

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: Seventh District

Case Name: *Hill v. Cundiff*, 2006-Ohio-5270

Decided: September 28, 2006 (posted October 6, 2006)

Issue(s): Definition of Insured / Dual Residency

Summary of Opinion: Ryan Cundiff was living in a trailer with his girlfriend, when an altercation at the trailer began between himself and his girlfriend's sister's husband, Robert Hill. As a result of the altercation, Cundiff shot Hill several times, causing Hill to become permanently paralyzed. Hill and his wife brought suit against Cundiff, and Westfield Insurance entered an answer on behalf of Cundiff. Westfield provided homeowner's insurance to Cundiff's parents and had agreed to appear in the action under a reservation of rights. Eventually, Westfield was allowed to intervene in the matter and file a declaratory judgment action seeking a declaration that Cundiff was no an insured under his parents' homeowner's policy. The matter was submitted by agreement of the parties to the trial court on the briefs, stipulations, deposition, and exhibits for a determination of the declaratory judgment issue. After considering the record, the trial court found that Cundiff did not qualify as a resident of his parent's household and was not an insured under the Westfield policy. On appeal, the Hills argued that the terms resident and household are vague and should be liberally construed in favor of coverage. Utilizing this liberal construction, the Hills maintained that the evidence established dual residency and Cundiff should have been considered a resident of both the trailer and his parents' home. The Seventh District first held that ambiguities are not construed in favor of coverage where the plaintiff is not a party to the contract of insurance. The policy of construing ambiguous insurance contracts in favor of coverage is designed to aid the insured. Construing the policy in favor of coverage where the insured is not the plaintiff could result in expanded coverage beyond the intent of the parties and increased rates for the insured. This was especially true where, as was the case here, the insured did not file a claim for coverage,

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did not submit a position on the issue of coverage to the trial court, and did not present arguments on appeal. The court then went on to find that there was sufficient evidence in the record to support the trial court's finding that Cundiff's only residence was the trailer. Thus, the judgment of the trial court was affirmed.

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