

# In the Indiana Supreme Court

American Family Mutual Insurance  
Company,  
Plaintiff,

v.  
Dustin McCowan, *et al.*,  
Defendants.

Supreme Court Case No.  
18S-CQ-00182

U.S. District Court for the Northern  
District of Indiana  
Case No. 2:14-CV-46



## Order

The United States District Court for the Northern District of Indiana has certified a question of Indiana state law for this Court's consideration, pursuant to Indiana Appellate Rule 64. The question arises in American Family Mutual Insurance Company v. Dustin McCowan, et al., Case No. 2:14-CV-46. The question as framed by the District Court is as follows:

Under Indiana law, does the American Family Policy serve to provide a duty to defend and indemnify an insured being sued only for negligence, notwithstanding any intentional or criminal acts of a co-insured which result in the exclusion of coverage for that co-insured, in light of the severability clause in the Policy?

The certified question, which each member of this Court has considered, is hereby ACCEPTED by a majority vote of the Court.

The Court further directs as follows:

- a) There shall be simultaneous briefing of this matter. The briefs shall, to the extent reasonably practicable, conform to the provisions of Appellate Rules 43, 44, and 46, except that they may not exceed the greater of **twenty (20) pages or 9,000 words**, and any brief exceeding twenty (20) pages shall conform to the word count and certification requirements found in Appellate Rules 46(C), 46(E), and 46(F). Each side's brief, and any appendix (see below), must be filed by **June 15, 2018**.
- b) If the parties believe there are documents from the District Court case necessary or helpful for deciding the certified question, then the parties shall confer and agree on the materials to be included and file a joint appendix containing copies of those documents and also, if applicable, the items listed in Appellate Rule 50. The parties should avoid unnecessary inclusion in the appendix of memorandums of law or briefs filed in the

District Court, since all necessary legal arguments should be presented to this Court in the briefs described in the preceding paragraph.

- c) The parties shall file and serve all documents electronically pursuant to Appellate Rules 24 and 68.
- d) Parties who have not yet filed appearance forms shall do so within twenty (20) days of this order or contemporaneously with the first document filed by the appearing party, whichever comes first, as required by Appellate Rule 16(C). The appearance forms shall include electronic mail addresses for each attorney appearing in this case. These e-mail addresses shall be used in this case for transmission of all orders, opinions, and notices from the Clerk of this Court. *See* App. R. 26.
- e) Extensions of time will be granted only in **truly extraordinary circumstances** and only for a very short period. Any motion seeking an extension of time must be made jointly by the parties.
- f) The Court will conduct oral argument in this matter on **Thursday, June 28, 2018 at 9:45 a.m.** A detailed order scheduling oral argument will issue contemporaneously with this order.
- g) No later than two (2) weeks after the conclusion of this matter before this Court, the parties shall supply file-stamped copies of all documents filed in this case, including the orders and opinions issued by this Court, in PDF format to the Clerk of the United States District Court for the Northern District of Indiana.

Done at Indianapolis, Indiana, on 5/22/2018.



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Loretta H. Rush  
Chief Justice of Indiana