

**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: Supreme Court

Case Name: *State Auto. Ins. Co. v. Pasquale*, 113 Ohio St.3d 11, 2007-Ohio-970

Decided: March 21, 2007 (posted March 21, 2007)

Issue(s): Exclusion of off-road vehicles from UIM coverage

Summary of Opinion: Plaintiffs' son was killed in a collision with an off-road motorcycle (dirt bike). After settling with the tortfeasor for his insurance limits of \$12,500.00, Plaintiffs sought underinsured motorist ("UIM") coverage through two insurance policies they had through State Auto. However, both State Auto policies had provisions that excluded off-road vehicles from the definition of an underinsured vehicle. Accordingly, State Auto denied coverage and moved for summary judgment. Plaintiffs' also moved for summary judgment, arguing that the State Auto exclusion violated the applicable version of R.C. 3937.18, which was the version amended by House Bill 261, effective September 3, 1997 (H.B. 261). It is appropriate to mention here that the current version of R.C. 3937.18 as amended by Senate Bill 97, effective October 31, 2001, includes a specific definition of the term "motor vehicle" that excludes off-road recreational vehicles, but that the applicable House Bill 261 version did not have any definition of a "motor vehicle" whatsoever. The trial court found that the exclusion for off-road vehicles did not violate the applicable version of R.C. 3937.18 and granted State Auto's motion for summary judgment. On appeal, the Eleventh District reversed the trial court, finding that the exclusion violated H.B. 261 because it did not fall within the narrow set of "excludable categories" specifically listed in that version of the statute. The Supreme Court, however, rejected the Eleventh District's holding and affirmed the decision of the trial court. In finding for the insurance company, the Supreme Court held that H.B. 261 version of R.C. 3937.18 allowed insurers to exclude off-road vehicles from UIM coverage.

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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.

Court of Appeals: Ninth District

Case Name: *Nationwide Mut. Fire Ins. Co. v. Rose*, 2007-Ohio-1216

Decided: March 19, 2007 (posted March 19, 2007)

Issue(s): Choice of Law Provisions / Statute of Limitation

Summary of Opinion: Defendant was injured in a motor vehicle accident in Ohio and recovered over \$800,000.00 from the tortfeasor. Plaintiff was defendant's automobile insurer and brought suit for failure to reimburse as required by the insurance policy. Defendant moved for summary judgment, arguing that the one year Michigan statute of limitations should apply because the insurance policy stated that the policy would be applied in accordance with Michigan law. The trial court denied the motion for summary judgment, and the jury found in favor of the insurer. On appeal, the Ninth District affirmed the trial court's decision, and stated that generally the statute of limitations for the forum state prevails despite a choice of law provision concerning substantive law in an insurance policy. While the insurance policy in question clearly stated that substantive issues would be governed by Michigan law, it was silent as to the applicable law for statute of limitation. Thus, the Ninth District held that the forum state's statute of limitation would apply.

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