

OHIO CASE SUMMARIES
A SERVICE OF
GREEN & GREEN, LAWYERS
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.

Court of Appeals: Second District

Case Name: *Rogers v. City of Dayton, 2007-Ohio-673*

Decided: February 16, 2007 (posted February 16, 2007)

Issue(s): Uninsured Motorist Coverage / Definition of Self-Insured

Summary of Opinion: Plaintiff was injured in an automobile accident that was caused by the negligence of a City of Dayton employee acting in the course and scope of his employment. At the time of the accident, Plaintiff had uninsured motorist coverage through State Farm. Dayton's employee was immune from liability under R.C. 2744.03(A), but a political subdivision is liable for injuries caused by the negligence of its employees while operating a motor vehicle in the course and scope of their employment under R.C. 2744.02(B)(1). However, Dayton contended that it was not liable for Plaintiff's injuries because it did not qualify as "self-insured" under the Ohio Revised code. Thus, it argued that State Farm was liable for Plaintiff's injuries under Plaintiff's UM coverage. In turn State Farm claimed that Dayton should qualify as self insured because it has the resources to pay for the loss and it is not required to obtain insurance. The trial court agreed with Dayton and granted it summary judgment. On appeal, a majority of the second district affirmed the trial court and found that Dayton was not a self insured entity because it had not requested a certificate of self-insurance from the registrar of motor vehicles. Accordingly, the majority found that Dayton was not excluded from the definition of an "uninsured motor vehicle" found in the applicable version of R.C. 3937.18(K)(3). Therefore, Dayton qualified as "uninsured" and State Farm was liable under its UM coverage. Furthermore, the majority found that R.C. 2744.05(B), which establishes a political subdivision's right to deduct available insurance coverage from its judgment, specifically set forth the legislature's desire that a UM provider should bear the harm of such a tort before the political subdivision does. The majority noted that its decision is in conflict with a decision from the first district.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

One judge dissented, and would have held that Dayton is self insured within the *meaning and spirit* of the law, even if it is not so within the letter. The dissent would have ruled in line with the First District's decision.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.