

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 Jared Wagner at 937-224-3333 or email Jared at jawagner@green-law.com.

Court of Appeals: Third District

Case Name: Bilow v. Wayne Mut. Ins. Co., 2006-Ohio-737

Decided: February 21, 2006 (posted February 21, 2006)

Issue: Underinsured motorist coverage in relation to a wrongful death claim and an exclusionary clause

Summary of Opinion: Plaintiff-Appellant's eight year old granddaughter was killed in an automobile accident by an underinsured driver. On the date of the accident, Plaintiff had in effect an automobile insurance policy with Wayne Mutual Insurance Co. that included uninsured/underinsured motorist coverage in the amount of \$250,000.00 per person. Plaintiff filed a claim with Wayne Mutual seeking coverage for the emotional damages he suffered as a result of his granddaughter's death. Wayne Mutual stipulated that Plaintiff had suffered an undetermined amount of damages but denied the claim on the basis of an exclusionary clause in the insurance contract providing as follows: **"We will pay damages which a covered person is legally entitled to recover from an uninsured motorist because of bodily injury sustained by a covered person and caused by a motor vehicle accident."**

The trial court granted Wayne Mutual summary judgment on the basis of this clause. On appeal, Plaintiff argued that the clause was ambiguous and should be strictly construed against the insurer and in favor of coverage. Specifically, Bilow contended that the phrase "sustained by a covered person" is a double reference modifier that modifies both "damages" and "bodily injury" Wayne Mutual countered that the last antecedent rule is the

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law in Ohio, and the policy language is clear and unambiguous.

In determining whether the exclusionary clause was ambiguous, the court relied on the rules of grammar that while dependent clauses modify some part of the main clause and cannot stand alone because it is introduced by a subordinating conjunction or relative, an independent clause can stand alone as a sentence. Applying these rules to the exclusionary clause in question, the court found that the clause contains two dependent clauses: 1) “which a covered person is legally entitled to recover from an uninsured motorist”; and 2) “because of bodily injury sustained by a covered person and caused by a motor vehicle accident”. Because no rule of grammar allows for a dependent clause to modify another dependent clause, and because each dependent clause must modify some part of an independent clause, the court held that each dependent clause in this case modifies the term “damages”, as part of the main clause. Affirming the trial court’s grant of summary judgment, the court held that the dependent clause “‘sustained by a covered person’ does not modify ‘bodily injury.’ The phrase is merely a subject-verb agreement with a prepositional phrase and is part of the larger dependent clause, which modifies “damages”, as discussed above. The policy language is clear and unambiguous.”

Court of Appeals: Seventh District

Case Name: Longo v. Nationwide Ins. Co., 2006-Ohio-750

Decided: February 17, 2006 (posted February 21, 2006)

Issue: Uninsured/Underinsured Motorist Coverage; Motion for a New Trial

Summary of Opinion: Margaret Longo was involved in a motor vehicle accident and settled with the tortfeasor and the tortfeasor’s insurance company for the policy limits of \$62,500, with the consent of Defendant-Appellant Nationwide Insurance, Co. At the time of the accident, Nationwide was the underinsured motorist (“UIM”) insurance provider for both Margaret and Mark Longo, husband and wife. Subsequently, the Longos filed a complaint against Nationwide for UIM coverage, alleging that the amount of coverage from the tortfeasor was not enough to cover their damages resulting from the accident. The case proceeded to a jury trial, and the jury returned a verdict for Nationwide. Thereafter, the Longos filed a motion for a new trial arguing that the jury’s verdict was against the manifest weight of the evidence. The trial court held a hearing on the Longos’ motion and subsequently entered a judgment in favor of the Longos simply stating that the motion for a new trial was sustained. Nationwide filed a timely notice of appeal on March 18, 2005, which the Seventh District sustained based on the fact that the trial court had failed to specify the reason for granting a new trial. Accordingly the case was remanded for the trial court to enter a new judgment entry stating its reasons. The trial court subsequently entered another judgment in favor of the Longos granting their motion for a new trial on the

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basis that the verdict was not sustained by sufficient evidence, that manifest injustice was done to appellees, and that the jury's damage verdict was inadequate and appeared to have been given under the influence of passion or prejudice. However, the trial court did not state any of its reasoning underlying its basis for granting the Longos motion.

Relying on Civ.R. 59(A)(6), which provides that "[w]hen a new trial is granted, the court shall specify in writing the grounds upon which such new trial is granted," the Seventh District held that the trial court had abused its discretion by failing to articulate its reasons for granting a new trial. Specifically, the court held that "the trial court's judgment granting appellees a new trial is not specific enough to grant a new trial based on the weight of the evidence. The trial court merely concluded that based on its observations at trial and the parties' arguments, it felt that the verdict was not sustained by sufficient evidence and that manifest injustice had been done to appellees. It did not specify what evidence it relied on to reach this conclusion. In fact, it did not mention any specific evidence whatsoever in its entry. Its statement is merely conclusory." The Seventh District also held that this requirement applies to all grounds on which a new trial may be granted, not just when it is granted based on the weight of the evidence. Therefore, it is reasonable that the same amount of specificity is required of the trial court no matter which ground it based its decision on in granting a new trial. Accordingly, the court held that the trial court's judgment granting the Longos' motion for a new trial was inadequate and reversed and remanded the judgment for the trial court is to reconsider its decision granting a new trial and, if it reaches the same conclusion, to sufficiently detail its findings for granting a new trial.

Court of Appeals: Tenth District

Case Name: State Farm Mut. Auto. Ins. Co. v. Advanced Impounding & Recovery Servs., 2006-Ohio-760

Decided: February 21, 2006 (posted February 21, 2006)

Issue: Stolen car/abandoned car/storage and towing fees

Summary of Opinion: On July 14, 2003, Sandra Biermacher reported to the Columbus Police Department ("CPD") that her car was stolen from a shopping plaza parking lot and notified her automobile insurance company, Plaintiff-Appellee, State Farm Mutual Automobile Insurance Company ("State Farm"). Earlier that day, Defendant-Appellant, Advanced Impounding and Recovery Services ("AIRS"), had towed a car Biermacher's car from a portion of the same parking lot that was allegedly marked as a private tow-away zone. Because neither State Farm nor Biermacher were aware that the car had been towed, State Farm ultimately paid Biermacher \$4,340 for the loss of the car and obtained title to the car. Five months later, AIRS still had the car and determined that the car was

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titled to State Farm. Therefore, AIRS notified State Farm that it had towed the car from a private tow-away zone and that State Farm had 15 days to claim the car or AIRS would proceed with legal action to protect its interest, including filing for title to the car pursuant to Ohio law. AIRS also informed State Farm that the total fee due to recover the car was \$2,407 plus tax. That amount included impound and filing fees as well as a \$12 per day storage fee. Subsequently, counsel for State Farm faxed a letter to AIRS' attorney that disputed AIRS' right to the claimed fees. State Farm requested AIRS to release the car and offered to pay AIRS' fees from the time State Farm learned AIRS had the car, January 27, 2004, to the time State Farm mailed the letter on January 30. AIRS' counsel informed State Farm that it would not release the car unless State Farm paid the towing, impound and storage fees. Six days later, AIRS' managing member filed for an abandoned title to the car pursuant to R.C. 4505.101. AIRS obtained title to the car one week later. As a result, State Farm filed a complaint alleging that AIRS converted the car. AIRS denied liability and asserted a counterclaim against State Farm for its statutory storage and towing fees. Both State Farm and AIRS moved for summary judgment on their claims. The trial court ruled that AIRS did not legally obtain title to the car pursuant to R.C. 4505.101. Therefore, AIRS was liable to State Farm for conversion as a matter of law. Accordingly, the trial court granted summary judgment to State Farm and awarded it damages in the amount of \$4,340, which is the amount State Farm paid Biermacher on her claim in exchange for title to the car. The trial court also ruled in favor of State Farm on AIRS' motion for summary judgment for statutory storage and towing fees. The trial court determined that AIRS was not entitled to statutory storage and towing fees because the car had been stolen. AIRS filed a timely appeal from this judgment.

Based on the fact that neither Biermacher nor State Farm had requested repairs from AIRS or agreed to a term of storage for the car, the Tenth District held that R.C. 4501.101 was inapplicable. Furthermore, the court held that State Farm's refusal to pay AIRS all of its requested fees did not demonstrate that State Farm had abandoned the car. In fact, State Farm's offer to pay AIRS' fees accruing from the time it learned that AIRS had the car was reasonable, and AIRS knew that State Farm was attempting to reclaim the car. Accordingly, AIRS improperly used R.C. 4501.01 to obtain title to State Farm's car and had wrongfully exercised control of State Farm's property in a manner inconsistent with State Farm's rights. Therefore, the Tenth District affirmed the trial court's decision granting summary judgment in State Farm's favor on its claim for conversion. However, the trial court did reverse the trial court's decision on the basis that material issues of fact remained concerning the value of the vehicle at the time of the conversion and whether the car had in fact been stolen or was actually parked in a private tow-away zone as AIRS contended.

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