

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: Eleventh District

Case Name: *McGrath v. Indiana Ins.*, 2006-Ohio-4037

Decided: August 4, 2006 (posted August 7, 2006)

Issue(s): Summary Judgment / Statute of Limitations / Illegible Policy Underinsured Motorist Claim

Summary of Opinion: Plaintiff was injured in a motor vehicle accident in 1993. Ten year later, Plaintiff initiated a declaratory judgment action in 2003, alleging that he was entitled to underinsured motorist (“UIM”) coverage under his employer’s insurance carrier. The trial court granted summary judgment in favor of the insurer on the basis that Plaintiff failed to bring his UIM claim within the statute of limitations time period for torts. On appeal, a majority of the Fifth District held that the trial court had committed error based on the holding in *Ponser v. St. Paul Fire & Marine Ins. Co.*, 104 Ohio St.3d 621, 2004-Ohio-7105, which held that a decision regarding whether an insured has filed a timely UIM claim is determined solely by looking at the language of the insurance policy. However, the insurance policy produced as evidence by Plaintiff in this case is illegible. Thus, the insurer argued that Plaintiff could not prove that his UIM claim was timely under the terms of the policy. Nevertheless, the majority found that summary judgment was not proper because the trial court had not determined whether the language of the illegible policy could be deciphered using enhancement technology, a comparison of similar insurance policies issued by the same insurer during the same time period, or some other interpretation method.

The dissenting judge argued that summary judgment was proper because Plaintiff had failed to meet his burden of proving that he was entitled to coverage under the illegible policy. While the dissent acknowledged that Plaintiff was entitled to establish the terms

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and conditions of the illegible insurance policy through “other evidence,” Plaintiff had not produced any such evidence. The dissent also noted that it was not the role of an appellate court in the Ohio system of justice to remand a case so that the evidence in the record can be enhanced. Plaintiff had a duty to respond to the insurer’s summary judgment motion by introducing “other evidence” showing that he was entitled to coverage under the illegible insurance policy. He failed to do so and summary judgment was proper.

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