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: Third District

Case Name: *Tuohy v. Taylor*, 2007-Ohio-3597

Decided: July 16 2007 (posted July 16, 2007)

Issue(s): UIM Coverage / Interpretation of an "other owned auto" exclusion"

Summary of Opinion: Plaintiffs' son was killed in a car accident. At the time of the accident, the son was driving his own vehicle, on which he carried a separate insurance policy. Plaintiffs' sought underinsured motorist ("UIM") coverage through their insurer, Westfield Companies ("Westfield") for their own personal losses arising out of their son's wrongful death. The Westfield policy defined UIM coverage as "compensatory damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle ***because of bodily injury*** sustained by an insured and caused by an accident." The policy also had an "other owned auto exclusion" that excluded UIM coverage "***for bodily injury*** sustained by an insured while operating a motor vehicle owned by any family member which is not insured under this policy." Eventually, the trial court granted Westfield summary judgment.

It was undisputed that the son's vehicle was not insured under Plaintiffs' policy. However, Plaintiffs argued that the use of the different phrases "because of bodily injury" and "for bodily injury" entitled them to UIM coverage for their wrongful death claims or at least gave rise to an ambiguity that should be read against Westfield and in favor of coverage. Plaintiffs claimed that the phrase "because of bodily injury", which is used to define the scope of UIM coverage, could be read to include wrongful death losses since such losses are separate from and occur as the result of bodily injury. Furthermore, Plaintiffs argue that the phrase "for bodily injury" as used in the other owned auto exclusion acts to limit only UIM claims actually arising out of physical injuries [i.e. their son's claim] and does not apply to UIM claims based on wrongful death losses [i.e. their claims.] Thus,

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Plaintiffs claimed that even if their son's UIM claims would have been barred by the other owned auto exclusion, their wrongful death UIM claims should have been permitted. At the very least, Plaintiffs maintained that the language is ambiguous and should be interpreted in favor of coverage.

In a less than clear ruling that affirmed the trial court's decision, a majority of the Third District held that there was no rational distinction between the phrases "because of bodily injury" and "for bodily injury." Thus, the majority ruled that the policy was not susceptible to more than one meaning and was thus not ambiguous. Accordingly, the majority held that both Plaintiffs' UIM claim and their son's claim were barred by the other owned auto exclusion. The practical effect of this ruling is that the phrases "because of bodily injury" and "for bodily injury" have been interpreted as interchangeable by the Third District. In making this ruling, the Third District expressly rejected a contrary ruling by the *Hall v. Nationwide Mutual Fire Insurance*, 10th Dist. No. 05AP-305, 2005-Ohio-4572.

On judge dissented, citing to decisions from the 5th, 7th, 6th, and 10th, districts that had held the phrases to be ambiguous. Thus, the dissent would have ruled that Plaintiffs' own UIM claim arising out of their wrongful death losses was not barred by the other owned auto exclusion.

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