

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: Eighth District

Case Name: Vento v. Strongsville Board of Education, et al
(2007-Ohio-4172)

Decided: August 16, 2007 (Posted August 16, 2007)

Issue: Sovereign Immunity, Trespass to Property.

Summary of Opinion: The Eighth District found that the according R.C. 2744.02(A)(1) the maintenance of school grounds is a governmental function that is immune from tort liability. Where run-off from school grounds trespassed on to plaintiff's property causing damage, the school was immune because the damage did not occur on school property.

Plaintiff brought suit for damage to his property from drainage run-off from an adjacent elementary school. The school filed for summary judgement based on sovereign immunity under R.C. 2744.02(A)(1) in that the maintenance of its property was a governmental function. The exception for negligent performance of governmental functions under R.C. 2744.02(B)(4) did not apply because that exception requires that the negligence occur within or on the grounds of buildings used in connection with a governmental function. As the damage to plaintiff occurred on his property, this exception did not apply and the school was entitled to sovereign immunity.

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Court of Appeals: Eighth District

Case Name: Carriero v. Cincinnati Insurance Company
(2007-Ohio-4171)

Decided: August 16, 2007 (Posted August 16, 2007)

Issue: Insurance Contract interpretation / ambiguity

Summary of Opinion: The Eighth District found that the time limitation for filing for UIM coverage in the policy was not ambiguous. There was no provision in the policy that permitted the insured to recover based on “substantial compliance” with the terms of the policy.

Plaintiff was involved in a motor vehicle accident on July 20, 2000. She settled her claims against the tortfeasor on for the limits of his coverage on June 1, 2003. She filed this UIM action against her insurance company on April 12, 2006. The defendant insurance company filed for summary judgement based on the UIM policy limitation that “No lawsuit or action whatsoever or any proceeding in arbitration shall be brought against us for the recovery of any claim unless the lawsuit or arbitration is commenced within two years of the date of the accident.” The trial court granted summary judgement.

On appeal, the plaintiff asserts that the term “any action whatsoever” rendered the time limitation “ambiguous.” The court found that the plain and ordinary meaning of the words were not ambiguous and that plaintiff had not commenced her action against the defendant until after the policy time limitation.

The plaintiff’s attorney had informed the defendant in a letter on September 28, 2004 that he was “prepared to proceed with a UIM claim.” The plaintiff argued that she had “substantially complied” with the policy terms such that her claim was not barred. The court found that the terms of the policy did not permit “substantial compliance” and the attorney’s letter was insufficient to comply with the policy requirements.

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