

**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](mailto:jawagner@green-law.com).**

Court of Appeals: Third District

Case Name: *Cooper Tire & Rubber Co. v. Travelers Cas. & Surety Co.*,  
2007-Ohio-1905

Decided: April 23, 2007 (posted April 23, 2007)

Issue(s): Effect of Settlement on Duty to Indemnify and Defend in an employer intentional tort action

Summary of Opinion: An employer intentional tort claim was brought against Cooper, who sought coverage for defense and indemnity under its general commercial liability policy with Travelers. Cooper's claim was denied based on an exclusion in the policy for bodily injury that occurs from an act that is "determined to have been committed by [the insured] with the belief that an injury is substantially certain to occur." Cooper brought suit against Travelers for breach of contract and declaratory judgment and settled with its employee on the employer intentional tort claim during the pendency of this action. Eventually, the trial court granted Travelers summary judgment and dismissed Cooper's claims. On appeal, the Third District noted that the language used in the exclusion was ambiguous in that it was uncertain what was meant by the term "determined." Thus, the court construed this provision in favor of coverage and held that "determined" referred to a judicial determination and that the exclusion could not apply to Cooper's claim because there was never a judicial determination that Cooper intended to injure the insured. Accordingly, Travelers owed Cooper a duty to both defend and indemnify, despite the fact that Cooper had settled the case, because there had been no judicial determination, and the decision of the trial court was reversed.

Court of Appeals: Fifth District

Case Name: *Combs v. Spence*, 2007-Ohio-2210

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.

Decided: April 30, 2007 (posted May 9, 2007)

Issue(s): Statute of Limitation for Personal Injury Automobile Claims

Summary of Opinion: Plaintiff was hit by insured's car on February 8, 2002. On February 11, 2002, Plaintiff went to the emergency room and was treated for injuries that arose as a result of the accident. Thereafter, on February 10, 2004, Plaintiff brought suit against the insured. The insured moved for summary judgment on the basis that Plaintiff's claim violated the two statute of limitations for personal injury set forth in R.C. 2305.10. Plaintiff responded that he was not aware of the injury until February 11, 2002, and that the "discovery rule" tolled the statute of limitations. The trial court granted the insured summary judgment. On appeal, the Fifth District affirmed the trial court's decision, holding that the discovery rule does not apply to personal injury automobile claims.

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