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: Second District

Case Name: Kremer v. Rowse, 2006-Ohio-992

Decided: March 3, 2006 (posted March 6, 2006)

Issue(s): Evidence of Insurance/Expert Witness/Bias

Summary of Opinion: The Defendant/Appellee rear-ended the Plaintiff/Appellant. In the subsequent law suit, the Defendant sought to preclude the Plaintiff from making any reference to the fact that she had liability insurance. The Plaintiff argued that he was entitled to demonstrate that Defendant's medical expert was biased in favor of her insurer [Allstate] because he performed multiple reviews for Allstate each year, he was paid for his services directly by Allstate, and correspondence from Allstate contributed to his medical opinion regarding Plaintiff's condition. The trial court agreed with the Defendant and redacted the portions of Dr. Jenkins's videotaped testimony that mentioned his relationship to Allstate. At the conclusion of trial, the jury found in favor of the Defendant and awarded no damages to the Plaintiff. Relying on Evid.R. 411, the Second District found that the trial court had abused its discretion by failing to allow the Plaintiff's lawyer to question the Defendant's expert about his possible bias in favor of Allstate. The Court specifically rejected the Defendant's contention that Evid.R. 411 only allowed an expert to be questioned on the issue of bias with respect to insurance if he/she had the same insurance carrier as the party he/she was testifying for. Nevertheless the Second District refused to reverse the decision, ruling that the trial court's abuse of discretion was not reversible error since there was no reasonable possibility that the outcome of the trial would have been different had the cross-examination been viewed by the jury.

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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: Second District

Case Name: Mundy v. Roy, 2006-Ohio-993

Decided: March 3, 2006 (posted March 6, 2006)

Issue(s): Discovery/Bad Faith/Prejudgment interest/Underinsured Motorist Claim

Summary of Opinion: The insured was involved in a car accident in 1999 and was offered a settlement by the tortfeasor's insurance carrier in August of 2000. The insured immediately sought approval of the settlement by his insurance carrier, Allstate, but Allstate did not approve the settlement until approximately two years later. Consequently, the insured brought suit against Allstate claiming bad faith and underinsured motorist (""UIM") coverage. These issues were bifurcated, and a jury awarded the insured $51,367.35 on the UIM claim. The insured then sought prejudgment interest on the amount the jury had awarded him and, in preparation for the bad faith portion of the trial, made a discovery request to examine Allstate's claims file. In response, Allstate moved for summary judgment on the bad faith claim and a protective order denying the insured's discovery request on the basis that because Allstate had merely disagreed over the value of the insured's UIM claim rather than denying the claim outright, there was no bad-faith cause of action. Allstate claimed that a dispute over the value of a claim cannot support a bad-faith action as a matter of law. The Second District disagreed finding that a bad faith claim could lie where the insurance company disputed the alleged damages, rejected the settlement demand, and compensated the insured only after a jury rendered a verdict against him. The court also found that a bad faith claim could arise out of a dispute over the amount of pain and suffering the insured had suffered and that the trial court had abused its discretion by completely denying the insured prejudgment interest.

Court of Appeals: Fourth District

Case Name: Gustin v. Chaney, 2006-Ohio-1049

Decided: March 2, 2006 (posted March 8, 2006)

Issue(s): Dog Bite/Motion in Limine/Collateral Source Rule

Summary of Opinion: The Plaintiff/Appellant suffered a dog bite at the hands of the Defendants/Appellants' dog. Liability was stipulated to, and the issue of damages went to trial. The Defendants sought a motion in limine to exclude any evidence of medical bills in excess of the amounts paid by Plaintiff's health insurance carrier. The trial court granted

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the motion, and no evidence was presented at trial concerning medical bills in excess of the amount paid by Plaintiff's insurance carrier except by her lawyer as a proffer to preserve the issue. The Fourth District overturned the trial court's exclusion of the evidence, ruling that a plaintiff can introduce evidence of the actual amount billed for his/her medical care even if that amount is in excess of the amount negotiated and paid for by his/her insurance carrier. In reaching this decision, the Court considered the collateral source rule, which prevents the reduction of a plaintiff's recovery for payments received and prevents the jury from learning anything about payments from other sources. The public policy behind this rule is that the injured party, rather than the tortfeasor, should benefit from a windfall caused by payment from an outside source. Applying this public policy, the court held that the collateral source rule applies to any amount written off pursuant to an agreement between a plaintiff's insurance carrier and healthcare provider. Thus, the actual amount of the medical bills charged to a plaintiff, regardless of the amount that the plaintiff or the plaintiff's insurance company paid on those bills, may be properly entered into evidence.

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