[This decision has been published in *Ohio Official Reports* at 96 Ohio St.3d 1203.]

LUCKENBILL ET AL., APPELLANTS, *v.* MIDWESTERN INDEMNITY COMPANY, APPELLEE.

[Cite as *Luckenbill v. Midwestern Indemn. Co.*, 2002-Ohio-3524.]

Certification of conflict dismissed as improvidently certified due to want of a conflict.

(No. 2001-1678—Submitted June 4, 2002—Decided July 24, 2002.)

CERTIFIED by the Court of Appeals for Darke County, No. 01-CA-1536.

{¶1} The certification of conflict is dismissed, sua sponte, as having been improvidently certified; there is a want of a conflict.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER and LUNDBERG STRATTON, JJ., concur.

COOK, J., dissents.

COOK, J., dissenting.

{¶2} I respectfully dissent. Instead of dismissing this case as improvidently certified, I would affirm the judgment of the court of appeals.

Craig A. Dynes, L.L.C., and Craig A. Dynes, for appellants.

Freund, Freeze & Arnold, L.P.A., and Stephen V. Freeze, for appellee.

Elk & Elk Co., L.P.A., and Todd O. Rosenberg, urging reversal for amicus curiae Ohio Academy of Trial Lawyers.

Weisman, Goldberg & Weisman Co., L.P.A., and Henry W. Chamberlain, urging reversal for amicus curiae Cleveland Academy of Trial Lawyers.

Bricker and Eckler, L.L.P., Kurtis A. Tunnell, Anne Marie Sterra and Robert Katz, urging affirmance for amicus curiae American Insurance Association.

Thomas P. Pappas, urging affirmance for amicus curiae National Association of Independent Insurers.