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: Sixth District

Case Name: Lager v. Gonzalez
(2007-Ohio-4094)

Decided: August 10, 2007 (Posted August 10, 2007)

Issue: Uninsured/Underinsured Motorist Coverage, Policy Ambiguity

Summary of Opinion: The Sixth District followed the Tenth District's holding in *Hall v. Nationwide*, 2005-Ohio-4572, finding that policy ambiguity existed between the terms "for bodily injury" and "because of bodily injury." Such ambiguity is resolved in favor of coverage.

Plaintiff Lager, as the administrator of his daughter's estate, brought a suit for wrongful death and a survivorship action. Plaintiff's daughter was 21-years-old and a college student residing in Toledo when she died as a passenger in her own vehicle due to the negligence of the driver. Decedent had a separate policy on her car with UM/UIM maximum limits of $100,000. Plaintiff had a policy through Defendant. Plaintiff's policy covered his "relatives" "**because of** bodily injury" and had a maximum of $300,000. "Relative" included "a blood relation, under the age of 25 and unmarried, while temporarily living outside the household. "

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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 policy also included an "other owned auto" exclusion that stated that "coverage is not applied to anyone **for bodily injury** while insured occupied a motor vehicle owned by a relative, but not insured for coverage under this policy."

The trial court followed *Hall v. Nationwide* and granted summary judgement to plaintiff. Defendants appealed arguing that the Tenth Circuit was not controlling. The Sixth Circuit adopted *Hall* and affirmed the finding of summary judgement.

Court of Appeals: Second District

Case Name: LaFollette v. Taylor Building Corp. (2007-Ohio-4085)

Decided: August 3, 2007 (Posted August 10, 2007)

Issue: Premises Liability, Open and Obvious Dangers

Summary of Opinion: The Second District found that where a danger is open and obvious, invitees' conduct could not create a duty by their own actions.

Plaintiff purchasing a home from defendant. Plaintiff and defendant's agent were inspecting the newly constructed home. Plaintiff was looking up at the gutters and walked backwards into a hold dug for a mailbox, injuring his knee.

The Second Circuit followed *Armstrong v. Best Buy*, 2003-Ohio-2573, in determining that the hole was an open and obvious danger. That plaintiff decided to walk backwards into a hole that could otherwise was noticeable, did not change the nature of the danger and create a duty for the landowner.

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