

## OHIO CASE SUMMARIES

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**Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to [arwebber@green-law.com](mailto:arwebber@green-law.com).**

Court of Appeals: Ninth District

Case Name: *Brezovar v. Am. Family Ins. Co.*, 2009-Ohio-1710

Decided: April 13, 2009

Issue(s): Subrogation for Medical Payment Coverage in Insurance Policies

Summary of Opinion: Plaintiff and another driver were involved in a car accident. Both drivers were insured by American Family Insurance Co. Plaintiff immediately filed a claim with American Family under the medical expenses provision of her own policy. American Family issued plaintiff a \$2,000 check, which represented the limit on her medical expense policy.

Subsequently, American Family settled plaintiff's claim against the other driver for \$15,000.00, an amount within the other driver's policy limits. American Family then issued plaintiff a check for \$13,000 and placed the remaining \$2,000 in an escrow account. Plaintiff accepted the check and signed a release, indicating that \$15,000 represented the full recovery on the claim. The release included a statement that:

The \$15,000 amount includes a lien of \$2,000 due American Family to satisfy a medical expense payment. Plaintiff will pay her own existing medical bills.

Plaintiff believed that the above provision meant that she would still be entitled to keep the \$2,000 paid from her medical coverage through her policy. American Family refused to pay the additional \$2,000 it held in escrow. Plaintiff filed suit, the parties filed cross motions for summary judgment, and the trial court granted summary judgment in favor of American Family.

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On appeal, the Ninth District Court of Appeals affirmed the holding of the trial court and found that American Family was entitled to the \$2,000 for medical expenses it paid to plaintiff. The court distinguished this case from the Supreme Court's decision in *Berrios v. State Farm Ins. Co.*, 98 Ohio St.3d 109, 2002-Ohio-7115.

In *Berrios*, the Ohio Supreme Court held that an insurer could not seek reimbursement of medical payments from the proceeds of its insured's settlement when a portion of that settlement came from the insured's own UM/UIM coverage. *Berrios's* insurance company paid for *Berrios's* medical bills, and *Berrios* then settled his claim against the other driver for the limits on that driver's policy. *Berrios* then filed a UIM claim with State Farm, but the parties disagreed as to whether State Farm could seek reimbursement for its medical payment from *Berrios's* settlement with the other driver. The Supreme Court held that State Farm could not seek reimbursement because State Farm was obligated to provide UM/UIM coverage and that *Berrios* "must recover under both the medical payments and UIM coverage" It held that an insurance company may not rob one type of coverage to pay another.

In this case, American Family was able to settle the claim for \$15,000. Plaintiff did not have to seek additional UM/UIM coverage from American Family, and this, the court held, distinguished this case from *Berrios*.

One of the three judges in this case, however, strongly dissented from the majority's holding. The dissent argued that this case ran contrary to the spirit of *Berrios* in that American Family was attempting to rob plaintiff of her medical payment coverage. As the dissent noted, plaintiff paid an extra premium for her medical payment coverage and she should be able to get the benefit of her bargain without any dilution by American Family. "To permit the insurer to retrieve sums it paid out from the funds the policyholder receives from the tortfeasor essentially undercuts the entire purpose of buying separate coverage [for medical payment] and relieves the insurer of the fulfillment of its promise to pay under the policy."

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