

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: Ohio Supreme Court

Case Name: Webb v. McCarty
(2007-Ohio-4162)

Decided: August 29, 2007 (Posted August 29, 2007)

Issue: Uninsured/Underinsured Motorist set off amounts

Summary of Opinion: A divided Ohio Supreme Court held that the language of R.C. 3937.18(A)(2) as to setoffs for underinsured motorist coverage defines “amounts available for payment” to be the amount actually paid and not the policy limit amount. Chief Justice Moyer, Justice Pfeifer and Justice O’Conner affirmed the prior holding of *Littrell v. Wigglesworth*. Justices Lundberg Stratton, Lanzinger and Cupp concurred in the judgement only because they were bound by *stare decisis* but would have preferred to overrule *Littrell*. Justice O’Donnell dissented finding sufficient reason to overrule *Littrell*.

Plaintiff Webb was injured and his wife was killed in a motor vehicle accident caused by defendant McCarty. McCarty’s motor vehicle liability policy provided for a \$300,000-per-accident limit. \$25,000 was paid to Webb and \$269,836.08 was paid to the estate of his wife. Webb had underinsured motorist coverage with a \$300-per-accident limit. Webb and his children made a claim under this policy and Nationwide denied citing the

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plain language of R.C. 3937.18(A)(2) that the policy maximums were the same and there was a complete setoff.

The language of R.C. 3937.18(A)(2) states that uninsured motorist coverage arises “where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are less than the limits for the insured’s uninsured motorist coverage.” This statute was previously interpreted by the Ohio Supreme Court in *Littrell v. Wigglesworth*(2001) to mean that insured are entitled to any amount beyond what was paid.

Under *Littrell*, Webb and his children are entitled to any amount of benefit between the \$269,836.08 paid by McCarty’s insurance and the \$300,000 maximum available under his own policy with Nationwide. The Justices found that although the General Assembly has amended R.C. 3937.18 since *Littrell* was decided, they did not change the meaning of “available for payment,” therefor *Littrell* is still the law of Ohio.

Justices Lundberg Stratton, Lanzinger and Cupp each reasoned separately that *Littrell* was wrongly decided but they were bound by prior decisions of the court without a justification for overruling it.

Justice O’Donnell dissented separately finding that the plain language of R.C. 3937.18 did not include any reference to “amounts actually recovered” and would overrule *Littrell*.

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