move this Honorable Court to strike the recent pleadings of Defendant American Family filed March 17, 2023, for Sanctions and attorney's fees in an amount to be provided, and for all other just and proper remedies in the premises.

Dated: **March 20, 2023**

Respectfully Submitted,

/s/ John H. Davis

John H. Davis
Attorney for Plaintiffs,
GAIL LEWIS HICKS and
LARRY HICKS

John H. Davis
Attorney at Law
P.O. Box 43
Crown Point, Indiana 46308
Phone: (219) 884 – 2461

VERIFICATION

I, John H. Davis, being duly sworn upon my oath and subject to the penalties for perjury, do state that I have prepared and read the foregoing averments and that said averments are true and correct to the best of my information, knowledge and belief.

Dated: **March 20, 2023**

/s/ John H. Davis
John H. Davis
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on 20th day of March, 2023, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on 20th day of March, 2023 the foregoing document was served upon all counsel of record using the Indiana E-filing System (IEFS) via Odyssey.

By: /s/ John H. Davis
John H. Davis

RULES
OF THE
Supreme Court of the
United States

ADOPTED APRIL 18, 2019

EFFECTIVE JULY 1, 2019

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. §3006A(d)(7), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified. See Rule 34.1(f).

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

PART III. JURISDICTION ON WRIT OF CERTIORARI**Rule 10. Considerations Governing Review on Certiorari**

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual

course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. §2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis*. A copy of the motion shall precede and be attached to each copy of the petition. An in-

RULES
OF THE
Supreme Court of the
United States

ADOPTED APRIL 18, 2019

EFFECTIVE JULY 1, 2019

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived mis-

statement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition. A brief in opposition should identify any directly related cases that were not identified in the petition under Rule 14.1(b)(iii), including for each such case the information called for by Rule 14.1(b)(iii).

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent shall prepare its brief in opposition, if any, as required by Rule 33.2, and shall file an original and 10 copies of that brief. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply

W A I V E R

Supreme Court, U.S.
FILED
OCT 18 2022
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

No. 22-287

Gail Lewis Hicks and Larry Hicks

(Petitioner)

American Family Mutual Insurance Company, S.I.

V.

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- I am filing this waiver on behalf of all respondents.
- I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature: 

Date: 10/11/22

(Type or print) Name Adam Arceneaux

- Mr.
- Ms.
- Mrs.
- Miss

Firm Ice Miller LLP

Address One American Square, Suite 2900

City & State Indianapolis, IN Zip 46282

Phone (317) 236-2137 Email adam.arceneaux@icemiller.com

A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service or cover letter is required.

cc: John H. Davis

RECEIVED
OCT 25 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

October 17, 2022

WRITER'S DIRECT NUMBER: (317) 236-2137
DIRECT FAX: (317) 592-4604
INTERNET: adam.arceneaux@icemiller.com

Supreme Court of the United States
ATTN: Clerk's Office
1 First Street, NE
Washington, D.C. 20543

*Re: Gail Lewis Hicks and Larry Hicks v. American Family Mutual Insurance
Company, S.I.
Case No. 22-287*

Dear Sir or Madam:

On behalf of Respondent, American Family Mutual Insurance Company, S.I., we ask that the enclosed *Waiver* be filed in the above-referenced matter. Please return a file-stamped copy of the Waiver to us using the envelope provided. If you have questions or need further information, please contact me. Thank you for your assistance.

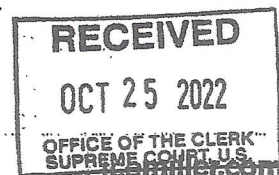
Very truly yours,

ICE MILLER LLP



Adam Arceneaux

AA/mlm; Encs.



No. _____

**In The
Supreme Court of the United States**

—◆—
GAIL LEWIS HICKS and LARRY HICKS,

Petitioners,

vs.

AMERICAN FAMILY INSURANCE COMPANY, S.I.,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The Indiana Supreme Court**

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
JOHN H. DAVIS
Counsel of Record
5201 Broadway, Suite 205
Merrillville, Indiana 46410
Phone: (219) 884-2461
Fax: (219) 884-2472
attyhdavis@gmail.com

QUESTION PRESENTED

Whether or not the Indiana Supreme Court decided an issue without determining the effect of the Indiana Court of Appeals granting Respondent American Family Mutual Insurance Company, S.I. a summary judgment—while at the same time—Petitioners Gail Lewis Hicks and Larry Hicks had a judgment on the pleadings which had not been vacated and thereby affected Petitioners' Due Process Rights under the Fifth and Fourteenth Amendments of the United States Constitution.

Apparently, the courts are overwhelmed and clerks are given too much leeway to provide rulings, therefore, the Law Office of Attorney John H. Davis filed a motion to vacate improper ruling.

STATE OF INDIANA)
)
COUNTY OF LAKE) ss: IN THE LAKE SUPERIOR COURT
) CIVIL DIVISION, ROOM TWO
) 3711 MAIN STREET
) EAST CHICAGO, INDIANA 46312

GAIL LEWIS HICKS and LARRY HICKS,)
 Plaintiffs,)
)
 v.) Case No. 45D02-2007-CT-000727
)
 KEITH L. HEAD, AMERICAN FAMILY)
 MUTUAL INSURANCE COMPANY, S.I.,)
 Defendants.)

PLAINTIFFS’ VERIFIED MOTION TO VACATE ORDER ENTERED BY THE COURT
ON MARCH 17, 2023

COME NOW Plaintiffs – GAIL LEWIS HICKS and LARRY HICKS—through the undersigned attorney and file Plaintiffs’ Verified Motion to Vacate Order Entered by the Court on March 17, 2023 and, in support thereof set forth the following:

1. That Plaintiffs did not receive notice of the Order until March 17, 2023 at 11:52 PM.

 (See copy of Plaintiffs’ attorney email notification referencing the March 17, 2023 Court activity in this matter marked as **EXHIBIT 1** attached and made apart hereto.)

2. Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.’s (“American Family’s”) most recent pleading entitled a reply in support of its response—filed March 17, 2023 at 8:43 AM—appears to be a Sur-reply which is not permissible under the rules without leave of court.

3. Plaintiffs' attorney spoke with the Clerk of this Court and indicated that Plaintiffs had not received an opportunity to file a motion to strike given that notice of service of Defendant American Family's purported Sur-reply was received also on March 17, 2023.

WHEREFORE, Plaintiffs—GAIL LEWIS HICKS and LARRY HICKS move this Honorable Court to vacate the Order entered on March 17, 2023 at 11:52 PM in that Plaintiffs did not receive an opportunity to file any pleadings in response to Defendant's recent pleadings and also that Defendant's reply should be considered a Sur-reply and is not permissible without leave of the court, and for all other just and proper remedies in the premises.

Dated: **March 20, 2023**

Respectfully Submitted,

/s/ John H. Davis

John H. Davis
Attorney for Plaintiffs,
GAIL LEWIS HICKS and
LARRY HICKS

John H. Davis
Attorney at Law
P.O. Box 43
Crown Point, Indiana 46308
Phone: (219) 884 – 2461

VERIFICATION

I, John H. Davis, being duly sworn upon my oath and subject to the penalties for perjury, do state that I have prepared and read the foregoing averments and that said averments are true and correct to the best of my information, knowledge and belief.

Dated: **March 20, 2023**

/s/ John H. Davis
John H. Davis
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on 20th day of March, 2023, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on 20th day of March, 2023 the foregoing document was served upon all counsel of record using the Indiana E-filing System (IEFS).

By: /s/ John H. Davis
John H. Davis



John Davis <attyhdavis@gmail.com>

**Odyssey E-Notices - 45D02-2007-CT-000727 GAIL LEWIS
HICKS,LARRY HICKS v. KEITH L HEAD,AMERICAN FAMILY
MUTUAL INSURANCE COMPANY, S.I.**

1 message

E-Notification <enotifications@courts.in.gov>

Fri, Mar 17, 2023 at 11:52
PM

To: John Davis <attyhdavis@gmail.com>

John Davis

Case Number: 45D02-2007-CT-000727
GAIL LEWIS HICKS,LARRY HICKS

v.

KEITH L HEAD,AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.

If any documents below are confidential, after you click the link, you must type your email address for verification before the document displays. In addition, document links expire 21 days after the date and time sent. If you need a copy of the document, download it immediately. Attorneys can access most cases and documents by signing into <https://mycase.in.gov>.

Order Granting - Defendant, American Family's, Response to plaintiffs' Verified Motion for Judicial Estoppel, Motion to Reconsider Order, Motion to Correct Errors and Motion for Sanctions

Entry Date: 3/17/2023

File Stamp / Order Date: 3/9/2023

To view the document, click the link below:

<https://m.in.gov/MG2R5J77>

Other Party - ENoticed:

BRIDGETT J. NELSON

Robert S O'Dell

Other Party - Noticed:

N/A
