

OHIO CASE SUMMARIES
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Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at jawagner@green-law.com.

Court of Appeals: Second District

Case Name: *St. Amand v. Spurling*, 2006-Ohio-4391

Decided: August 25, 2006 (posted August 25, 2006)

Issue(s): Permissive User / Negligent Entrustment / Material Facts

Summary of Opinion: Plaintiff was injured in an automobile accident when the vehicle she was driving was hit by a van being driven by Howard Spurling. At the time of the accident, Howard was driving a van owned by his employer, Spurling Electric, which was owned by his brother Robert Spurling. It was undisputed that Howard was not operating the van in the course and scope of his employment with Spurling Electric at the time of the accident and that Spurling Electric had a written policy prohibiting the personal use of company vehicles. Accordingly, Spurling Electric's insurer, Cincinnati Insurance Company, denied Howard coverage under the company's insurance policy and moved for summary judgment based on the assertion that Howard was not a permissive user of the van at the time of the accident. Likewise, Spurling Electric moved for summary judgment on Plaintiff's negligent entrustment claim on the same basis. The trial court found that Howard did not have permission to use the company van at the time of the accident and granted both Cincinnati Insurance and Spurling Electric summary judgment. Affirming the trial court, the Second District found that the written policy prohibiting personal use of the company vehicle and Howard's signature on a copy of the written policy was compelling evidence that Howard did not have implied permission to use the company van at the time of the accident. The appellate court also held that the fact Robert had observed Howard operate a company vehicle for personal reasons on one prior occasion did not give rise to a material issue of fact on the issue of whether Howard had implied permission to use the van for personal reasons. Likewise, the court held that the fact other employees used company vehicles for personal reasons was irrelevant because none of these employees had positions in the company similar to Howard's position.

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Court of Appeals: Ninth District

Case Name: *Sokol v. Spiegel*, 2006-Ohio-4408

Decided: August 28, 2006 (posted August 28, 2006)

Issue(s): Default Judgment / Excusable Neglect / Civil Rule 6(B) / Service

Summary of Opinion: Plaintiff's complaint sought recovery for damages she suffered as the result of an automobile accident. Plaintiff filed her complaint on December 1, 2004, and the trial docket reflected that a summons and a copy of the complaint were sent to Defendant on December 16, 2004. Service was properly completed on Defendant on December 27, 2004, but the trial court's docket did not post an entry acknowledging the service until June 27, 2005. On July 7, 2005, Plaintiff moved the court for default judgment. Twelve days later, Defendant filed a motion to file here answer instanter under Civ.R. 6(B). The basis of Defendant's motion instanter was that she had failed to file a timely answer due to excusable neglect. The trial court denied Defendant's motion and granted Plaintiff default judgment. On appeal, Defendant argued that her failure to file an answer was due to the clerk of court's failure to timely post a verification of service. Defendant asserted that it was her counsel's custom and practice to periodically check the docket and verify service to ensure that service had actually been completed. Thus, because the docket did not reflect a signed return receipt, Defendant claimed that her failure to file an answer was excusable neglect. The Ninth District disagreed, finding that the time for filing an answer is not tolled pending the clerk of court's entry of service verification on the record pursuant to Civ.R. 4.1(A). While the trial court's docket did not timely indicate that a return receipt was received by the court, such an entry does not, in any manner, effect the twenty-eight day time period prescribed by Civ.R. 12(A). Thus, Defendant's failure to file an answer within twenty-eight days of service of the complaint was not excusable neglect, and the appellate court affirmed the trial court's decision granting Plaintiff default judgment.

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