

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: Tenth District

Case Name: *Burgess v. Erie Ins. Group*, 2007-Ohio-934

Decided: March 6, 2007 (posted March 6, 2007)

Issue(s): Insurance Contract Interpretation / Ambiguity / UM Coverage

Summary of Opinion: Plaintiff, while operating a motorcycle owned by his father, was allegedly injured by an uninsured motorist. Plaintiff sought uninsured motorist (“UM”) coverage, but his insurer, Erie Insurance (“Erie”) denied coverage based on a clause that excluded UM coverage for bodily injury incurred by an insured while “operating occupying” a motor vehicle not specifically identified in the policy for UM coverage. It was undisputed that Plaintiff’s father’s motorcycle was not identified anywhere in the policy. However, Plaintiff maintained that the lack of a comma or conjunction between the words operating and occupying in the language of the exclusion created an ambiguity. According to Plaintiff, the phrase “operating occupying” was susceptible to many different interpretations and should be interpreted in favor of coverage. Both the trial court and the appellate court found that Plaintiff’s attempted interpretation of the exclusion resulted in an absurd result. The terms occupying and operating are separate and mutually exclusive; a person is occupying a vehicle when operating it, but is not necessarily operating a vehicle while occupying it. Thus, the courts rejected Plaintiff’s argument held that the general rule of strict construction of an insurance contract, “will not be applied so as to provide an unreasonable interpretation of the words of the policy.” In affirming the trial court and ruling in favor of Erie, the Tenth District found that the exclusion was unambiguous despite the lack of commas or conjunctions separating the words operating and occupying.

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