

## 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](mailto:jawagner@green-law.com).**

Court of Appeals: Fourth District

Case Name: *Bowen v. Stewart*, 2006-Ohio-831

Decided: February 16, 2006 (posted February 24, 2006)

Issue: Exclusion of uninsured/underinsured motorist coverage in cases involving wrongful death claims.

Summary of Opinion: The insureds in this case are two brothers who had a third brother killed by an intoxicated driver. The insureds sought coverage under the uninsured/underinsured ("UM/UIM") provisions of their respective automobile liability policies. Their claims were based on the alleged mental and emotional loss they had suffered as a result of their brother's death. However, coverage under the UM/UIM provisions of both policies was limited to bodily injury sustained by an insured. The insureds argued that such a limitation was unlawful under R.C. 3937.18(A)(1) as interpreted by the Supreme Court in *Moore v. State Farm Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27. In response, the insurance companies argued that R.C. 3937.18(A) as amended by House Bill 261 in 1997 permits insurance carriers to restrict UM/UIM claims to those involving bodily injury and death suffered by an insured. After acknowledging that other Ohio District Courts of Appeal are split on the issue of whether House Bill 261 has such an effect, the Fourth District found that R.C. 3937.18(A) as amended by House Bill 261 allowed insurance carriers to exclude traditional wrongful death damages from UM/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 court 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.

Court of Appeals: Fifth District

Case Name: *Carter v. Gen. Cas. Co. of Wisconsin*, 2006-Ohio-822

Decided: February 17, 2006 (posted February 24, 2006)

Issue: Rental Car/Garage and Umbrella policy/Rental Agreement

Summary of Opinion: The appellee was involved in an automobile accident while operating a vehicle he had rented from appellant while appellant was repairing his vehicle. As a result of the accident, appellee was sued. Consequently, he brought a declaratory judgment action against appellant, claiming that he was an insured under appellant's garage and umbrella insurance policies. However, appellee had signed a rental agreement prior to renting the motor vehicle that stated the only liability insurance coverage on the rental vehicle would be his personal automobile insurance policy. It was undisputed that appellee qualified as an insured under the language of both the garage policy and the umbrella policy. The only issue before the court was whether appellee had become "uninsured" by signing a rental agreement purporting to reject coverage under the two policies. Relying on *State Farm Mut. Auto. Ins. Co. V. Northbrook Ins. Co.* (Feb. 5, 1990), 2d Dist. No. 11593, the Fifth District held that insurance coverage is determined by looking at the terms and provisions of the insurance contracts and not the lease agreements between the named insureds. Because there was no reference or incorporation of the rental agreement in either insurance policy, the language in the rental agreement limiting coverage to appellee's personal insurance policy was unenforceable.

Court of Appeals: Eighth District

Case Name: *Ruggiero v. Nationwide Ins.*, 2006-Ohio-808

Decided: February 23, 2006 (posted February 23, 2006)

Issue: Insurance agent's liability for failure to procure the insurance requested and insurance company's vicarious liability for the same.

Summary of Opinion: The insureds' basement flooded resulting in excess of \$54,000 worth of damage. Under their Nationwide insurance policy, which they had bought from Nationwide agent Phil Heim, they were entitled to \$5,000. However, this amount represented only a portion of the full water back-up coverage the insureds could have obtained. Full water back-up coverage under the insureds' policy would be five percent of the coverage for the home. The dispute was not over whether the insureds had full or partial coverage at the time of the flood damage. Rather, the insureds claimed that they

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had requested full coverage from Heim and that he told them that \$5,000 represented full coverage. The Eighth District found that an insurance agent is liable for failing to procure the insurance requested by an insured. Because there was a material issue of fact concerning whether Heim had represented to the insureds that \$5,000 was full coverage, the court reversed the trial court's decision granting Heim summary judgment. With respect to Nationwide, the Eight District found that Heim was an insurance agent and that Nationwide was liable for any torts Heim may have committed in his capacity as an insurance agent. Because a material issue of fact remained concerning Heim's liability, the court also reversed the trial court's decision granting Nationwide summary judgment.

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