

## 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: Third District

Case Name: *Indiana Ins. Co. v. Murphy*, 2006-Ohio-1264

Decided: March 20, 2006 (posted March 20, 2006)

Issue(s): Motion to Intervene/Declaratory Judgment/Third Party

Summary of Opinion: Appellant brought suit against her landlord for injuries she and her family sustained as the result of a fire. The landlord then filed a third-party complaint against the former owners of the property, and appellant was granted leave to amend her complaint to include the former owners. Subsequently, appellee, Indiana Insurance Co. ("Indiana"), brought an action seeking a declaratory judgment that the former owners of the property were not entitled to coverage under their Indiana policy. Appellant then filed a motion to intervene in the declaratory judgment action, which the trial court denied. Utilizing the principle that Civ.R. 24 should be liberally construed in favor of intervention, the Third District held that Appellant had an interest in the action between Indiana and its insured since such insurance could be the source from which she obtains satisfaction of any judgment she is able to obtain against the insured. Thus, a tort claimant has a sufficient interest in a tortfeasor's insurance policy to allow intervention in a declaratory judgment action. Furthermore, because R.C. 2721.12(B) renders a declaratory judgment binding on a tort claimant even if that claimant is not a party to the declaratory judgment proceeding, Appellant's interest in recovering against the insureds would have been impaired by a ruling in the declaratory action in Indiana's favor. Thus, the court held that Appellant should have been allowed to intervene as of right under Civ.R. 24(A).

The court also rejected Indiana's argument that Appellant was precluded from joining the declaratory judgment action by the language in R.C. 2721.02(B) stating that a

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plaintiff who is not an insured under an insurance policy may not *commence* a declaratory judgment action against the insured. The court held that nothing in this statute precluded an injured tort claimant from *participating* in a declaratory judgment action. Therefore, because Indiana had commenced the action, R.C. 2721.02(B) did not operate to preclude Appellant from intervening in the action.

Court of Appeals: Ninth District

Case Name: *Pierson v. Wheeland*, 2006-Ohio-1316.]

Decided: March 22, 2006 (posted March 22, 2006)

Issue(s): Motion to Intervene/Declaratory Judgment/Third Party

Summary of Opinion: James Ridgeway (“Ridgeway”) suffered bodily injury when the vehicle he was a passenger in was negligently struck by a vehicle being driven by Richard Wheeling (“Wheeling”). At the time of the accident, Wheeling had a \$65,000 bodily injury liability policy with Allstate, Ridgeway had \$25,000 in UIM coverage from Allstate, and the driver of the car Ridgeway was riding in had \$100,000 in UIM coverage from Nationwide. It was undisputed that Ridgeway qualified as an insured under the Nationwide policy. Eventually, Ridgeway received \$20,000 from Allstate for Wheeling’s liability policy, and the rest of the \$65,000 was distributed to other passengers in the vehicle Wheeling struck. As a result, Nationwide paid Ridgeway \$80,000 for UIM coverage, and Ridgeway assigned his pending UIM claim against Allstate to Nationwide. Nationwide took the position that Allstate owed them a prorated portion of the UIM payout to Ridgeway. Both the Allstate and the Nationwide insurance policies had “excess coverage” provisions that provided if there was UIM insurance available from another source, then that policy’s UIM coverage would be considered excess. Because the court was unable to determine which policy should be considered primary and which one would be considered secondary without making an arbitrary decision, it found that the appropriate remedy is that the policies be enforced pro-rata. The court specifically rejected a rule that would have insurance follow either the driver or the car.

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