

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, Cuyahoga County

Case Name: Gainer v. State Farm Ins. Co.
(2007-Ohio-5324)

Decided: October 4, 2007 (Posted October 4, 2007)

Issue: Uninsured Motorist Coverage, Regular Use Exception

Summary of Opinion: The Eighth District ruled that plaintiff was entitled to uninsured motorist benefits where he was injured while a passenger in a work vehicle assigned to another employee while the plaintiff was off duty

Gainer was employed by Area Wide Protection. Area Wide provided a vehicle to Brian Ward who regularly transported Gainer to job sites. An uninsured motorist struck the vehicle one morning while the two were on their way to a customer's business location. Gainer was not "on duty" until they arrived at the customer's business. Area Wide did not have uninsured motorist coverage on the vehicle, so Gainer sought uninsured motorist benefits under his own policy with State Farm.

State Farm denied benefits based on an exclusion for bodily injury that occurs while the insured is "occupying a motor vehicle owned by, leased to, furnished to, or available for the regular use of the insured" if the vehicle is not covered by the policy.

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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.

State Farm argued that the Area Wide vehicle was “furnished to” Gainer. Gainer brought suit. The trial court ruled the exclusion did not apply because the Area Wide vehicle was only available to Gainer “50% of the time.” State Farm appealed.

The Eighth Circuit held that the Area Wide vehicle was not “furnished or available for regular use” by Gainer because Gainer did not maintain “sole dominion and control” over the vehicle. The vehicle had been provided to Ward and there was no evidence that Gainer had any authority to exercise control over it, or even drive it. Coupled with the fact that Gainer was not on duty nor performing any employment duties, the vehicle was not furnished to him. The “regular use” exception did not apply.

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