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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DORIS MICHAEL and
TODD BATTLE, by his
Next Friend, Doris Michael,
And KITRENA MICHAEL,

Plaintiff,

v.

CIVIL ACTION NO. 07-C-2616
JUDGE KAUFMAN
(Consolidated w/ 07-C-2617)

FILED
2009 APR 23 PM 3:37
KATHY S. [Signature]
CLERK
KANAWHA COUNTY CIRCUIT COURT

APPALACHIAN HEATING, LLC
AND STATE AUTO INSURANCE COMPANY,

Defendants.

FILED
APR 30 2009
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**AGREED ORDER CERTIFYING QUESTION TO
SUPREME COURT OF APPEALS OF WEST VIRGINIA
PURSUANT TO WEST VIRGINIA CODE 58-5-2**

On a previous day, State Auto Insurance Company filed a motion to dismiss the Plaintiff's Complaint pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure arguing that Plaintiff's Complaint was barred by West Virginia Code § 33-11-4(a). Plaintiff responded to State Auto's Motion by stating that West Virginia Code § 5-11-9(A), more commonly known as the West Virginia Human Rights Act was independent of West Virginia Code § 33-11-4(a) and an action could proceed against State Auto Insurance Company under this legislation. Oral arguments were heard and at the conclusion of the argument, this Court ruled that State Auto Insurance Company's Motion to Dismiss would be denied as West Virginia Code § 33-11-4(a) did not preclude an action based upon violation of the West Virginia Human Rights Act wherein it is

alleged that a tortfeasors' insurance carrier discriminated against the plaintiffs because they are African-American and reside in public housing.

After this denial, counsel for State Auto orally moved for this Court to certify the question to the Supreme Court of Appeals of West Virginia pursuant to West Virginia Code § 58-5-2 as the issue deals with the sufficiency of the pleadings. Further, the Court is of the opinion that this issue is one of first impression and presents new and novel issues of law. Accordingly, the Court agrees that a certified question pursuant to West Virginia Code § 58-5-2 is appropriate.

WHEREFORE, it is hereby **ORDERED** that the following question, dealing with the sufficiency of a pleading pursuant to West Virginia Code § 58-5-2 be certified to the Supreme Court of Appeals of West Virginia:

May a plaintiff present a cause of action against a tortfeasor's insurance carrier pursuant to the West Virginia Human Rights Act, West Virginia Code § 5-11-9(A), when it is alleged that a tortfeasors' insurance carrier discriminated against the plaintiffs because they are African-American and reside in public housing?

Circuit Court: Yes.

Dated this 23rd day of April 2009.

The Circuit Clerk shall send a certified copy of this order to counsel of record and transmit a copy of same to the Clerk of the W.Va. Supreme Court of Appeals. (pgk)

Tod J. Kaufman

Tod J. Kaufman, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 28
DAY OF April 2009.

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PREPARED FOR ENTRY BY:



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