

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: *Mid-American Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248

Decided: April 4, 2007 (posted April 4, 2007)

Issue(s): Declaratory Judgment / Standard of Review

Summary of Opinion: A man was injured in an automobile accident by an unidentified driver and initially sought coverage through his employer's uninsured motorist insurer, Mid-American, pursuant to *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660. However, *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, was decided during the pendency of his claim, which reversed *Scot-Ponzer* and held that an employer's uninsured motorist coverage only applies to those individuals injured within the scope of their employment. Because he was not acting within the scope of his employment at the time of his accident, the man voluntarily dismissed the action. Nevertheless, Mid-American initiated a declaratory judgment action to determine his rights under the policy. The trial court dismissed the declaratory judgment action, finding that there was no justiciable controversy. The Eleventh District found that the trial court had not abused its discretion and affirmed. Although recognizing that the declaratory judgment statutes are broad in scope and to be construed liberally, the Supreme Court also affirmed the trial court, holding that an automobile-liability insurer cannot maintain a declaratory judgment action to determine the rights of a party under its insurance contract if that party is barred from seeking insurance coverage by controlling legal authority. Furthermore, a dismissal of a declaratory judgment action is reviewed under an abuse of discretion standard.

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.

Court of Appeals: Eighth District

Case Name: *Qualchoice, Inc. v. Doe*, 2007-Ohio-1586

Decided: April 5, 2007 (posted April 5, 2007)

Issue(s): Subrogation / Effect of Release

Summary of Opinion: The insured was injured in an automobile accident and Qualchoice paid medical bills on behalf of the insured for injuries arising out of the accident. The insured entered into a settlement and release agreement with the tortfeasor, whereby the insured settled "all bodily injury claims." Subsequently, Qualchoice brought suit against the tortfeasor in subrogation, seeking recovery of the amounts it had paid as a result of the accident. The trial court granted the tortfeasor summary judgment. On appeal, the Eight District affirmed the decision of the trial court, holding that although a tortfeasor who knows of a subrogation claim remains liable for the subrogation claim even after the insured executes a release, the subrogation claim is waived where the tortfeasor is not aware of the subrogation claim prior to entering into an settlement and release agreement with the insured. Thus, because there was no evidence that the tortfeasor herein was aware of Qualchoice's subrogation claim prior to entering into the settlement with the insured, Qualchoice's right of subrogation against the tortfeasor was destroyed.

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