

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: Rhinehart v. Dillard
(2007-Ohio-4310)

Decided: August 23, 2007 (Posted August 23, 2007)

Issue: Insurance Policy Interpretation, Ambiguity

Summary of Opinion: The Tenth District held that an insurance policy exclusion for bodily injury arising from the use of a motor vehicle, except motor vehicles designed principally for recreational use off public roads, did not apply to a motorcycle that had been modified by the owner for off-street racing.

Nelson and Dalton purchased a 2002 Suzuki Hayabusa 1300 motorcycle. When purchased, the motorcycle was designed for use on public roadways. However, the motorcycle was then modified for off-street racing and was no longer "street legal" and was not insured by the owners.

The owners stored the motorcycle in the garage of Defendant Dillard. Dillard was not to operate the motorcycle, except for moving the motorcycle from the garage to a trailer so that the motorcycle could be hauled to racing events.

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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.

Dillard and some friends, including Roshawn McBroom, were to load the motorcycle onto the trailer for a race. However, Dillard drove the motorcycle on the public road in front of his home, lost control of it and struck McBroom as McBroom stood in Dillard's driveway.

Dillard was covered by a homeowner's policy with Allstate. Allstate denied coverage citing an exclusion in the policy for bodily injury caused by the use of a motor vehicle, except motor vehicles principally designed for recreational use off public roads.

There were several issues related to civil and appellate procedure that are not relevant to insurance law. Allstate argued that the motorcycle had been designed and built for use on public roads and that later modifications did not alter its "principal design." Dillard argued that the motorcycle did not fit the exclusion as it was designed and modified for off-street racing by the owners and that, regardless, the policy was ambiguous and should be construed in favor of coverage. Suffice it to say that Dillard prevailed before the trial court on the issue of coverage and Allstate appealed.

The Tenth District determined that the policy language as to the "motor vehicle designed principally for recreational use off public roads" was ambiguous as to the motorcycle in question and construed the policy against the drafter, Allstate, and in favor of coverage.

Court of Appeals: First District

Case Name: Carter v. Adams
(2007-Ohio-4322)

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

Issue: Insurance Policy Interpretation, Ambiguity

Summary of Opinion: The First District held that a shooting by a patron within a bar was an "assault and battery" within the meaning of an insurance policy exclusion for assault and battery.

Plaintiff Carter was shot eight times by another patron while inside the Queen Ann Grill & Bar. Carter survived and sued the bar's owner and several employees. The shooter was not sued.

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The bar's insurer refused to defend the bar in the suit brought by Carter. The bar then brought a third-party complaint for breach of contract and bad faith. It also brought suit for declaratory judgement that the insurer had a duty to defend the bar against Carter's complaint.

The insurer counter-claimed against the bar, seeking declaratory judgement that no coverage existed under the policy as the insurance policy excluded coverage for bodily injury arising from "assault and/or battery committed by the insured, any employee of the insured, or any other person" and "the failure to suppress or prevent assault/and or battery by any person." The trial court granted summary judgement to the insurer.

The bar appealed arguing that the use of a firearm was not an "assault and/or battery." The bar argued that "the plain and ordinary meaning of assault and battery would encompass a physical attack on another without a firearm." The Tenth District stated that to hold that an assault and battery under the meaning of the policy would be if the plaintiff had been injured by the use of fists instead of a firearm would be "pure pettifoggery."

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