

**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: Sixth District

Case Name: *Coe v. Grange Mut. Cas. Co.*, 2007-Ohio-2823

Decided: June 8, 2007 (posted June 8, 2007)

Issue(s): Retroactivity of *Scott-Pontzer* / Bad Faith / Fraud / Effect of Settlement

Summary of Opinion: Wanda Moffit died as the result of injuries she sustained in a car accident. At the time of the accident, Moffit was not engaged in the course and scope of business. However, based upon the Ohio Supreme Court's ruling in *Scott-Pontzer v. Liberty Mutual Insurance Co.* (1999), 85 Ohio St.3d 660, Plaintiff, as the administrator for Moffit's estate, requested copies of the insurance policies applicable to Moffit's employers, which was insured by Grange Mutual Casualty Company. Grange denied coverage, refused to provide the requested policies, and concealed the existence of a relevant umbrella policy. Accordingly, Plaintiff brought a claims against Grange for breach of contract, breach of duty of good faith, and fraud. Eventually, Grange settled the breach of contract claim for the \$1 million policy limits plus \$222,191.57 in accumulated interest. Thus, only the bad faith and fraud claims remained. During the pendency of these remaining claims, *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849 was decided, which limited *Scott-Ponzer* and held that only employees acting in the course and scope of employment are entitled to coverage under an employer's insurance policy. Grange moved for summary judgment, arguing that because Moffit was not engaged in the course and scope of employment at the time of the accident, she was not an insured under the employer's policy and not entitled to coverage. Thus, Grange argued that it owed no duty to Moffit and that it could not, as a matter of law, be found to acted in either bad faith or fraudulently. The trial court agreed and granted Grange summary judgment. On appeal, the Sixth District recognized that *Galatis* applied retroactively to claims which were still on appeal at the time it was decided. However, the Sixth District distinguished the

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present case and held that as a matter of policy, retroactive application of case law to settlements already memorialized, on claims already dismissed, would undermine the finality of such arrangements. Thus, a dismissal with prejudice on a settlement agreement is the equivalent of a judgment, and Motiff had obtained vested rights which could not be disturbed by subsequent judicial interpretations.

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