

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: Supreme Court

Case Name: *Shay v. Shay*, 113 Ohio St.3d 172, 2007-Ohio-1384

Decided: April 11, 2007 (posted April 11, 2007)

Issue(s): Modification of Insurance Policy / UM and UIM Coverage

Summary of Opinion: Debra Shay, was injured seriously in a single-vehicle accident on March 16, 2001. At the time of the accident, Shay was a passenger in a minivan operated by her husband. Both Shay and her husband were the named insureds on the relevant insurance policy, which was first issued to them on July 6, 1998. Thus, the Shays' first two-year guarantee period thus ran from July 6, 1998, to July 6, 2000, and the second two-year guarantee period ran from July 6, 2000, to July 6, 2002. The policy provided liability coverage as well as UM/UIM coverage, but excluded any vehicle owned by a named insured from the definition of an uninsured motor vehicle. This exclusion mirrored the version of R.C. 3937.18(K)(2) in effect at the time the initial policy was issued and at the onset of the second two-year guarantee period. However, in September of 2000, R.C. S.B. 267 was passed, which removed the provision in R.C. 3937.18(K)(2) allowing insurers to bar a vehicle owned by a named insured from the definition of an uninsured vehicle. Shay argued that the exclusion was eviscerated by S.B. 267, and that S.B. 267 was incorporated into the policy on January 6, 2001, the date the Shays first renewed the policy after S.B. 267 became effective. She conceded that UM/UIM coverage would not have been available to her absent S.B. 267. Shay's insurer, Ohio Mutual Insurance Group ("Ohio Mutual"), argued that the precedent in *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246 should apply and the terms of the insurance policy, including any exclusions, cannot be amended during the two-year guarantee period except by agreement of the parties. The trial court found in favor of Shay and granted her summary judgment motion. On appeal, the Sixth District Court of Appeals affirmed the trial court, holding that while *Wolfe* prevents an insurance company from lessening coverage during the two-year guarantee period, it

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.

is not prevented from increasing such coverage. The Supreme Court subsequently overruled both the trial court and the Sixth District, holding that the decision to alter the terms of an insurance contract during the two-year guarantee period is strictly optional, regardless of whether the alteration results in an increase or decrease in coverage. Specifically, the Court noted that the General Assembly passed S.B. 267 in response to the *Wolfe* decision and that S.B. 267 amended R.C. 3937.31 by adding subsection E, which provides: "Nothing in this section prohibits an insurer from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of this section." Such language only indicates that an insurer *may* modify the terms of the policy during the two-year guarantee period to incorporate changes in the law; it does not indicate that such changes are automatically incorporated into the policies.

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.