

## 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: Second District

Case Name: Unklesbay v. Fenwick, 2006-Ohio-2630

Decided: May 19, 2006 (posted May 26, 2006)

Issue(s): Bad Faith/Motion to Compel/Discovery/Privileged Documents

Summary of Opinion: Plaintiff was hit by a vehicle being driven by an uninsured driver. Accordingly, he sought coverage from his uninsured motorist provider, Preferred Mutual Insurance Company ("Preferred Mutual"). When Preferred Mutual failed to respond to his requests for coverage, and Plaintiff initiated suit against the uninsured driver and Preferred Mutual, seeking a declaratory judgment that he was covered under the Preferred Mutual policy and alleging that Preferred Mutual had acted in bad faith. Eventually, Plaintiff received his policy limits from Preferred Mutual, and he dropped the declaratory judgment claim. However, the bad faith claim remained, and Plaintiff served Preferred Mutual with a document request seeking all of the claims files materials, including privileged documents. Preferred Mutual refused to provide such documents, and the trial court granted Plaintiff's motion to compel. On appeal, the Second District held that Civ.R. 37(E), which requires parties to make reasonable efforts to resolve discovery matters prior to filing a motion to compel, is intended for the benefit of trial courts and cannot be used on appeal to attack a motion to compel. The Court also held that under Supreme Court precedent, Preferred Mutual could be compelled to produce privileged documents. The fact that Preferred Mutual had eventually paid Plaintiff's claim did not foreclose a finding that Preferred Mutual had acted in bad faith by delaying or foot dragging. Thus, it is possible that the claims file, and any privileged information in that file, may have information relevant to Plaintiff's bad faith claim. Nonetheless, the Court held that only those

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documents in Plaintiff's claims file that were created prior to Preferred Mutual's decision to pay the claim were relevant to the issue of bad faith. Therefore, the trial court would need to conduct an in camera interview of the entire claims file to ensure that only those portions of the file that were relevant were produced.

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