

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: First District

Case Name: *Flynn v. Westfield Ins. Co.*, 2006-Ohio-3719

Decided: July 21, 2006 (posted July 21, 2006)

Issue(s): Ambiguous Policy Language / Course and Scope of Employment
The Coming and Going Rule / Employee versus Volunteer

Summary of Opinion: Plaintiff was a partner in a law firm (“the Firm”), an employee of Lawyers Title of Cincinnati (“Lawyers Title”), and a volunteer for LaSalle Highschool. In February of 2002, Plaintiff was involved in an automobile accident while in the process of dropping off real estate documents as part of his employment with Lawyers Title. Plaintiff had also intended to attend a volunteer’s meeting at LaSalle after dropping off the documents. Seeking to recover for the injuries he sustained as a result of the accident, Plaintiff sought coverage under the policies issued to the Firm, Lawyers Title, and LaSalle. At trial, the court found that Plaintiff was not entitled to coverage under any of these policies and granted the insurers summary judgment. On appeal, the First District affirmed in part, reversed in part, and remanded the cause based upon the following findings:

- Because the Firm was listed as a named insured, Plaintiff, as a partner of the Firm, qualified as an insured under the policy;
- Because Lawyer’s Title was listed as a named insured and Plaintiff was in the course and scope of employment at the time of the accident, Plaintiff qualified as an insured under the policy;
- A “Broadened Coverage Endorsement” that extends coverage to family members of a specific partner does not act to limit coverage to that partner only;
- An Underinsured Motorist (“UIM”) provision is ambiguous with respect to whether

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it requires the insured to be occupying a covered auto where the does not specifically provide in the definition of who is an insured under UIM coverage that the insured must be occupying a covered auto. The Court reached this decision despite the fact that:

- The Schedule of Coverages specifically provided that UIM coverage would apply only to those autos shown as covered autos; and,
- An “Other-Owned-Vehicle” Exclusion that excluded UIM coverage for an insured who sustained bodily injury while occupying any vehicle owned by him that is not a covered auto;
- The “Coming-and-Going Rule” applies to volunteers as well as employees. Thus, because Plaintiff was merely driving to LaSalle for a meeting at the time of the accident, he was not acting in the course and scope of his duties as a volunteer. Therefore, Plaintiff was not an insured under LaSalle’s policy.

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