

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: Third District

Case Name: *Cooper Farms, Inc. v. Brown & Brown of Ohio, Inc.*, 2006-Ohio-5982

Decided: November 13, 2006 (posted November 13, 2006)

Issue(s): Insurance Binder / Interpretation of Insurance Policy

Summary of Opinion: Plaintiff, a turkey farm, solicited commercial property insurance coverage through an insurance broker, Brown & Brown. Plaintiff received and accepted a quotation for coverage, but the coverage was on a scheduled value basis rather than blanket coverage. Per the schedule of values, Plaintiff's facilities were valued at \$6,567,262. Brown & Brown issued two binders of insurance to Plaintiff so that coverage could be instituted while the formal policies were being drawn up. The first binder listed Lexington Insurance Company as the primary insurer with a per occurrence limit of \$5,000,000. The second binder listed Crum & Forster Speciality Insurance Company as the excess limits insurer with a \$5,000,000 limit. A tornado struck Plaintiff's turkey farm and caused over \$10,000,000 worth of damage to Plaintiff's facilities a few days before the formal policies were finalized. Lexington paid Plaintiff the \$5,000,000 policy limits, and Crum & Forster paid Plaintiff \$1,567,282 as the remainder due per the schedule of values. Thereafter, Plaintiff brought suit against Brown & Brown and Crum & Forster and Brown & Brown filed a cross claim against Crum & Forster. Eventually, the trial court granted Crum & Forster summary judgment. On appeal, Appellants argued that the terms of Crum & Forster's policy provided blanket coverage rather than schedule coverage. However, the Third District noted that the formal insurance policy was not yet in place at the time of the accident. Therefore, it was necessary to interpret the language of the binder rather than the formal policy to determine the nature of the coverage. The appellate court affirmed the decision of the trial court because the Crum & Forster binder unambiguously stated that limits of coverage under this policy were to be determined by the schedule of values and only in excess to Lexington's coverage.

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Court of Appeals: Fourth District

Case Name: *Byers v. Motorists Ins. Cos.*, 2006-Ohio-5983

Decided: November 6, 2006 (posted November 13, 2006)

Issue(s): Interpretation of insurance policy / Business use exclusion

Summary of Opinion: Plaintiff's garage was destroyed by a fire. Prior to the fire, her and her fiancé used the garage to assemble and store satellite dish antennas as part of Plaintiff's business. Plaintiff's insurer denied coverage for the fire because her homeowner's policy excluded any structure used "in whole or in part for business" from coverage. Plaintiff filed suit against her insurer, arguing that the phrase "in whole or in part for business" was ambiguous. The trial court granted the insurer summary judgment based on its finding that the garage had been used for business and was excluded from coverage under the terms of the policy. On appeal, the majority reversed the trial court, holding that the phrase "in whole or in part for business" was ambiguous. According to the majority, the phrase taken to its logical conclusion would exclude coverage for either a plumber who parked a tool truck in the garage or a lawyer who talked to clients in the garage. The phrase was ambiguous because the exclusion drew no discernable line and set no parameters to distinguish between active, ongoing business pursuits and passive activities remotely related to income or employment pursuits. Additionally, the majority felt that the use of the garage by Plaintiff was so minimal that the phrase "in whole or in part for business" would not have been invoked even if it had not been ambiguous.

Judge Harsha dissented, arguing that the phrase was not ambiguous. Harsha contends that the phrase would not apply to a situation where a plumber parked a vehicle in the garage or a lawyer talked to a client on the phone in the garage because such activities involve the mere "presence" of business related objects and activities in the garage rather than the "use" of the garage for business. However, where the insured "used" the garage for business, as Harsha would have held Plaintiff did, the exclusion would properly apply.

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