

**OHIO CASE SUMMARIES**  
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A Legal Professional Association

**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](mailto:jawagner@green-law.com).**

Court of Appeals: Tenth District

Case Name: *Bond v. Caudy*, 2006-Ohio-6898

Decided: December 26, 2006 (posted December 26, 2006)

Issue(s): Priority among competing UM claims

Summary of Opinion: Plaintiff, while riding as a passenger, was injured in a motor vehicle accident caused by an uninsured driver. Plaintiff sought uninsured motorist (UM) coverage under both his wife's insurance policy (Citizens Insurance Company) and the driver's insurance policy (Allstate Insurance Company). Both insurance companies filed motions for summary judgment, arguing that their UM policy provided excess coverage only. The language of Citizens' policy stated that UM coverage was excess to any primary coverage. The Allstate policy simply stated that UM was excess. The trial court held that Citizens' policy was primary and granted Allstate's summary judgment motion. The Tenth District affirmed the trial court's decision on the basis that while both policies provided that UM coverage was excess, Citizens' UM coverage was excess only if there was primary coverage. Because there was no primary coverage, Citizens' policy became primary.

Court of Appeals: Eleventh District

Case Name: *Montecalvo v. Am. Family Ins. Co.*, 2006-Ohio-6881

Decided: December 22, 2006 (posted December 26, 2006)

Issue(s): Res Judicata / Collateral Estoppel

Summary of Opinion: Plaintiff was bitten by a dog and brought suit against the dog's

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owner. A jury returned a verdict in Plaintiff's favor. Thereafter, Plaintiff sought to initiate a new suit against the dog owner's homeowner's insurer. The trial court dismissed the second suit on the basis of res judicata and collateral estoppel. The Eleventh District affirmed the trial court's decision, holding that the dog owner and his homeowner's insurer are in privity. Accordingly, Plaintiff was barred by res judicata and collateral estoppel from seeking additional recovery for the same injury.

Court of Appeals: Eleventh District

Case Name: Preferred Mut. Ins. Co. v. Butcher, 2006-Ohio-6884.]

Decided: December 22, 2006 (December 26, 2006)

Issue(s): Determination of "named insured" / Determination of "you"

Summary of Opinion: A son negligently caused an accident while driving his father's vehicle in the course and scope of his employment with his father's company. He sought coverage under the company's insurance policy. The applicable insurance policy defined "you" as the "named insured." The company was the only name or entity listed as the "named insured." However, the father was listed on the policy as an additional insured. A "covered auto" was defined as those autos "you" do not own that are used in connection with the business. The insurance company argued that "you" as used in the definition of a "covered auto" was ambiguous and could not refer to the company solely. Thus, the insurer claimed that the father was included within the term "you" as an employee of the company and that the vehicle driven by the son, and owned by the father, did not fall within the definition of a "covered auto." The trial court agreed granted the insurer summary judgment. On appeal, a majority of the Eleventh District overturned the trial court's decision and held that while an insurance policy that defines "you" solely as a company is ambiguous when applied to the definition of an insured in connection with uninsured/underinsured motorist coverage, such a definition of "you" is not ambiguous when used in connection with the definition of a "covered auto." The distinction made by the appellate court was that UM/UIM coverage is intended to protect persons not companies, but a company may legally own vehicles. The insurer also argued that the father qualified as a named insured and fell within the definition of "you" because he was specifically listed on the policy as an additional insured. The appellate court rejected this argument, holding that only those persons or entities specifically listed on the policy as a "named insured" would fall within this definition. Simply being listed on the policy as an additional insured did not qualify.

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