

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: Supreme Court

Case Name: *Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 2006-Ohio-6551

Decided: December 20, 2006 (posted December 20, 2006)

Issue(s): Commercial General Liability Insurance / Anti-assignment Clause / Transfer of insurance rights between corporations

Summary of Opinion: Pilkington purchased LOF Glass in 1986 from the Libbey-Owens-Ford Company. At the time, Libbey-Owens-Ford was insured under various commercial general liability policies. Pilkington agreed by contract to assume LOF Glass' business and environmental liabilities. Subsequently, claims were brought against LOF Glass based on allegedly tortious activities that occurred prior to the 1986 sale. Pilkington sought coverage under the insurance policies issued to Libbey-Owens-Ford on the following two theories: (1) it had acquired a "chose in action" from Libbey-Owens-Ford with regard to any losses that occurred prior to the 1986 sale; and (2) rights to indemnity and defense in insurance contracts follow the sale of a corporation as a matter of law where the indemnity and defense is based on actions that occurred prior to the sale. The insurance companies disagreed, arguing that anti-assignment clauses in the policies prevented Libbey-Owens-Ford from transferring any interest in the policies without their consent and that coverage does not follow a successor corporation as a matter of law. In addressing these issues, the Supreme Court recognized that a "chose in action" is a proprietary and transferable right to coverage that arises automatically under an occurrence-based insurance policy at the time the covered loss occurs. Thus, because the insurance policies in question were occurrence-based, any occurrence that happened prior to the sale arose automatically and was transferable, and a transfer of a "chose in action" after the occurrence is valid even where the insurance policy contains an anti-assignment clause. However, the majority's opinion limits this holding to the duty to indemnify and did not directly address whether the duty to defend is also transferable. Accordingly, a "chose in action" as to the duty to indemnify is unaffected by an anti-assignment provision when the covered loss has already

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occurred. On the issue of coverage arising by operation of law, the Court discussed Ohio's rule that a purchaser of a corporation's assets is not generally liable for the purchased corporation's debts and obligations. Therefore, a successor corporation does not necessarily incur liability for its predecessor's previous transgressions. However, a successor corporation can agree to accept liability by contract, which is what Pilkington did in this case. The Supreme Court held that when a covered occurrence under an occurrence based insurance policy occurs before liability is transferred to a successor corporation, insurance coverage does not arise by operation of law when the liability was assumed by contract. The Court specifically declined to address whether such insurance coverage would transfer to a successor corporation that is found liable for reasons other than contract.

In a separate concurring opinion, Chief Justice Moyer and Justice O'Conner held that an anti-assignment clause in an insurance policy prohibits the transfer of the duty to defend when the transfer places upon the insurer a materially changed duty or a materially increased risk.

Justice Pfeifer also wrote a separate decision, stating that while he agreed that the duty to indemnify is always transferrable where the "chose in action" has arose, he also believes that the duty to defend is likewise always transferable.

Finally, Judge Lanzinger wrote a separate opinion in which she stated that she felt a "chose in action" does not arise until after a claim is made against an insurance policy.

Court of Appeals: Supreme Court

Case Name: *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362

Decided: December 20, 2006 (posted December 20, 2006)

Issue(s): Collateral source rule / Determination of reasonable value of medical treatment

Summary of Opinion: Appellee sue Appellant for injuries incurred on Appellant's property. The medical bills for Appellee's injuries totaled \$1,919, but her insurance company negotiated a payment of \$1350.43 as payment in full. The trial court refused to admit the original bills as evidence of the reasonable value of her medical treatment and limited proof of damages to the amount paid by the insurance company. Citing the collateral source rule, the First District reversed the trial court's decision. In affirming the First District, the Supreme Court held that both an original medical bill and the amount ultimately accepted

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for payment of the bill are relevant and admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care. The determination of the reasonable value of medical services is ultimately a decision for the jury and should not be limited to either amount. However, the Court also held that the First District had erred in applying the collateral source rule because any difference between the original bill and the amount accepted is not a "benefit" under the collateral source rule.

Court of Appeals: Tenth District

Case Name: *Safe Auto Ins. Co. v. Koroma*, 2006-Ohio-6742

Decided: December 19, 2006 (posted December 19, 2006)

Issue(s): Duty to defend and indemnify / Rental vehicle exclusion

Summary of Opinion: Defendant, while insured under a policy with Plaintiff Safe Auto Insurance Company ("Safe Auto"), rented a motor vehicle. Defendant was involved in an accident while driving the rented vehicle. Safe Auto refused Defendant coverage based on a provision in the insurance policy excluding coverage for rented vehicles. The trial court agreed and found that there was no coverage under the policy. On appeal, Defendant argued that Safe Auto's policy violated the statutory coverage limits of R.C. 4509 and is against public policy because it excluded coverage for use of rental vehicles. In rejecting Defendant's claims, the Tenth District held that the policy issued by Safe Auto met the requirements of R.C. 4509 by providing the minimum coverage limits. Nothing in R.C. 4509, or any other statute, required Safe Auto to provide Defendant any coverage whatsoever for rental vehicles. Defendant had a duty to obtain a policy providing coverage for the use of rental vehicles if he desired such a policy.

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