

Neuro-Communication Services, Inc. v. The Cincinnati Ins. Co.

Year: 2021

Court: The Supreme Court of Ohio

Case Number: 20CV01275

In its brief, UP urges the court to exercise its discretion and decline to answer a question that was certified by the United States District Court, Northern District of Ohio. The question, UP argues, addresses well settled principles of contract and insurance law that are not in dispute. The certified question should not be answered because it also raises issues of fact that must be resolved by the fact-finder in this case, not this Court.

UP also advocates that the proposed certified question is not ripe for resolution because discovery has not been conducted and the record is incomplete. Neuro-Communication has not had a full and fair opportunity to marshal its evidence and present its case. Whether the virus causes physical loss or damage to insured property is a fact issue that will turn on expert testimony and findings by a trier of fact and cannot be resolved in the absence of record.

This brief was authored pro bono by Rhonda D. Orin and Marshall Gilinsky of Anderson Kill LLP, and Daniel R. Karon of Karon LLC.