

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.

Court of Appeals: Eighth District Court of Appeals

Case Name: *Blake v. Thornton*, 2009-Ohio-2487

Decided: May 28, 2009

Issue(s): Umbrella Liability Insurance Coverage

Summary of Opinion: Delores Johnson and Lorraine Blake were traveling in a minibus owned by their senior living facility, The Owl's Nest, when it was struck by a truck driven by Eddie Thornton. Johnson died at the scene, and Blake died several months later from an unrelated condition. The administrators of their estates filed suit claiming negligence and intentional conduct. The claims against Thornton were settled under his liability insurance, but this did not fully compensate the plaintiffs' losses.

Through amended complaints, the plaintiffs asserted underinsured motorists (UIM) claims against National Union and Progressive Preferred Insurance Company (Progressive). Plaintiffs also claimed these companies had acted in bad faith in denying their UIM claims.

Progressive had issued a commercial auto policy under which the minibus was covered, and the plaintiffs' decedents were insureds. This policy provided liability and UIM coverage. Plaintiffs sought excess coverage under a commercial umbrella liability policy issued by National Union, arguing that UIM coverage was provided through an exception to the automobile liability exclusion in the policy's follow-form endorsement. Essentially, plaintiffs claimed that the National Union policy incorporated the Progressive policy in its entirety, including the UIM coverage.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

Plaintiffs and National Union both moved for summary judgment on the UIM coverage issue, and the trial court granted plaintiffs' motion and denied defendant's motion. National Union appealed, arguing that the trial court erred in holding that an excess liability insurance policy provides UIM coverage by implication.

The Eighth District Court of Appeals found that the National Union umbrella policy did not incorporate the UIM coverage contained in the Progressive policy, reasoning that the plain meaning of the policy only incorporated the Progressive policy insofar as it provided automobile liability coverage for bodily injury or property damages to third parties. The court explained that National Union's policy did not *expand* coverage to include UIM protection.

Moreover, the court rejected plaintiffs' argument that because National Union's umbrella policy did not specifically exclude UIM coverage, that silence allowed UIM coverage to be included in the follow-form endorsement. The court asserted that exclusions are relevant to interpreting an insurance policy but *only when the policy provides coverage in the first place*. Therefore, since the umbrella policy never included UIM coverage in the first place, there was no reason for National Union to exclude it.

The judgment of the trial court was reversed and remanded, and judgment was rendered in favor of National Union as a matter of law.

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