

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

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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.

STATEMENT OF RELATED CASES

1. Indiana Supreme Court:

American Family Mutual Insurance Company, S.I., Appellant v. Gail Lewis Hicks; Larry Hicks; and Keith Head, Appellees, Court of Appeals Case No. 21A-CT-01441, Trial Court Case No. 45D02-2007-CT-727, Indiana Supreme Court, Judgment entered June 28, 2022.

2. Indiana Court of Appeals:

American Family Mutual Insurance Company, S.I., Appellant-Defendant v. Gail Lewis Hicks and Larry Hicks, Appellees-Plaintiffs and Keith Head, Appellee-Defendant, Case No. 21A-CT-1441, Indiana Court of Appeals, Judgment entered February 7, 2022.

3. Lake County, Indiana Superior Court:

Gail Lewis Hicks and Larry Hicks, Plaintiffs v. Keith L. Head, American Family Mutual Insurance Company, S.I., Defendants, Cause No. 45D02-2007-CT-000727, Lake Superior Court, Judgment entered June 10, 2021.

4. Lake County, Indiana Superior Court:

Gail Lewis Hicks and Larry Hicks, Plaintiffs v. Keith L. Head, American Family Mutual Insurance Company, S.I., Defendants, Case No. 45D02-2007-CT-000727, Lake Superior Court, Judgment entered December 7, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Gail Lewis Hicks and Larry Hicks, respectfully request that a writ of certiorari issue to review the order of the Indiana Supreme Court which denied Petitioner's petition to transfer from the Indiana Court of Appeals.

OPINION BELOW

The Indiana Supreme Court's order denying Petitioner's petition to transfer from the Indiana Court of Appeals on June 28, 2022 appears in App. 13 to this Petition.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a). The Indiana Supreme Court's opinion below was issued on June 28, 2022. This petition is timely filed under Rule 13.1.

CONSTITUTIONAL PROVISIONS

The 5th Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ." The 14th Amendment provides, in relevant part: ". . . nor shall any state deprive any person

of life, liberty, or property, without due process of law
. . . ”

STATEMENT OF THE CASE

1. On July 22, 2018, Petitioner Gail Lewis Hicks (“Gail”) was involved in an automobile accident insured by Keith Head with Respondent American Family Mutual Insurance Company, S.I. (“American Family”). On or about July 24, 2018, Respondent American Family accepted liability by paying repairs for the automobile owned by Petitioner Gail. At the time of the accident, the following individuals were in the car: Petitioner Gail, Petitioner’s minor daughter, and aunt.

On July 25, 2018, Petitioner Gail retained the law office of Attorney John H. Davis and tendered a letter dated July 25, 2018 from Respondent American Family which, in pertinent part, set forth: “Because you were injured, American Family Mutual Insurance Company, S.I. is responsible to determine your Medicare **beneficiary** status with the Federal government.” (*Emphasis added*) 42 U.S.C. § 1395y(b)(7) and (8). On January 2, 2019, Petitioners sent Respondent American Family a letter dated January 2, 2019 (marked as EXHIBIT A attached to and filed with the complaint against the insured Keith Head and Respondent). App. 15.

On July 20, 2020, Petitioners Gail Lewis Hicks and Larry Hicks filed a complaint against Respondent American Family and against the insured, Keith Head. On August 6, 2020, Petitioners received notice that

Keith Head was served with the complaint. On August 10, 2020, Petitioners received notice that Respondent American Family received or was served with the complaint. On August 17, 2020, Respondent American Family filed appearance by retained counsel Robert O'Dell. On October 9, 2020, Respondent American Family filed multiple pleadings: Defendant, American Family's Rule 12(B)(4) and (5) Motion to Dismiss for **Lack of Service**. (*Emphasis added*) On October 9, 2020, Respondent American Family also filed multiple pleadings: Defendant, American Family's, Motion to Dismiss and Motion for Judgment on the Pleadings.

On December 7, 2020, the court granted Petitioners judgment on the pleadings and denied all of Respondent's motions, and granted sanctions against Respondent for filing frivolous pleadings. App. 11. On December 22, 2020, Attorney Bridgett Nelson filed an appearance on behalf of Keith Head which was, at that time, four (4) months after being served with the complaint. On February 22, 2021, the court granted motion for judgment and, immediately thereafter—on the same date, the court made an entry: 'Docket Entry of February 22, 2021 "Order Granting Motion for Judgment" was entered in Error'.

On June 10, 2021, the lower court denied Respondent American Family's motion for summary judgment, thereafter, Respondent American Family appealed to the Indiana Court of Appeals. App. 9. On February 7, 2022, the Indiana Court of Appeals reversed the lower court's denial of summary judgment to Respondent American Family. App. 1. On June 28, 2022, the

Indiana Supreme Court denied Petitioners' petition to transfer. App. 13.

2. On December 7, 2020, the Indiana Lake Superior Court issued a judgment on the pleadings in favor of Petitioners. App. 11. On June 10, 2021, the Indiana Lake Superior Court issued order denying summary judgment for Respondent American Family. App. 9. On February 7, 2022, the Indiana Court of Appeals reversed denial of summary judgment in favor of Respondent American Family. App. 1. On June 28, 2022, the Indiana Supreme Court issued order denying the petition to transfer. App. 13. On September 23, 2022, Petitioners filed a petition for writ of certiorari with the United States Supreme Court. 28 U.S.C. § 1257(a) is the basis sought for review of an order from the Indiana Supreme Court.

REASONS FOR GRANTING THE WRIT

The fundamental rights of Petitioners under the 5th and 14th Amendments of the United States Constitution have been violated in that the Indiana Court of Appeals ruled in favor of the Respondent thereby creating competing summary judgments.

The Indiana Court of Appeals granted a summary judgment to Respondent—overruling the trial court's decision which denied summary judgment for Respondent—thus creating competing summary judgments in that the trial court had previously granted Petitioners judgment on the pleadings which is the

same as a summary judgment under Indiana Trial Rule 12(C). The judgment on the pleadings was not vacated and was in effect when the Indiana Court of Appeals granted the summary judgment for Respondent. The Indiana Court of Appeals could not have read the trial court's records prior to making its ruling.

On July 22, 2018, Petitioner Gail Lewis Hicks ("Gail") was involved in an automobile accident insured by Keith Head with Respondent American Family Mutual Insurance Company, S.I. ("American Family"). Now, more than four (4) years later through Respondent's, American Family's, machinations and multiple, conflicting pleadings, Petitioners have yet to receive resolution. On or about July 24, 2018, Respondent American Family accepted liability by paying repairs for the automobile owned by Petitioner Gail. Thus, there were no justifications that the entire matter has not been resolved. On July 25, 2018, Petitioner Gail retained the law office of Attorney John H. Davis and tendered a letter dated July 25, 2018 from Respondent American Family which, in pertinent part, set forth: "Because you were injured, American Family Mutual Insurance Company, S.I. is responsible to determine your Medicare **beneficiary** status with the Federal government." (*Emphasis added*) 42 U.S.C. § 1395y(b)(7) and (8). On January 2, 2019, Petitioners sent Respondent American Family a letter dated January 2, 2019 (marked as EXHIBIT A attached to and filed with the complaint against the insured Keith Head and Respondent). App. 15.

On July 20, 2020, Petitioners filed a complaint against Respondent American Family and against the insured, Keith Head. On August 6, 2020, Petitioners received notice that Keith Head was served with the complaint. On August 10, 2020, Petitioners received notice that Respondent American Family received or was served with the complaint. On October 9, 2020, Respondent American Family filed multiple pleadings: Defendant, American Family's Rule 12(B)(4) and (5) Motion to Dismiss for **Lack of Service**. (*Emphasis added*) On October 9, 2020, Respondent American Family also filed multiple pleadings: Defendant, American Family's, Motion to Dismiss and Motion for Judgment on the Pleadings. These pleadings by Respondent American Family represent the multiple, conflicting and purposefully confusing pleadings by Respondent American Family.

On December 7, 2020, the court granted Petitioners judgment on the pleadings and denied all of Respondent's motions, and granted sanctions against Respondent American Family for filing frivolous pleadings. App. 11. On December 22, 2020, Attorney Bridgett Nelson filed an appearance on behalf of the insured Keith Head which was, at that time, four (4) months after being served with the complaint. During this four (4) month period, Attorney Bridgett Nelson who was the in-house counsel for Respondent American Family—remained silent as retained counsel for Respondent American Family, Attorney Robert O'Dell, filed his numerous multiple, conflicting, and confusing pleadings and, after filing his appearance for Respondent

American Family, **retained counsel** Robert O'Dell indicated that he (O'Dell) was only representing Respondent American Family and not the insured, Keith Head. On February 22, 2021, the court granted motion for judgment and, immediately thereafter—on the same date, the court made an entry: 'Docket Entry of February 22, 2021 "Order Granting Motion for Judgment" was entered in Error'.

On June 10, 2021, the lower court denied Respondent American Family's motion for summary judgment thereafter Respondent American Family appealed to the Indiana Court of Appeals. App. 9. On February 7, 2022, the Indiana Court of Appeals reversed the lower court's denial of summary judgment to Respondent American Family. App. 1. The Indiana Court of Appeals wrote: "However, given that the only question before us on appeal is whether the trial court erroneously denied American Family's motion for summary judgment, we omit these other filings from our recitation of the procedural history as they are not relevant to the instant appeal." App. 5.

By this omission, the Indiana Court of Appeals fails to notice that there is a judgment on the pleadings in favor of the Petitioners which was not vacated and thus the Indiana Court of Appeals—by granting Respondent American Family a summary judgment—creates competing summary judgments thus violating Petitioners' 5th and 14th Amendments' Rights under the United States Constitution. On June 28, 2022, the Indiana Supreme Court denied Petitioners' petition to transfer. App. 13. The Indiana Supreme Court wrote:

“The Court has reviewed the decision of the Court of Appeals, **and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review.**” (*Emphasis added*) App. 13.

The Indiana Supreme Court compounds the problem created by the Indiana Court of Appeals violating Petitioners’ Due Process Rights under the 5th and 14th Amendments of the United States Constitution. Further, had the Indiana Supreme Court reviewed all the records and files, it would have discovered the problem regarding competing summary judgments. The Indiana Court of Appeals and Indiana Supreme Court have both violated Petitioners’ Due Process Rights and Constitutional Rights under the 5th and 14th Amendments of the United States Constitution by *failing to review* all the necessary and relevant records and files in order to make a full and **informed** decision.

Finally, this petition for writ of certiorari should be granted because the Indiana Supreme Court has decided an important federal question—due process—in a way that conflicts with relevant decisions of this Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

September 23, 2022 Respectfully submitted,
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