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: Fifth District

Case Name: *Hastings Mut. Ins. Co. v. McCoy*, 2007-Ohio-2447

Decided: May 18, 2007 (posted May 21, 2007)

Issue(s): Self Defense / Intentional Injury Exclusion

Summary of Opinion: Defendant engaged in a physical altercation with a third party. When the third party commenced a civil action for damages sustained in the altercation, Defendant's insurer, Hastings Mutual, initiated a declaratory judgment action, arguing that Defendant's actions were excluded from coverage pursuant to an exclusion for injury intentionally caused by the insured. The trial court granted Hastings Mutual summary judgment. On appeal, Defendant argued that summary judgment was not proper because there was at least a material issue of fact regarding whether his actions constituted self defense. Recognizing that self defense is an affirmative defense, the Fifth District affirmed the trial court's ruling and held that even though acts of self-defense may provide a legal justification for a person accused of assault, the underlying intentionality of those acts does not change. Thus, the only Defendant *intentionally* used force during the altercation, which is excluded from the policy, even if he acted in self-defense.

Court of Appeals: Sixth District

Case Name: *Dalferro v. Knight*, 2007-Ohio-2255

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

Issue(s): UM/UIM Claims / Course and Scope of Employment

Summary of Opinion: Plaintiff is a vice-president of Citizen's Bank, and she was injured

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while riding as a passenger on a motorcycle on a Saturday afternoon in July of 1999. Prior to the accident, Plaintiff and her husband had been to a classic car show and were on there way to a live music concert at the time of the accident. Plaintiff had performed no job related activities that day. After the accident, Plaintiff sought coverage through Citizen's Bank's underinsured motorist coverage, arguing that she was within the course and scope of her employment at the time of the accident. The basis of this argument was a clause in the bank's code of conduct that states all bank employees engaged in off the job activities are to refrain from conduct that could negatively reflect on the bank. Thus, Plaintiff argued that she is always within the course and scope of her employment as an ambassador of the bank. The trial court rejected Plaintiff's argument and directed a verdict for the Bank's insurer. On appeal, the Sixth District affirmed the trial court's decision, holding that an employer's code of conduct cautioning the exercise of prudence in nonwork related actions by employees renders an employee within the course and scope of employment on an uninterrupted basis. Therefore, because there was no nexus between Citizens Bank and Plaintiff's activity at the time of her accident, she was not acting within the course and scope of her employment.

Court of Appeals: Ninth District

Case Name: *Pierson v. Wheeland*, 2007-Ohio-2474

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

Issue(s): Proration of UIM Liability

Summary of Opinion: James Ridgeway was injured in an automobile accident caused by the negligence of Richard Wheeland. The automobile Wheelend was operating was owned by a third party, which had underinsured motorist coverage through Nationwide in the amount of $100,000. Wheeland qualified as an insured under the owner's Nationwide UIM policy. Ridgeway personally carried $25,000 in UIM insurance through Allstate. Eventually, Ridgeway settled with Wheeland for $20,000.00. Because both the Nationwide UIM policy and the Allstate UIM policy provided had excess other insurance clauses, both were obligated to provide underinsured motorist coverage on a pro-rated basis. The trial court pro-rated the amount of liability based on the total coverage amounts of each UIM policy ($100,000/$25,000). However, on appeal, the Ninth District reversed the trial court's decision, holding that both UIM policies had provisions reducing UIM coverage by amounts the injured party receives. The appellate court ruled that both coverages should have been reduced by the amount of money Ridgeway collected *prior* to calculating the proration. Thus, the trial court should have based calculated the percentage of proration based on the amounts of $80,000 and $5,000, rather than $100,000 and $25,000 because Ridgeway had received $20,000 from Wheelend.

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Court of Appeals: Ninth District

Case Name: *Welfle Inc. v. Motorist Ins. Group*, 2007-Ohio-1899

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

Issue(s): Proration of UIM Liability

Summary of Opinion: Plaintiff contracted to remove asphalt from a bridge. While removing the concrete, Plaintiff milled to deeply and damaged the underlying concrete. Plaintiff submitted a claim under its comprehensive general liability insurance policy, seeking coverage for the damage to the concrete. The claim was denied based on an exclusion for any damage caused to that particular part of real property on which Plaintiff was performing work. Plaintiff argued that it was performing work on the asphalt rather than the concrete and that this exclusion did not apply to damage caused to the underlying concrete. The trial court granted the insurance company summary judgment. On appeal, the Ninth District affirmed the trial court's decision, holding that Plaintiff was in fact working on the bridge deck and that it caused damage to the bridge deck while trying to remove the asphalt from the deck. The appellate court drew an analogy to a painting contractor who misuses a scraper while using it to remove paint or other material from window panes thereby damaging the panes. Such a painter has incorrectly performed work on the panes and coverage for the cost of their repair would be excluded.

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