

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: Eighth District

Case Name: *Hous. Advocates, Inc. v. Am. Fire & Cas. Co.*, 2006-Ohio-4880

Decided: August 31, 2006 (posted September 21, 2006)

Issue(s): Racial Discrimination / Insurance Rates

Summary of Opinion: Plaintiff filed discrimination charges with the Ohio Civil Right Commission (the "Commission") against twenty-five insurance companies. The basis of Plaintiff's claims was the allegation that the insurance companies had discriminated against minorities by charging higher rates in metropolitan areas such as Cincinnati, Cleveland, and Akron as compared to the rates charged in the surrounding suburban areas. After conducting a year long review into Plaintiff's charges, the Commission found that there was not probable to issue a complaint because the insurance companies had nondiscriminatory reasons for their insurance rates, territories, and practices. Specifically, the Commission found that the insurance companies had assigned rates based upon historical loss data, observable loss trends, identifiable risk classifications and numerous other factors widely accepted in the development of insurance rates. Moreover, the rates had been reviewed and approved by an independent state agency, the Ohio Department of Insurance.

Thereafter, Plaintiff appealed the Commission's decision to the Cuyahoga County Court of Common Pleas and requested the trial court to consider additional evidence. After refusing to consider the additional evidence, the court found that the Commission's decision was not unlawful, irrational, arbitrary or capricious and affirmed the decision. The trial court also denied Plaintiff's motion for relief from judgment.

On appeal to the Eight District, Plaintiff argued that the trial court had used the wrong standard to review the Commission's decision. Rather than an abuse of discretion standard, Plaintiff claimed that the trial court should have weighed the evidence presented to the Commission and determined whether the decision was supported by reliable, probative, and substantial evidence. The Eighth District disagreed with Plaintiff and held

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that a decision by the Commission that there is not probable cause sufficient to issue a complaint is not based upon formal evidence entered upon the record. Thus, such a determination is reviewed under the unlawful, irrational, arbitrary or capricious standard. To the contrary, where the Commission has found probable cause and issued a complaint, formal evidence is heard by the Commission and a subsequent decision in such a case is reviewed to under the reliable, probative, and substantial standard.

Reviewing the Commission's decision, the Eighth District noted that risk assessment is widely accepted as a legitimate insurance actuarial principle and that risk discrimination is not race discrimination. Therefore, based on the fact that setting insurance rates and territories according to actual incurred losses does not constitute race discrimination and the fact that the Commission's findings did not reveal any significant difference between the rates charged to minorities and the rates charged to whites, the appellate court found that the Commission had not acted unlawfully, irrationally, arbitrarily, or capriciously and affirmed the finding of no probable cause.

The Eighth District also noted that the Commission has wide discretion in investigating discrimination claims and a party bringing a discrimination claim does not have the right to rebut evidence produced by the party against which the claim was brought prior to the Commission's determination of whether there is probable cause. Similarly, additional evidence not considered by the Commission cannot be considered by a trial court reviewing a finding of no probable cause. Finally, the appellate court held that a motion for relief from judgment is not permissible in such an administrative appeal.

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