

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: *Bykova v. Szucs*, 2006-Ohio-6424

Decided: December 7, 2006 (posted December 7, 2006)

Issue(s): Civ.R. 15(C) / Statute of Limitations / Additional Party

Summary of Opinion: Plaintiff was one of four people injured in an automobile accident. The three others brought suit against the tortfeasor, but Plaintiff was not named in the suit. After the statute of limitations had already run on her claim against the tortfeasor, Plaintiff moved to join the suit and have her complaint dated back to the original filing under Civ.R. 15(C). The trial court denied Plaintiff's motion to join the suit. In affirming the trial court, the Eighth District held that Civ.R. 15(C) is designed to substitute or change a mistakenly identified or misnamed party; not to add parties to an action.

Court of Appeals: Tenth District

Case Name: *Gray v. Grange Mut. Cas. Co.*, 2006-Ohio-6370

Decided: December 5, 2006 (December 5, 2006)

Issue(s): UIM Coverage / Set-Off for Additional Available Insurance Policies

Summary of Opinion: Plaintiffs' son was injured in an automobile accident and subsequently received negligent medical care. Ten days after the accident, Plaintiffs' son died. At the time of the accident, Plaintiffs had an insurance policy through Grange Mutual Casualty Company ("Grange") with underinsured motorist ("UIM") limits of \$100,000 per person and \$300,000 per accident. The doctor and hospital where Plaintiffs' son received negligent treatment paid \$510,000 to settle Plaintiffs claims. Grange refused Plaintiffs'

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claim for UIM coverage, arguing that the UIM policy limits had to be setoff by the \$510,000 paid by the doctor and hospital. Thus, Grange claimed that Plaintiffs were not entitled to UIM coverage because the amount Plaintiffs had received from the doctor and the hospital exceeded their UIM limits. The trial court agreed with Grange, and granted it summary judgment. On appeal, the Tenth District reviewed the language of the relevant version of R.C. 3937.18 and found the statute does not allow an insurer to reduce UIM coverage by amounts available to an insured through insurance policies other than automobile insurance policies. It should be noted here that the appellate court was interpreting a prior version of R.C. 3937.18; HOWEVER, the exact language relied on by the court is still in the current version of the statute. Thus, the Tenth District held that an insurer may only set off against UIM coverage those amounts available to an insured through automobile insurance. Amounts available to an insured through other insurance policies, such as medical malpractice, are not relevant to UIM coverage.

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