

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: *Dieble v. Auto Owner's Ins. Co.*, 2007-Ohio-3429

Decided: July 2, 2007 (posted July 5, 2007)

Issue(s): Admissibility of Drug Use and Amount of Insurance Coverage

Summary of Opinion: The Plaintiffs' son was killed in a motor vehicle accident. At the time of the accident, he was test driving a motorcycle for his employer. Defendant Auto-Owners Insurance Company provided \$1,000,000.00 in underinsured motorist coverage to the decedent's employer. A toxicology report revealed that the decedent had illegal drugs in his system at the time of the accident. Furthermore, there was other evidence that the decedent had used cocaine, marijuana, opiates, and regularly consumed five to six beers per day. However, there was no evidence that the decedent was under the influence of drugs at the time of the accident or that he had used drugs immediately prior to the accident. The trial court held that such evidence was inadmissible and barred Auto-Owners from introducing any evidence related to decedent's drug use. During trial, a witness testified that the decedent's employer had \$1,000,000.00 in insurance coverage through Auto-Owners. Immediately after this comment, the trial court instructed the jury to ignore the amount of insurance coverage and focus on determining the amount of damage. Additionally, the trial court gave a limiting instruction that reminded the jurors to determine the amount of damages without considering the amount of coverage available. On appeal, Auto-Owners argued the trial court had erred by refusing to allow evidence regarding decedent's past drug use and in allowing the jury to hear evidence on the amount of insurance coverage. As to the issue of decedent's drug use, Auto-Owners argued that such evidence was relevant and admissible to test the credibility of family members who were claiming to have been close to the decedent and were seeking damages for his death. According to Auto-Owners, members of the family could not have been that close with decedent if they were ignorant of his drug use. In affirming the trial

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court, the Fifth District held that any arguable relevance of such evidence was substantially outweighed by the danger of unfair prejudice and inflaming the jury. On the issue of the amount of insurance coverage available, the Fifth District agreed that such evidence was irrelevant and thus inadmissible. However, the court also found that Auto-Owners was not prejudiced by the admission of such evidence because the trial court cautioned the jury not to consider such evidence in determining damages; the trial court gave the jury a separate limiting instruction on this issue; and the total amount of damages awarded by the jury, \$560,692.00, was well under the \$1,000,000.00 limits of the policy.

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