

## 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: Supreme Court

Case Name: Sharonville v. Am. Employers Ins. Co., 109 Ohio St.3d 186,  
2006-Ohio-2180

Decided: May 17, 2006 (posted May 17, 2006)

Issue(s): Police Officers/Municipal Liability/Duty to Defend/Lost or Destroyed  
Insurance Policy

Summary of Opinion: A federal law suit was brought against three police officers in their official capacity, alleging that the officers had purposefully conspired to destroy and conceal evidence related to a murder that occurred in 1981. In response to the law suit, the officers filed a declaratory judgment action in state court against the various insurers who had insured the city between the years of 1979 and 2002, claiming that the insurers have a duty to defend them in the federal law suit.

The insurers had issued law enforcement liability policies admitted that included a duty to defend personal injury claims filed under Section 1983, Title 42, U.S.Code; however, the insurers denied that they have a duty to defend the officers in this case because the alleged actions of these officers were outside the scope of their employment and it would be bad public policy to require insurers to defend officers for covering up a crime. The insurers also argued that these intentional acts were expressly excluded from coverage as "willful violation[s] of a penal statute or ordinance" or as acts of fraud characterized by "affirmative dishonesty or actual intent to deceive or defraud. Holding that the issuer of a law-enforcement insurance policy has a duty to defend its insured against an action when the complaint contains an allegation of conduct that could arguably be considered covered by the policy, the Supreme Court rejected the insurers arguments, and

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relied upon the legal proposition that allegations of improper officer activity, with the exception of sexual assaults, have been held to be within the scope of employment. The Supreme Court also rejected the insurers arguments that the criminal activity or fraud exceptions were applicable as none of the officers had been charged with, let alone convicted of, a crime.

The Supreme Court also found that North East Insurance Company ("North East") has a duty to defend the officers despite the fact that the North East policy that had provided coverage for the city of Sharonville had been lost. In making this ruling, the Court held that when an insurance policy is missing, lost, or destroyed, its terms may be proven by secondary evidence, unless the record contains evidence that the policy was lost or destroyed in bad faith. Because there was sufficient evidence to show that North East had issued a law enforcement liability policy to Sharonville during the applicable period of time and there was no evidence that it was lost due to bad faith, North East has a duty to defend the officers.

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