

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Travis Vieux at 937-224-3333 or email Travis at tjvieux@green-law.com.

Court of Appeals: Tenth District

Case Name: Rakich v. Anthem Blue Cross and Blue Shield, et al
(2007-Ohio-3739)

Decided: July 24, 2007 (Posted July 24, 2007)

Issue: Claim for “residual diminution” recognized under Ohio law.

Summary of Opinion: The Tenth District addressed this issue of first impression in Ohio. The plaintiff brought suit for, among other claims, damages for the difference between the fair market value of her vehicle prior to being damaged and the value after repair.

Plaintiff was involved in a motor vehicle accident and her vehicle was damaged. The vehicle was later repaired. Liability was admitted by the defendants and compensatory damages were paid as to the costs of repair. On the question of damages, plaintiff sought compensation for the “diminutive value” of her vehicle, i.e., the reduction in market value after the repairs. Franklin County Court of Common Pleas entered partial summary judgment for the defendants as to this claim. The trial court concluded that Ohio law allowed only two exclusive and alternative methods to calculate property damages: diminution of value and cost of repairs and precluded plaintiff from offering evidence as to the “future lesser resale value” of her vehicle in order to establish damages. Plaintiff appealed.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court 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.

The Tenth District began with a discussion of fundamental tort law and restated that the purpose of damages is to make the injured party whole. The Court determined that no previous Ohio cases had yet addressed what the Court termed “residual diminution” and reviewed several persuasive cases from other jurisdictions.

The Tenth District ultimately decided that claims for “residual diminution” are allowed under Ohio law in cases where the cost of repairs fail to make the plaintiff whole.

The Court then rejected arguments by the defendant that such actions for residual diminution were speculative and would promote increased litigation requiring each side to hire valuation experts. The Court found that the required evidence is substantially similar and no more onerous than the valuation that is already required.

Court of Appeals: Ninth District

Case Name: Horak v. Nationwide Insurance Co. (2007-Ohio-3744)

Decided: July 25, 2007 (Posted July 25, 2007)

Issue: Insurance agent negligence, fiduciary responsibilities, breach of contract, bad faith

Summary of Opinion: The Ninth District determined that an insurance agent does not have a fiduciary relationship with an insured in the normal course of business. The agent was not negligent in failing to procure adequate insurance for the insureds where the insureds had not requested additional insurance. Agent was likewise not negligent for failing to annually inspect the insureds’ property for increases in value and that insurance was sufficient for increases in value. R.C. 3929.25 does not create an ongoing duty for the agent to make annual inspections of insured property. Insurance company did not breach the insurance contract nor act in bad faith when it made timely payments on the insureds’ claim in excess of policy limits.

Plaintiffs insured their home and then later made additions to home. The original policy included a replacement cost guarantee, however, later amendments removed that guarantee and included a policy limit of \$132,000 plus up to an additional 20% if actual repair or replacement exceeded the insured amount. Plaintiffs home was destroyed by fire. Insurance representatives responded that day and over the following two months plaintiffs were paid more that \$190,000 for the loss of the home.

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The plaintiffs rebuilt their home at a cost of \$260,000 and sought to enforce the replacement cost guarantee. They alleged that the insurance agent breached his fiduciary duty to them in that he did not procure sufficient insurance to cover their loss. Additionally they claimed negligence as a breach of R.C. 3929.25 in that the agent failed to inspect the property to determine if the home was sufficiently covered. Plaintiffs also brought suit against Nationwide for breach of contract and bad faith for failing to pay the complete replacement cost of their home. Summit County Court of Common Pleas granted summary judgement to the defendants and plaintiffs appealed.

The Court determined that an insurance agent, in the normal course of business, did not have a fiduciary relationship with insurance clients. Such relationship only exists where “special confidence and trust is reposed in the fidelity and integrity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust.” The Court determined that the forming of a fiduciary relationship was mutual and with all parties understanding.

The Court found that an insurance agent may be negligent in failing to procure insurance that was requested by the insured. The insurance agent has a duty to exercise good faith and reasonable diligence in obtaining insurance which a customer requests and the insured has a corresponding duty to examine the policy, know the extent of coverage and notify the agent if coverage is inadequate. Where plaintiffs had never requested additional insurance, the agent was not negligent.

R.C. 3929.25, the “valued policy statute,” requires an insurance company representatives to examine an insured property and determine a fixed insurable value. The Court found that the intent of the statute was to prevent insurers from over-insuring property in an attempt to increase premiums and then paying less in the event of a total loss. The Court found that nothing in R.C. 3929.25 required annual inspections and to ensure that the value had not changed.

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